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HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-THIRD CONGRESS

FIRST SESSION

ON

NOMINATION OF LOUIS PATRICK GRAY III, OF CONNECTICUT,
TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

FEBRUARY 28; MARCH 1, 6, 7, 8, 9, 12, 20, 21, AND 22, 1973

Printed for the use of the Committee on the Judiciary



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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1973

91-331

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NOMINATION OF LOUIS PATRICK GRAY III

WEDNESDAY, FEBRUARY 28, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 1202, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Ervin, Hart, Kennedy, Bayh, Byrd of West Virginia, Tunney, Hruska, Fong, Scott, Thurmond, Cook and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Peter Stockett, and Thomas D. Hart, professional staff members.

The CHAIRMAN. These hearings are on the nomination of L. Patrick Gray III, to be Director of the Federal Bureau of Investigation.

Senator Ribicoff.

STATEMENT OF HON. ABRAHAM RIBICOFF, A U.S. SENATOR FROM CONNECTICUT

Senator RIBICOFF. Mr. Chairman, we, in Connecticut, are proud of Pat Gray, and so am I. We, in Connecticut, respect Pat Gray, and so do I.

Mr. Chairman, I have known Pat Gray for many years. I have always found him to be a man of outstanding ability, character, and integrity. Every job that Pat Gray has performed he has performed with excellence. There is no question in my mind that Pat Gray is a dedicated public servant who will perform any task assigned to him in a nonpartisan manner. I respect the FBI, and the entire Nation respects the FBI. The FBI is one of the great law enforcement institutions in America. All of us know that when youngsters come to visit Washington, one of the first places they want to see is the FBI.

There is no question in my mind that as Director of the FBI, Mr Gray will perform his tasks on a completely nonpartisan basis. In all the years I have known Pat Gray he has never questioned the civil rights of individuals and the protection of constitutional guarantees. My feeling is that only the criminal has much to fear from Patrick Gray, and that the law-abiding citizen has nothing to fear from Pat Gray. He will be a defender of our rights, a defender of the Constitution, and law enforcement in this Nation will be stronger with Pat Gray as Director of the FBI. He has my unqualified support.

I am proud that Pat Gray is a citizen of Connecticut, and I am most pleased that the President of the United States has seen fit to appoint Pat Gray Director of the FBI.

The CHAIRMAN. Any questions?
Senator Weicker.

**STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR
FROM CONNECTICUT**

Senator WEICKER. Thank you very much, Mr. Chairman. I certainly associate myself with all that Senator Ribicoff has said. In addition I have a few other comments.

Pat Gray comes to your committee as a man of very broad experience, fortunately not just in the law but as a man who has served in the service as a Navy man, and as a man who went to law school, as a man who served as a lawyer, as a man who served in HEW, as a man who served in the Attorney General's office. In other words, one whose life has touched upon many aspects of the American experience, and I think that is a good thing for one who is going to lead the FBI. He has not been in one narrow area of activity.

Now, Mr. Chairman, I would like to comment upon an innuendo that has been made about this man of which I have firsthand knowledge. There appeared in Time magazine a column devoted to Pat Gray and in that column the following paragraph appears:

Much of the Senate opposition to Gray is rooted in his lack of law enforcement experience. Gray, who became a lawyer while on active duty with the Navy in 1949, retired after 20 years military service in 1960. He was nominated for a federal judgeship but because of his meager qualifications the nomination was withdrawn before the American Bar Association could officially act upon it.

And in the same paragraph, I don't really know what this has to do with the lead sentence:

He and Nixon had met at a Washington cocktail party in 1947 and the two have been on friendly terms ever since.

I would like to direct my comments to the innuendo that is contained in that paragraph of lack of legal qualifications. On November 23, 1971, I wrote to the then Attorney General, John Mitchell, recommending Pat Gray to a vacancy on the second circuit court of appeals, and I will make that letter available to your committee. In January 1972, the Deputy Attorney General, Mr. Kleindienst, wrote a letter to the standing committee on the federal judiciary of the American Bar Association requesting that an informal report on Pat Gray be compiled.

Now, prior to that report being compiled Pat's name was withdrawn as, in fact, he was being nominated for the Office of Deputy Attorney General.

Now, No. 1: Your committee knows full well that Pat Gray was never nominated for anything. Now let's get to the business of the American Bar Association. Mr. Albert Connolly of Cravath, Swaine, & Moore, New York, was designated by the ABA to investigate Mr. Gray's qualifications. He stated, in reading over the personal data questionnaire between February 1 and February 9, that he decided Mr. Gray had more background in Washington and should be evaluated there.

Therefore, on February 9, he called Mr. Charles Horsky of Covington and Burlington here in Washington and transferred the evaluation to him. That was all that was done on Mr. Gray's nomination before February 16, when the nomination was withdrawn. Mr. Connolly called Mr. Horsky on February 16, and told him to stop the evaluation because Mr. Gray's nomination had been withdrawn. Mr. Horsky said that was okay because he had not done anything on it anyway. Now that is the record, substantiated by correspondence and by the individuals.

I am ashamed, quite frankly, that this kind of innuendo and implication is contained in a magazine that really had its beginnings in the State of Connecticut so far as personnel were concerned, because if that is the status of reporting, it certainly is a far cry from the great reporting that built Time, Inc.

Point No. 2: The political role that Mr. Gray played. He does belong to the Republican Party as do I, and I have certainly been active during the past dozen years in Republican politics in the State of Connecticut and I have never heard of Pat Gray's role in the Republican Party, or Republican politics in the State of Connecticut. He plays no role and has never played a role in Republican politics in the State of Connecticut. So I think we can throw that out the window as being innuendo.

And lastly, Mr. Chairman, we come to what I consider to be, and I am sure the members of the committee also, the No. 1 issue that confronts the entire Congress and the executive branch, and that is the integrity of thought and the integrity of practice within this great democracy of ours and it is very much under test at this moment in time.

I don't think I have to review my credentials insofar as my total belief in a press free to tell us everything that is going on around us in this country. And I also believe very firmly in law enforcement free of politics, and I certainly believe in a political system where its participants are free from dishonesty of thought or deed. Let me say right now in relation to the Select Committee that I serve on with the distinguished Senator from North Carolina, commonly referred to as the Watergate Committee, if one-tenth of what I keep on reading is true in relation to some of the activities of my own party, God help the person or persons who either participated directly or indirectly in what I consider to be an American disgrace and a Republican shame, and I very much believe, Mr. Chairman, in the untarnished American dream.

Now insofar as Pat Gray's relation to these personal beliefs of mine, I believe he is a man of absolute integrity, and I believe he is a man of intellectual capacity, and I know that he believes not only in the words of the Constitution and the laws of this Nation, but the spirit, and I think that is even more important nowadays.

And I think that should your committee and the Congress see fit to appoint this man that he will exercise a leadership in the FBI that is on behalf of all Americans.

Thank you very much.

The CHAIRMAN. Do I understand from you that consideration of him for appointment to the circuit court of appeals was withdrawn because he was to be nominated for Deputy Attorney General?

Senator WEICKER. Mr. Chairman, I am glad you raised this point. It slipped my mind. It has been a well known fact that for the past 9 months I have made no move to fill this vacancy on the second circuit court of appeals, pending the decision of the President whether or not to nominate Pat Gray to the Directorship of the FBI. I have held it open. Would I take that course of action if I had known that the man had been rejected by the ABA in an earlier evaluation? I am glad you asked the question and that is the answer and I think it speaks for itself.

Senator RIBICOFF. Mr. Chairman, may I add that Senator Weicker had talked to me some time ago about recommending Mr. Gray to the second circuit court, which covers our State of Connecticut. At that time I told Senator Weicker that as far as I was concerned I had the highest regard for Patrick Gray and I would enthusiastically support the proposal of Senator Weicker. Subsequently I was told by Senator Weicker, and also in a kidding manner by Pat Gray, that he had been nominated for the Deputy Attorney Generalship and was going to take that instead of taking the life security of the second circuit court. He felt that if the President wanted him to serve in that capacity, he would so serve. So I reaffirm the statements of my colleague, Senator Weicker, concerning Patrick Gray on the second circuit court.

The CHAIRMAN. Any questions, gentlemen?

Thank you.

Senator WEICKER. Thank you.

The CHAIRMAN. Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF LOUIS PATRICK GRAY III, NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. GRAY. I do, Mr. Chairman.

The CHAIRMAN. Now, you have a prepared statement.

Mr. GRAY. Yes, I do, Mr. Chairman.

The CHAIRMAN. Do you want to go through that statement before any questions are asked of you?

Mr. GRAY. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. GRAY. Mr. Chairman, and members of the committee, I am privileged and honored to appear before this distinguished committee of the U.S. Senate.

The President has seen fit to send my name to the U.S. Senate, and the Senate now has the responsibility—and for the first time the opportunity—to advise and consent to the nomination of the Director of the Federal Bureau of Investigation.

The President has made his decision and now the U.S. Senate sets out to discharge its responsibility to examine into my qualifications and work its will in reaching a decision.

With regard to my background and professional qualifications, Mr. Chairman, I have sent to each member of the committee a copy of my responses to a personal data questionnaire of the American Bar Association prepared by me when it was believed that I might be considered for an appointment to the Federal judiciary. I thought

these might be helpful to the Senators, since the questions of the ABA were searching and my responses detailed and documented with exhibits.

Also, for the first time, the Senate has the opportunity to inquire into and evaluate the manner in which a man other than John Edgar Hoover has discharged the responsibilities and exercised the power of this great office.

But first, Mr. Chairman, I wish to state a few of my basic beliefs that I consider to be directly related to the manner in which I have performed my duties these last 10 months and in which I will perform my duties in the months and years that lie ahead.

I believe in the United States of America, not only as a nation and a people, but as an ideal that has helped to reshape the world.

I believe in the democratic form of government, and in the sovereignty of the people.

I believe in a government of law, enacted by the people through their representatives, and not in a government of men. I believe that where this kind of law ends, tyranny begins, and I believe that the people have the right and the duty to oppose such tyranny.

I believe that individual constitutional rights are basic to our society and our form of government, and I include not only the rights of the accused to the full protection of the law, but also the rights of all citizens to have that same protection.

I believe that it is possible for popular government to protect itself from overthrow without denying basic freedoms, and I consider that one of the principal responsibilities of the FBI and its Director is to prove that this can be done.

I believe in the FBI as a vital American institution. When it is criticized, I will look into the charges to determine whether they have any validity. And if they do, I will make the changes necessary to maintain the FBI's posture as the finest investigatory agency in the world. If they are not valid, I will defend the FBI with all the personal energies and capabilities at my command.

I did not ask the Attorney General or the President to place me in the position of Acting Director on May 3, 1972, nor did I ask anyone else to intercede for me. I believed then and I believe now that the position of Director of the Federal Bureau of Investigation seeks the man and not vice versa.

I said then and I say today that my appointment as Acting Director was accepted by me and interpreted by me as a return to the service of my country, a return to the service of all the people of the United States whom I had served so long in the U.S. Navy without regard to party, to politics, or to ideology.

I am aware of, and humbled by, the responsibilities, as well as the power, of the office I have occupied during the last 10 months. But, I am not afraid of the responsibilities, nor do I fear to use the power in the national interest and in keeping with constitutional safeguards. Every decision I have made has been considered carefully, and I have approached each with a sense of humility.

The record of performance is there. I accept, Mr. Chairman, full responsibility for that record.

No one can doubt the tremendous challenge inherent in following the footsteps and building on the legacy of John Edgar Hoover, whose

personal vision and ideals, and whose leadership, made the FBI an institution respected and honored by millions of our fellow citizens.

Thomas Jefferson said of Benjamin Franklin, "I succeed him; no one could replace him."

I could and do say the same about Mr. Hoover. I follow him in a position of great responsibility to our people and to our Nation. He, together with the men and women of the FBI who served with him during the years 1924 to 1972, created and built a magnificent organization devoted to the service of our country.

I welcome this opportunity to set forth for the committee, the Senate, and the American people, an accounting of my decisions and my actions, how I went about learning at first-hand the operations of the FBI, examining and evaluating them, the changes I have made, my viewpoints, and the conclusions I have reached about this American original.

Every American is a shareholder in the FBI. Every American has a right, I believe, to know the frank and candid reactions and views of the man who has held this responsible position since May 3 of last year.

When I became Acting Director, I made a key decision. I decided that I would not be a mere caretaker, making no waves and taking no actions. Rather, as Acting Director, I would not only make those decisions necessary for the day-to-day conduct of FBI operations but also those long-term decisions essential to the continued effectiveness and efficiency of the organization.

Mr. Hoover's death left a serious void. The members of the FBI were stunned and deeply grieved. They were accustomed to strong leadership. I believed that only by taking a positive and active approach, by working closely with the traditional leadership of the FBI, could we come through this critical period of transition.

I approached my assignment with deep feelings of respect and admiration for the FBI. Yet, at the same time, there were no stars in my eyes. I had my feet on the ground and was ready to ask the tough questions.

It is true that I had no professional law-enforcement experience prior to my entry into the FBI. I had not been handicapped or predisposed in any way, and, strange as these words may sound, I think there is sound basis for this statement. The FBI is an investigative agency accustomed to working on a daily basis with inquisitive lawyers and responding to tough questions. The law-enforcement expertise is there in great abundance, and that expertise has responded magnificently to my appearance on the scene and to my brand of leadership.

Basic to my approach, however, was a desire to learn, to keep an open mind, to become a part of the FBI as a living, active, human organization.

What made it tick? What were the sinews, muscles, and nerves that held it together? What were its problems? Who were the FBI people, both at headquarters and in the 59 field divisions across the United States? How could I earn the respect of these dedicated men and women, so that I could lead them effectively and so that we could work together as the FBI had always worked, as a team, as a "we" organization.

On my very first weekend in office, I developed a series of topics to be examined by me and the senior officials of the FBI—which I later distilled into 13 avenues of inquiry—dealing with such topics as organized crime, subversion, narcotics traffic, and espionage. A copy of these avenues of inquiry, Mr. Chairman, is appended as exhibit "A" to this statement.

This was launched the first group of a series of studies that continue to this day and will be continuing under a new Office of Planning and Evaluation far into the future.

I have been privileged, as no outsider had ever before been so privileged, to observe the performance of the FBI at first hand, to direct its performance, to question its performance, and to evaluate its performance.

It is a rare tribute to Mr. Hoover, and to the men and women who built the FBI with him, for me to be able to say to you today that this magnificent organization of human beings responded with a zest, an enthusiasm, and with an all-consuming fidelity to perfection that is unparalleled in my experience.

As the days passed, the position papers and study papers achieved a degree of excellence that seemed to challenge me, my own personal staff, and the senior executives of the FBI to find any point, a single topic, that should have been covered and was not.

These early days formed the most intensive educational experience I have ever encountered, stimulating and filled with insights. I asked the men and women of the FBI to "show me"—and, beyond all expectation, they showed me wherein the FBI's reputation resides.

At the same time, I wanted to get to know them personally. It was no graven image or historical mausoleum whose leadership I inherited when I moved to FBI headquarters. It was a working organization. It was a human institution.

I made a special effort to visit our field divisions, and, to date, I have visited all of them except one. I visited the people of our headquarters divisions here in Washington. I talked to these dedicated men and women—to the special agents in charge of the field divisions, to the special agent who works the cases on the street, to the stenographer, to the file clerk. I met with them. I wanted to see them, to talk to them, and I wanted them to see me. This was a period of transition, a period of trial, evaluation, and measurement on both sides.

I consider these visits to the field and to our headquarters divisions to be of overriding importance to the effectiveness of our overall effort and to our morale. I have every reason to believe that the men and women of the FBI share this view.

I moved into the FBI with a leadership philosophy that comes down, fundamentally, to a choice between the meat axe and an attitude of mutual trust and confidence. A new man can enforce control, which is where the meat axe comes in, or he can build confidence—confidence up and confidence down. He can run a penal colony, or a living, breathing, human organization, with all the risks that entails and all its incomparable strengths. I chose the latter course, and I am proud to report, Mr. Chairman, that the morale in the FBI is high, and I am pleased to say that it has always been high.

Very naturally, as the Acting Director, I based my conduct of the operations of the FBI on certain principles—principles that have set

the tone for my 10-month administration. I would like to share some of them with you, for these are principles that affect not only the FBI internally and operationally but affect its role in our free society.

First, I am determined that the FBI will remain completely and absolutely nonpolitical. This is one of the pillars of its historic strength. This is a policy that enables the FBI to perform efficiently, regardless of which great political party holds the reins of government, a policy that enables the FBI to carry out its responsibilities without the pull of political allegiance or the thrust of political influence.

When I met with President Nixon last May, at the time of my appointment as Acting Director, he gave me only one instruction, and he reiterated it on the 16th of this month, that the FBI and its Director continue to stay out of politics and to remain free of politics. I was not at all surprised to receive this instruction. It typifies our past relationship, which, for a decade and more, has always been essentially professional, on my part, as a lawyer and administrator. It is going to remain that way.

I pledge to the members of this committee, to the Senate, and to the American people, that, if the Senate advises and consents, and the President appoints, I will cause the FBI to continue to exercise the highest degree of professional competence in the interest of our Nation and all its people. At no time will political considerations or influence, in any shape or form, alter or guide my decisions or the activities of the FBI.

If, Mr. Chairman, I am unable to persevere in this determination for any reason, if my loyalties to the Nation's elected leadership, to the Constitution, and to my job, ever come into conflict, I will resign at once and return to my beloved law firm in southeastern Connecticut.

In following another operating principle, I have tried to open the windows, so to speak, to give the public and the news media an opportunity to see a little more of the FBI's internal workings, not just its final accomplishments.

I happen to believe—with Thomas Jefferson—that our democracy is a very fragile and precious form of Government, and I believe that it has lasted all these years because an interested and informed electorate has had confidence in its institutions. If the American people are informed of the facts, they can be counted on to make the right decisions and support the right decisions most of the time. And they become informed primarily through a free press, reporting objectively and factually.

I realize that the FBI cannot live in a fishbowl. We are an investigative agency and an intelligence agency. Constitutional due process and national security considerations demand a measure of secrecy for the protection of individuals, to protect the integrity of the investigative process itself, and for the common good, the general welfare of society as a whole.

It is now FBI policy, however, and to the maximum extent possible, to furnish information to the news media, to answer questions, to allow them to have a firsthand look at some of our activities, in the hope that such a policy will enable them to better understand and to report to the American people the facts regarding FBI operations.

If the American people are not informed, or are misinformed, some of the blame must necessarily rest with us. We are making the effort, and will continue to make the effort, to work with, not against, the press.

The committee might be interested in knowing that, during the past 10 months, I have met with more than 1,000 members of the fourth estate representing all segments of the media. I have met with a large number of them in my office in head-to-head situations, and in groups. I have talked to them over the telephone; I have answered their inquiries at press availability conferences. On my visits to our field divisions, I have specifically announced in advance that I would be available to any interested member of the press.

I have also undertaken to make myself available through public appearances in various parts of the country, before law enforcement, civic, church, educational, and business groups. I believed then, and I believe now, that this is one way in which I can report to the American people about their investment in the FBI. Fourteen of 33 speeches made through November 17, 1972, and sponsored by organizations other than the FBI or the Department of Justice, were made in connection with my visits to our field divisions. During this same period, I also made eight speeches sponsored by the FBI or the Department. I submit, Mr. Chairman, that a fair reading of these speeches will indicate clearly that these were not political or campaign speeches. There was no intent that they be, and they were not written to be, political or campaign speeches.

Mr. Chairman, I have appended a list of these appearances as exhibit "B" to this statement.

The CHAIRMAN. It will be admitted into the record.

Mr. GRAY. Also, I have endeavored to talk with individuals who have, in the past, been critical of the FBI. I believe in personal dialog, in person-to-person discussions, where there is some chance, however slight, of correcting misunderstandings. On occasion, these have arisen because accurate information about the FBI has been lacking. I have tried, to the best of my ability, to correct such misunderstandings. I am also well aware that dialog is of no avail if the human mind is closed.

Still another operating principle is that the FBI will continue to be a servant of the people, all the people, responsive to protecting both the security and the rights of every citizen.

I believe that there is no principle more important to a free society than that government should remain close to the people, and that the dispersion of power in our Federal system is one of the great safeguards of the liberties of a free people.

Fears have been expressed—by a very small number—that the FBI is becoming a national police force, that it is infringing on the liberties of the individual citizen. I pledge to this committee, the Senate, and the American people, that as long as I am its Director, the FBI will not exceed the jurisdictional authority defined by the President and the Congress, the FBI will respect the constitutional guidelines handed down by the Judiciary. In brief, the FBI will not take the law into its own hands.

As for my principles of management, you know that a new man at the top can signal any number of radical changes, or his arrival can mean a continuation of the same policies and procedures, with or without careful examination and evaluation.

I resolved to follow a course of continuity and change, that of continuing the same policies and procedures, with a careful examination and evaluation being conducted simultaneously.

It is not my way to move in with the broad brush of change if the organization has been delivering the product coupled with a handsome return on equity. This was the situation in the FBI.

My evaluation of the FBI, based on probing and study, is clear. The Nation can be proud of the quality of its performance. The men and women of the FBI are complete professionals. Their prime, and overriding, characteristic is a sustained pursuit of excellence in service to the American people.

It is true, however, based on our evaluations, that some changes in policies and procedures have occurred. There is nothing discrediting about this. Mr. Hoover, to his eternal credit, built a superb organization uniquely adaptable to change, which is why it has always remained so effective in its operations.

Some of these changes have been substantive in nature and, as you are undoubtedly aware, some have been well publicized. For example, the FBI since last May accepts applications from women who aspire to become special agents, a policy determination which, incidentally, also happens to be in accord with the law of the land.

We now have seven female agents who have been assigned to field divisions of the FBI following their successful completion of our new agent's training course. They are performing the same duties as their male counterparts.

Eight more female agents are still in training. Four of them are members of the new agents class that will graduate tomorrow, and they too will be reporting to field divisions.

Early last June, changes were made in the grooming standards for members of the FBI, but not in the requirement that they be neat, clean, and presentable in appearance. We changed the grooming standards; we did not abolish them.

I know, and every man and woman in the FBI knows, that the FBI would self-destruct without discipline. We have not abandoned our disciplinary procedures but we do approach them and apply them in a different manner. A law-enforcement agency of any kind or size cannot function at all, let alone function in the public interest in accordance with law, without a firm, fair, and swift disciplinary system.

On May 26 last, I announced that an Office of Equal Employment Opportunity Affairs was being established for the specific purpose of intensifying the FBI efforts to recruit more black Americans, Asian-Americans, Spanish-speaking Americans, and American Indians.

My initial inquiries last spring showed that the FBI's overall record in this area had been good. Special efforts had been made to recruit employees from these groups of Americans, but it had proven difficult to attract people qualified in every particular to meet the standards for FBI agents.

Although recruiting among these Americans is tough, we will not lower our standards, and I am certain that members of these groups of Americans would not want us to do so.

Representatives of the Office of Equal Employment Opportunity Affairs visit our field divisions across the United States and meet with influential community leaders and members of the press, among others, in an effort to recruit qualified applicants from these groups.

Since May 1972, we have achieved an increase in the FBI from among these groups of Americans, Mr. Chairman, and I have appended exhibit "C" to this statement which sets forth the small gains that lots of hard work has so far produced.

The CHAIRMAN. It will be admitted into the record.

Mr. GRAY. Another basic change in our policies concerns the re-ordering of investigative priorities in the area of organized crime.

Organized crime is a tenacious, brutal, and costly social malady. The investment capital of the organized criminal element is generated by its tremendous illegal gambling combines and narcotics traffic throughout the country. This investment capital enables the underworld to finance other criminal activities, as well as fraudulent activities in legitimate business and industry.

In order to strike organized crime where it would do the most damage, that is, at the top and in the pocketbook, we are concentrating our manpower on the larger, more powerful hoodlum groups, on the upper echelon leaders, and on their most prolific sources of illicit revenue.

The emphasis is not on assembling statistics, or keeping a high caseload, but in using our resources to hit directly at the strong points of the criminal enemy.

Along these same lines, we have improved our acquisition and dissemination of narcotics intelligence. Violations of the narcotics laws, of course, are not within the investigative jurisdiction of the FBI. But in the performance of our regular work, we receive information concerning the drug traffic and about the principals involved in this traffic.

Last summer, following receipt and study of a thorough in-house survey of the narcotics problem that I had ordered, I instructed each of our field divisions to designate a special agent as the narcotics coordinator for the division. So also I directed that a narcotics coordinator be designated at FBI Headquarters, and I ordered each special agent in charge of our field divisions to intensify the acquisition of narcotics intelligence for transmission to agencies having direct investigative responsibilities in cases involving violations of our narcotics laws.

This shift in emphasis has improved our efficiency in generating narcotics intelligence and this, in turn, is proving to be of real help to the agencies with jurisdiction in the narcotics field.

We have established a new FBI policy designed to insure complete fairness regarding civil rights investigations in cases involving complaints against police officers—fairness to the officers and the complainant. We do not assign special agents to make these investigations who have worked with the officers involved in the normal course of business. We bring in an agent who has had no prior close association with the local police department. This policy is in the interests of all, our agents, the police, and the public we both serve.

In August 1972, the evaluation process that I had been spearheading personally for 3 months was formalized in an Office of Planning and Evaluation. This office has been, and will be, conducting detailed studies of all phases of FBI operations, policies as well as procedures. We are giving ourselves a good, thorough overhaul, and we believe that we are the people best qualified to undertake this task.

The FBI, an agency of nearly 20,000 employees, needs topflight management. To further this objective, I have altered some, and initiated new, management programs. For example, last October I established Executive Selection Boards comprising experienced top level executives from both our Headquarters and field staffs to recommend to me those men in our ranks best qualified to advance to

positions of greater responsibility and authority. Another example is the institution of management instruction programs for our executives. These individuals are required to keep abreast of the latest ideas and concepts in effective decisionmaking, work planning and productivity, performance appraisal and evaluation, and human behavior.

And if that reference to "human behavior" seems inappropriate to the FBI agent—it is not. The men and women of the FBI, like all law-enforcement people, are expected these days to serve as baby sitters, handholders, and behavioral scientists, even as we expect them to confront the most desperate criminal with guns and guts and raw courage. It is not easy for the police officer to serve in this dual capacity. But increasingly he must. He has to be more of a sociologist, and, simultaneously, no less of a cop.

During the past 10 months, we have taken steps to bring our headquarters and field staffs closer together. In an organization stretching from Honolulu to Bangor, Maine, from Anchorage, Alaska, to San Juan, Puerto Rico, there is always the danger of polarization, of hard-core divisiveness between headquarters and the field staffs. As I indicated previously, I have visited 58 of the 59 field divisions. I have personally met, and talked at length, with each of our special agents in charge, as well as other field officials. I want to know their problems because their problems are our problems. I seek their counsel; in fact, I demand their advice and counsel. I want to establish that personal rapport which builds confidence and enhances performance.

In this connection, the FBI now encourages the interchange of ideas between field and headquarters officials. We have made this exchange a reality by visits to and from the field and to and from headquarters by our key officials.

Most important, we have taken steps to increase the productivity of the special agent in carrying out his daily assignments. To this end, we have eliminated a number of sheer administrative chores requiring considerable paperwork, thereby stealing his time from investigative tasks. For example, last June, shortly after I became Acting Director, we discontinued the requirement to maintain so-called time in the office statistics, that is, keeping account of the time spent by the agent in the office during working hours.

We are seeking to free the special agent from unnecessary administrative burdens, thereby enabling him to turn in an even better performance during his day's work.

The FBI forms part of a law-enforcement team, a team that today stands on the front lines against crime.

I have made a special effort to meet personally with my brother law-enforcement officials. Last year, for example, some 50 of the Nation's chief law-enforcement officials, representing the major urban and metropolitan areas of our land, met with me and top executives of the FBI in my office in small groups so that we could have meaningful, thorough discussions. We reviewed our specific needs in the fight against crime, the cooperative services of the FBI, and ways in which we could be of further help to them and they to us. Their

cooperation has been, and continues to be, of great assistance to the FBI.

Last spring our new FBI Training Academy opened at Quantico, Va., affording increased opportunity for improved police training and thereby contributing heavily to the development of police professionals.

One of the more promising features of our National Academy program is our affiliation with the University of Virginia. We are bringing the cop to the campus and the campus to the cop. Both are profiting from a really important learning experience.

We have held three national symposia at the new FBI Academy at Quantico. These have been devoted to major police concerns such as police-community relations, urban police patrol practices, and terrorism. A national seminar on current bombing problems began at the Academy on February 25 and concludes today, February 28.

To help law enforcement agencies cope with the growing danger of deadly attacks, the FBI developed a week long antisniper and survival training course in the fall of 1971. A total of 940 officers, representing 186 agencies, have been afforded this training at Quantico and another 200 agencies are waiting to be accommodated.

Mr. Chairman, I have prepared an exhibit to this statement that sets forth additional changes made in FBI policies and procedures during the past 10 months, exhibit D. I do this to save time, not to indicate that they are of lesser importance than the ones I have discussed with the committee. Some are, but some are not.

The CHAIRMAN. That is exhibit D? It will be admitted into the record.

Mr. GRAY. Mr. Chairman, after 10 months as a member of the FBI and from my vantage point as Acting Director, I have found the FBI to be a superb organization, a faithful servant to our democratic tradition. Its foundations have been well built; its people are complete professionals; and their dedication is to service, integrity, and excellence.

There have been changes in style, simply because I am Pat Gray and not Mr. Hoover. I have, where I felt it was necessary, made some changes, changes that I was convinced would be beneficial not only to the FBI but also to the people we serve.

But the FBI remains the same, an FBI dedicated and loyal, imbued with the concepts of fidelity, bravery, and integrity—the servant of the people.

I am highly optimistic about the future of the FBI and our free society.

I am optimistic about the future of the FBI because I know—as only an insider can ever really know—that the people of the FBI are imbued with a spirit and dedication to constitutional principles that augurs well for the future.

The FBI, operating as it does under the constitutional controls of our democratic system of government, is, I believe, one of our greatest national institutions.

I am honored and humbled, Mr. Chairman, to have been nominated by the President to be its Director.

Thank you, sir.

(The exhibits referred to follow:)

EXHIBIT A

AVENUES OF INQUIRY

(1) Organized Crime.

(2) Subversion (Specifically include in this paper a detailed analysis and justification for our current policies with regard to the investigation of individuals where there has been no specific violation of Federal law. Is additional legislation needed in this area?)

(3) Drug Abuse (This is one of the Nation's most pressing problems and we should be sure that the FBI is doing everything possible to assist. Set forth specific contributions which we have made during the last six months. What further should we and can we do? Imagination and ingenuity should be exercised to explore possibility of further contributions within our jurisdictional lines and without diverting substantial manpower from other critical areas.)

(4) National Police Force (What safeguards do we have to prevent the FBI from becoming a National police force? What role should the Inspection Division play and should the Inspection Division report directly to the Director?)

(5) Bureau Files (We have a vast amount of information in our general files, in the National Crime Information Center, and in the Identification Division. Are we taking adequate security precautions to prevent leaks to unauthorized persons? Are state safeguards adequate to insure the confidentiality of National Crime Information Center information? Are classification procedures completely responsive to our needs and to the needs of other Federal agencies? Is there a need for certain of our files of a very sensitive nature to be given greater security than the criminal files?)

(6) FBI Jurisdiction (Should we have an office specifically set up for the evaluation of pending legislation and to study the needs for any additional legislation? Are FBI jurisdictional lines sharply defined? Is there any need for legislation to transfer some of our responsibilities to other Federal agencies?)

(7) Police Training (Is our training responsive to the needs of the police agencies we serve? What role should the FBI assume in this field? Examine our National Academy program.)

(8) Personnel Matters (Recruiting, applicant standards, evaluation, discipline, including methods by which employee is advised of requirements.)

(9) Director's Advisory Committee (Need for, proposed make-up, and method of operation.)

(10) Director's Staff Group (Mid-range and long-range policy planning and evaluation.)

(11) Office of Minority Affairs (What steps can be taken to increase the number of qualified applicants from minority groups?)

(12) Should the FBI Special Agent Position be Opened to Women? (Requirements of the position should be carefully considered.)

(13) Grooming and Personal Appearance Standards for FBI Employees (Here we must consider the tenor of the times. We must be sure that our standards are reasonable and yet at the same time preserve the effective image of the Bureau.)

EXHIBIT B

LIST OF PUBLIC SPEECHES AND FIELD OFFICE VISITS BY L. PATRICK GRAY III, AS ACTING DIRECTOR OF THE FBI

Date and location	Sponsoring organization	Type of event	Title of speech
May 8, 1972: New Haven, Conn.		Field office visit.	
May 10, 1972: Washington, D.C.		do.	
May 12, 1972: New York, N. Y.		do.	
May 15, 1972: Boston, Mass.		do.	
May 17, 1972: Washington, D.C.	The Thomas More Society	Luncheon address.	Untitled.
May 19, 1972: Norfolk, Va.		Field office visit	
May 25, 1972: Mobile, Ala.		do.	
May 25, 1972: Biloxi, Miss.	Governor of Mississippi	4th Annual Crime Control Conference.	Challenges We Face Together.
May 26, 1972: New Orleans, La.		Field office visit	
May 26, 1972: Houston, Tex.		do.	
June 5, 1972: Newark, N. J.		do.	
June 5, 1972: Philadelphia, Pa.	Bureau	National Academy graduation (remarks, present diplomas).	Untitled.
June 7, 1972: Washington, D.C.		Annual convention (closing, dinner speech)	Our Most Valuable Resource.
June 8, 1972: Washington, D.C.	Boys' Clubs of America.	Field office visit	
June 12, 1972: Detroit, Mich.		do.	
June 12, 1972: Chicago, Ill.	Bureau, NCIC	Meeting of law enforcement officials (brief remarks)	Spoke extemporaneously.
June 13, 1972: Washington, D.C.		do.	
June 14, 1972: Washington, D.C.	Washington Host Lions Club.	Flag day luncheon (brief acceptance remarks, citizenship award in honor of Mr. Hoover).	Do.
June 15, 1972: Washington, D.C.	American Association of Editorial Cartoonists	National convention (briefing: questions and answers).	Do.
June 16, 1972: Los Angeles, Calif.		Field office visit	
Do.	Pepperdine University	"Great Issues" series	Masters of Change.
June 17, 1972: Santa Ana, Calif.	do.	Law school commencement (speech, receive honorary degree).	Perfection and the Law.
June 19, 1972: Palm Springs, Calif.	National Sheriffs' Association	Annual convention (speech)	The Image of Law Enforcement.
June 19, 1972: San Francisco, Calif.		do.	
June 20, 1972: Sacramento, Calif.		Field office visit	
June 21, 1972: Washington, D.C.	Italian Historical Society of America	Bonaparte day ceremony	Spoke extemporaneously.
June 26, 1972: Cleveland, Ohio		do.	
June 26, 1972: Cincinnati, Ohio		Field office visit	
June 29, 1972: San Diego, Calif.		do.	
June 30, 1972: San Diego, Calif.	California Exchange Clubs	Annual convention (luncheon speech)	Law Enforcement and Social Progress.
June 30, 1972: Phoenix, Ariz.		Field office visit	
July 4, 1972: Philadelphia, Pa.	City of Philadelphia	July 4th ceremonies at Independence Hall (keynote speaker)	Our Beloved Country.
July 11, 1972: Indianapolis, Ind.		Field office visit.	
July 11, 1972: Milwaukee, Wis.	Bureau	do.	
July 13, 1972: Washington, D.C.	Bipartisan Congressional Intern Committee	National Academy Associates sectional retraining session (banquet speech).	Law Enforcement—Protector of Our Liberties.
		Congressional summer interns (remarks, questions and answers).	Untitled.

EXHIBIT B—Continued
LIST OF PUBLIC SPEECHES AND FIELD OFFICE VISITS BY L. PATRICK GRAY III, AS ACTING DIRECTOR OF THE FBI—Continued

Date and location	Sponsoring organization	Type of event	Title of speech
July 15, 1972: Lowell, Mass.	Retired Armed Forces Association	Annual convention (dinner speech)	Spoke extemporaneously.
July 18, 1972: Denver, Colo.		Field office visit	
July 18, 1972: Las Vegas, Nev.		do.	
Do		do.	
July 19, 1972: Omaha, Nebr.	International Conference of Police Associations	Annual convention (banquet speech)	Our Challenge and Trust.
July 25, 1972: Knoxville, Tenn.		Field office visit	
July 25, 1972: Atlanta, Ga.		do.	
July 27, 1972: Washington, D.C.	Department of Justice	Legal clerks speaker program (remarks, questions and answers)	Untitled.
Aug. 1, 1972: Albany, N. Y.		Field office visit	
Aug. 1, 1972: Pittsburgh, Pa.		do.	
Aug. 8, 1972: Louisville, Ky.		do.	
Aug. 8, 1972: Charlotte, N.C.		do.	
Aug. 11, 1972: Cleveland, Ohio	The City Club of Cleveland	Luncheon speech	Freedom Under Law.
Aug. 15, 1972: Columbia, S.C.		Field office visit	
Aug. 15, 1972: Savannah, Ga.		do.	
Aug. 22, 1972: Springfield, Ill.		do.	
Aug. 23, 1972: Minneapolis, Minn.	VFW	Convention (remarks, accept gold medal award in honor of Mr. Hoover)	America Is Worth Fighting For.
Aug. 23, 1972: Minneapolis, Minn.		Field office visit	
Aug. 28, 1972: Little Rock, Ark.		do.	
Aug. 28, 1972: Jackson, Miss.		do.	
Sept. 1, 1972: Buffalo, N. Y.		do.	
Sept. 5, 1972: Anchorage, Alaska		do.	
Sept. 6, 1972: Seattle, Wash.		do.	
Sept. 7, 1972: Portland, Ore.		do.	
Sept. 7, 1972: Spokane, Wash.	Washington State Bar Association	Annual convention (luncheon speech)	The Delicate Balance.
Sept. 7, 1972: Butte, Mont.	Rotary Club of Butte	Monthly meeting (dinner speech)	A Nation That Cares.
Sept. 8, 1972: Butte, Mont.		Field office visit	
Sept. 14, 1972: Alexandria, Va.	Bureau	90th session, FBI National Academy (commencement address)	The FBI National Academy.
Sept. 15, 1972: Quantico, Va.		National symposium on police-community relations	The Police Officer and His Community.
Sept. 18, 1972: Quantico, Va.	do.	Field office visit	
Sept. 19, 1972: Kansas City, Mo.		do.	
Sept. 19, 1972: Memphis, Tenn.	Washington College	Witham James Forum	Spoke extemporaneously.
Sept. 21, 1972: Chestertown, Md.	Michigan State Bar Association	Annual convention (triquet speech)	The Rule of Law—Dividing Line Between Freedom and Chaos.
Sept. 22, 1972: Detroit, Mich.		do.	Spoke extemporaneously.
Sept. 25, 1972: Washington, D.C.	Scripts-Howard Editors	Annual meeting (remarks: questions and answers)	Spoke extemporaneously.
Sept. 27, 1972: Colorado Springs, Colo.	Colorado Correctional Association	Annual meeting (luncheon speech)	Spoke extemporaneously.
Sept. 27, 1972: Albuquerque, N. Mex.		Field office visit	Corrections—A Time of Opportunity.
Sept. 27, 1972: El Paso, Tex.		do.	
Sept. 27, 1972: San Antonio, Tex.		do.	

Oct. 2, 1972: Washington, D.C.	United Press International	UPI International Editors and Publishers Annual Conference (remarks; questions and answers)	Spoke extemporaneously.
Oct. 9, 1972: New London, Conn.	United Community Services of Southeastern Connecticut	United Fund kickoff luncheon	The American Way.
Oct. 10, 1972: Oklahoma City, Okla.	Rotary Club of Oklahoma City	Monthly luncheon meeting.	The Promise of America.
Do.		Field office visit	
Oct. 11, 1972: Dallas, Tex.		do	
Oct. 11, 1972: Birmingham, Ala.		do	
Oct. 13, 1972: Chicago, Ill.	Executives Club	Luncheon speech	A Standard of Excellence.
Oct. 16, 1972: Salt Lake City, Utah		Field office visit	
Oct. 17, 1972: Salt Lake City, Utah	International Association of Chiefs of Police	79th annual conference	In the Nation's Service.
Oct. 20, 1972: Hot Springs, Va.	The Business Council	Fall meeting (banquet)	A Standard of Excellence.
Oct. 24, 1972: Tampa, Fla.		Field office visit	
Oct. 25, 1972: Miami, Fla.		do	
Oct. 25, 1972: Jacksonville, Fla.		do	
Oct. 26, 1972: New York, N.Y.	Rotary Club of New York City	Monthly luncheon meeting	Service in the Cause of Freedom.
Oct. 26, 1972: New York, N.Y.	Bureau employees	23rd annual FBI communion breakfast	Spoke extemporaneously.
Oct. 30, 1972: Washington, D.C.		Field office visit	
Oct. 30, 1972: Richmond, Va.		do	
Oct. 30, 1972: Baltimore, Md.		do	
Oct. 31, 1972: San Juan, P.R.		do	
Nov. 7, 1972: Washington, D.C.	Commission on Personnel Interchange	Remarks; questions and answers to personnel interchange executives.	Do.
Nov. 9, 1972: New Orleans, La.	Society of Former Special Agents of the FBI	National convention (breakfast address)	Do.
Nov. 9, 1972: Hartford, Conn.	The Hundred Club of Connecticut	Annual banquet	Partners in Public Safety.
Nov. 14, 1972: St. Louis, Mo.		Field office visit	
Do.		Annual winter meeting (dinner address)	When Disaster Strikes.
Nov. 15, 1972: Quantico, Va.	Bureau	Symposium on urban police control practices	Spoke extemporaneously.
Nov. 17, 1972: Washington, D.C.	Law Association, The George Washington University	Annual banquet (remarks; receive distinguished alumnus award)	Untitled.
Jan. 16, 1973: Quantico, Va.	Bureau	Symposium on terrorism	Do.
Jan. 24, 1973: Washington, D.C.	Naval Ship Systems Command	Luncheon address	Spoke extemporaneously.
Jan. 25, 1973: Washington, D.C.	Department of Justice	National Conference on Criminal Justice (remarks; panels)	Untitled.
Jan. 26, 1973: Bangor, Maine	Maine Bar Association	Annual meeting (luncheon address)	Fidelity to Perfection.
Feb. 1, 1973: Annapolis, Md.	U.S. Naval Academy	Prayer breakfast	Spoke extemporaneously.
Feb. 14, 1973: Washington, D.C.	Women's Club, National War College	Monthly luncheon	Do.
Feb. 15, 1973: College Station, Tex.	Texas A & M University	18th Student Conference on National Affairs	The FBI in a Free Society.
Feb. 16, 1973: Milwaukee, Wis.	State Bar of Wisconsin	Annual convention (luncheon address)	FBI—Change of Command.
Feb. 28, 1973: Quantico, Va.	Bureau	Seminar on bombing problems.	
Mar. 30, 1973: Quantico, Va.	Bureau	Graduation exercises, 92d session, FBI National Academy (remarks).	

EXHIBIT C

INCREASES IN MINORITY EMPLOYMENT

Following is a tabulation as of February 1, 1973, of FBI employees who are members of four minority groups, compared with the number employed as of May 1, 1972:

	Field offices	FBI headquarters	Total
FBI black employees as of May 1, 1972:			
Agents.....	60	3	63
Clerks.....	154	1,231	1,385
Total.....	214	1,234	1,448
FBI black employees as of Feb. 1, 1973:			
Agents.....	67	5	72
Clerks.....	195	1,358	1,553
Total.....	262	1,363	1,625
FBI Spanish-surnamed employees as of May 1, 1972:			
Agents.....	61	1	62
Clerks.....	110	116	226
Total.....	171	117	288
FBI Spanish-surnamed employees as of Feb. 1, 1973:			
Agents.....	74	1	75
Clerks.....	120	134	254
Total.....	194	135	329
FBI American Indian employees as of May 1, 1972:			
Agents.....	3	0	3
Clerks.....	2	0	2
Total.....	5	0	5
FBI American Indian employees as of Feb. 1, 1973:			
Agents.....	11	0	11
Clerks.....	7	1	8
Total.....	18	1	19
FBI Asian-American employees as of May 1, 1972:			
Agents.....	15	0	15
Clerks.....	23	22	45
Total.....	38	22	60
FBI Asian-American employees as of Feb. 1, 1973:			
Agents.....	19	0	19
Clerks.....	28	26	54
Total.....	47	26	73

EXHIBIT D

ADDITIONAL CHANGES IN FBI POLICIES AND PROCEDURES MAY 3, 1972 TO FEBRUARY 28, 1973

1. Delegation of greater authority to Special Agents in Charge to handle investigative matters.
2. Reduction in frequency of routine administrative reporting from the field.
3. Instituted annual 2-day conferences at Headquarters for Special Agents in Charge and eliminated the requirement that they attend Inservice classes.
4. Instituted policy of bringing Assistant Special Agents in Charge and supervisors to Headquarters for specialized management training.
5. Increased personal consultation between the Acting Director and the Executives Conference. Formerly, the Executives Conference met with the Associate Director.
6. Left the two Assistant to the Director positions vacant in an effort to shorten the lines of reporting between the Assistant Directors and the Acting Director.
7. Realigned supervisory responsibility of certain investigatory matters among the Headquarters divisions.

8. Instituted program of sending top Headquarters personnel to the field divisions for consultations.

9. Reorganized functions previously assigned to the Crime Research Division by transferring responsibility for Congressional and press services to the Director's Office and remaining functions to other divisions.

10. Instituted a policy of transferring top Headquarters personnel to the field and top field personnel into Headquarters.

11. Reestablished a liaison section to facilitate and expedite business with other government agencies.

12. Purged inactive arrest records of individuals age 80 and older from the fingerprint files.

13. Reduced the length of tours for personnel on foreign assignments from 3 years to 2 years.

14. Re-emphasized Inservice training for Special Agents and instituted specialized classes for Inservice training.

15. Eliminated the requirement that Agents in Resident Agencies submit daily reports of their activities.

16. Clarified the Hardship Transfer Policy, which allows transfers for personnel with severe personal hardships which could be alleviated by a change in office of assignment.

17. Modified the weight limits for Special Agents to make them more realistic in accordance with expert medical advice.

18. Changed policy on granting advance of funds to an employee officially transferred, to include advances for:

(1) Per diem and mileage when travel is by a privately owned automobile; and

(2) Subsistence expenses while occupying temporary quarters.

19. Instituted voluntary physical fitness program with established standards for Special Agents, allowing them to use up to three one-hour periods per week during regular working hours for this purpose.

20. Revised procedures for evaluating disciplinary action in connection with inspections.

21. Established tougher physical tests for Agents in training.

22. Cut from two years to one the time period that Special Agent applicants must wait to be re-examined if they fail to qualify on the first try.

23. Changed the qualifications for the Special Agent position to consider certain enlisted military service as sufficient under the Modified Program for Special Agent applicants. Formerly the only enlisted service which was considered sufficient was that in military intelligence.

24. Changed the qualifications for tour leaders so that female clerical personnel are eligible to be tour leaders, a position formerly restricted to male clerical personnel.

25. Changed the smoking rules to apply equally to men and women. Formerly female employees were prohibited from smoking at their desks.

26. Changed rules to allow employees to have coffee, soft drinks, etc., at their desks. Formerly, this had not been allowed.

27. Changed policy to allow certification, where appropriate, of former employees as desirable for employment in the criminal justice field upon completion of their education as required to qualify for Law Enforcement Education Program (LEEP) loans. Prior policy was to certify, where appropriate, only current employees.

28. Discontinued the program of gathering biographical data on non-incumbent Congressional candidates.

29. Caused a White House Fellow to be assigned to the Bureau for the first time.

30. Established the Law Enforcement Training Advisory Committee.

31. Discontinued the compilation of statistics on the recovery of stolen motor vehicles which were transported in interstate commerce unless the vehicle was recovered specifically as a result of FBI investigative efforts.

32. Instituted a training program for airline personnel in anti-hijacking procedures.

The CHAIRMAN. You made a very fine and able statement, Mr. Gray.

You state that the President's instruction to you, his only instruction when you were appointed, was to stay out of politics, is that correct?

Mr. GRAY. That is correct, sir. He did that on May 3, then also on May 4 in the presence of my wife, and my wife volunteered the information she was going to go down and work as a volunteer for the Committee to Reelect the President, and he told her not to go and to have absolutely nothing to do with politics.

The CHAIRMAN. Well, in fact, have you stayed out of politics?

Mr. GRAY. I have done my very level best to stay out, Mr. Chairman, and I believe—

The CHAIRMAN. Well, have you stayed out?

Mr. GRAY. Yes, sir.

The CHAIRMAN. All right.

Now, the charge is made that the White House got you to go to Cleveland, Ohio, to make a speech. What are the facts about that?

Mr. GRAY. The facts in that case are that a memorandum was sent to me, and I was one of perhaps 20 to 30 people, I am told, inviting my attention to this particular speaking engagement at the City Club of Cleveland, and stating in the last paragraph of that memorandum, Mr. Chairman, I believe, that Ohio was important to us and it would be a thing, a nice thing, to do.

Let me stop for just a moment here and ask, Mr. Chairman, if I may have the permission of the committee to submit for the record the actual documentary information regarding this particular incident.

The CHAIRMAN. Yes, sir.

Mr. GRAY. All right, now I would like to continue. I reviewed the record, and I saw that this particular group, the City Club of Cleveland, had been sending invitations to the Director of the FBI since 1968 asking that he attend. I saw in the record that the staff of the FBI had recommended that the Director attend because of the composition of this group.

Now at the particular time this memorandum came to me, I already had the invitation from the people at the City Club and I immediately asked that the staff of the FBI look into this and determine whether or not there were any political overtones here. I received back a memorandum which is a part of the documentation that I wish to insert in the record.

The CHAIRMAN. It will be admitted.

(Mr. Gray subsequently submitted the following documents for the record:)

THE WHITE HOUSE,
Washington, D.C., June 13, 1972.

Memorandum for: Hon. L. Patrick Gray.

From: Patrick E. O'Donnell.

Subject: Freedom's Forum—The City Club, Cleveland, Ohio.

The City Club has asked our assistance in attempting to secure your participation as a key speaker sometime during the period following July 1, 1972. Since its founding fifty years ago, Cleveland's City Club has been a focus and one of the bulwarks of freedom of speech in one of America's great cities. The Club maintains a deep interest in affairs of government, economics and politics, both national and international. It offers a prestigious meeting place for the open discussion of important social, political and economic problems.

They meet every Friday at noon and have a 300 maximum attendance. However, if you were inclined, they could "go public" and provide almost a crowd of any size you might desire. Both Secretaries Hodgson and Shultz have recently addressed the Club and just recently Ambassador Bush delivered a well-received speech.

With Ohio being crucially vital to our hopes in November, we would hope you will assign this forum some priority in planning your schedule. In the event you

are interested, I have full background material available. Incidentally, Under Secretary of Commerce Jim Lynn is quite familiar with the Club.

Many thanks.

U.S. GOVERNMENT,
June 16, 1972.

MEMORANDUM

Re Request for appearance of Acting Director Gray.

To: Mr. Bishop.

From: M. A. Jones.

Subject: The City Club, Cleveland, Ohio.

A memorandum dated June 13, 1972, from Mr. Patrick E. O'Donnell, advised Mr. Gray that his assistance had been requested to secure Mr. Gray's participation as a key speaker before The City Club of Cleveland, Ohio, sometime after July 1, 1972. He pointed out that the Club meets Friday at noon, and although they have a maximum attendance of 300, they could "go public" if Mr. Gray were so inclined. He commented that Secretary Hodgson and Shultz recently addressed the Club as well as Ambassador Bush. The Club offers a prestigious meeting place for the open discussion of important social, political, and economic problems.

The Cleveland Office has advised that The City Club has no political connections and actually the majority of the members could be classified as "liberals." The Club engages in discussing controversial subjects and it is entirely possible that some embarrassing questions could be put to Mr. Gray which might prove embarrassing to him and the Bureau. They also noted that these meetings are carried live on local radio stations.

Although Cleveland points out that this Club discusses controversial subjects, it is believed that it might be advantageous for Mr. Gray to appear before such a group. As indicated, the Club is dominated by liberals and these are the type of people we should be contacting in an effort to "convert them."

Recommendation:

Mr. Gray may desire to accept this invitation and, if so, he should indicate some Friday after July 1st when he could appear. (Due to other commitments, it would appear that a Friday in August or early Fall might be the most convenient). Thereafter, additional details will be obtained from Mr. O'Donnell.

U.S. GOVERNMENT,
June 27, 1972.

MEMORANDUM

Re Request for Appearance of Acting Director Gray, August 11, 1972.

To: Mr. Felt.

From: T. E. Bishop.

Subject: The City Club, Cleveland, Ohio.

In a memorandum from Jones to Bishop dated 6/16/72, there was set forth details concerning an invitation extended to Mr. Gray by The City Club of Cleveland, Ohio, for him to be a key speaker at a Friday noon meeting of the Club sometime after July 1, 1972. It was recommended and approved that Mr. Gray accept the invitation if possible. Mr. Gray noted, "I will do it but push it out ahead. Check with Mrs. Neenan."

After consulting with Mrs. Neenan, on 6/26/72 Bishop advised Patrick E. O'Donnell of The White House, through whom the invitation had been extended, that Mr. Gray could make this appearance on August 11, 1972. O'Donnell stated that he would check with Lawrence Robinson, Executive Director of The City Club of Cleveland, (telephone—area code 216, 861-1260), to ascertain if this date is satisfactory and advise Bishop of the result on 6/27/72.

On 6/27/72, Mr. O'Donnell advised Bishop that Mr. Robinson had informed him that the Club would be delighted to have Mr. Gray speak to it at its noon meeting on Friday, August 11, 1972. He advised that Mr. Robinson stated that he would furnish Mr. Gray additional details concerning the Club and the meeting in question in a letter to be forthcoming in the immediate future.

Recommendation:

That Crime Records Division begin preparing an appropriate speech for use by Mr. Gray on August 11, 1972.

Jb ROBINSON Co., JEWELERS, INC.,
Cleveland, Ohio, June 28, 1972.

Mr. L. PATRICK GRAY III,
Acting Director, Federal Bureau of Investigation,
Department of Justice, Washington, D.C.

DEAR DIRECTOR GRAY: Thank you for agreeing to speak at the City Club of Cleveland on August 11, 1972!

Patrick E. O'Donnell has been enormously helpful to us and we are writing at his suggestion.

Our usual schedule is to have lunch at Noon, followed by a half hour talk beginning at 12:30 p.m. Questions follow until we close at 1:30 p.m.

We will have an office available for your private use before and after your presentation.

I will be in touch with your Assistant Director Bishop with additional details.

We are looking forward to the privilege of having you here.

Sincerely yours,

LARRY ROBINSON.

THE CITY CLUB,
Cleveland, Ohio, July 7, 1972.

Mr. L. PATRICK GRAY III,
Acting Director, Federal Bureau of Investigation,
Department of Justice, Washington, D.C.

DEAR DIRECTOR GRAY: We are very pleased that you have accepted our invitation to speak at our Forum on Friday, August 11. As you may know this Forum has brought many well known people to Cleveland and raised many crucial issues in the past. Many of our speakers have used this opportunity for a major policy statement.

The Forum is carried live by one radio station (WCLV) and rebroadcasted in its entirety by four others. We also get full TV and press coverage.

We begin with lunch at noon, go on the air at 12:30 with your speech, and close with a half hour of questions till 1:30. Please plan your presentation to last 25-30 minutes.

Will you please send us some biographical materials and the topic of your speech so that we may give your coming adequate publicity.

Thanks again for planning to be with us on June 16. We look forward to seeing you then.

Sincerely yours,

ALAN DAVIS, Executive Director.

JULY 12, 1972.

Mr. LARRY ROBINSON,
J. B. Robinson Co., Jewelers, Inc.,
Cleveland, Ohio.

DEAR Mr. ROBINSON: Assistant Director Bishop has advised me of your very kind offer of cooperation in regard to my forthcoming trip to your city and you may be sure I deeply appreciate your gracious hospitality.

Thank you for offering to meet me at the airport, but this will be unnecessary since I previously made arrangements for transportation from there to the City Club of Cleveland. Mr. Bishop or a representative from our local office in Cleveland will be in contact with you prior to my speech concerning any additional details relative to my visit.

With best wishes and warm respect,

Sincerely yours,

L. PATRICK GRAY III,
Acting Director.

JULY 13, 1972.

Mr. ALAN DAVIS,
Executive Director, The City Club,
Cleveland, Ohio.

DEAR Mr. DAVIS: I received your letter of July 7th and am certainly looking forward to being with you at your Forum on August 11th.

In regard to your request, I am enclosing a copy of my biographical sketch and my photograph which you may use as indicated in your letter. A representative from my office will be in contact with you concerning the topic of my address.

With best wishes and warm respect,

Sincerely yours,

Pat Gray
L. PATRICK GRAY III,
Acting Director.

Mr. GRAY. This stated in no uncertain terms that this was not a political group, gave its composition, and said if anything this was a liberal group and even went so far as to say I ought to go to speak to them in order to try to convert them.

Mr. Chairman, I went to speak because I believe that I should go to speak to all Americans; but if you asked me under oath if I went because I got the memorandum from the White House, I will say no, sir, I did not. I went for different reasons.

The CHAIRMAN. What kind of speech did you make?

Mr. GRAY. The title is in the exhibit and, as I remember it, it had absolutely nothing to do with politics. And the speech, incidentally, we have submitted—yes, it was entitled “Freedom Under Law,” the City Club of Cleveland August 11, 1972, and with the permission of the chairman I would like to insert that speech in the record.

The CHAIRMAN. It will be admitted.

(Mr. Gray subsequently submitted the following document for the record:)

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Friday, August 11, 1972.

“FREEDOM UNDER LAW”—AN ADDRESS BY THE HONORABLE L. PATRICK GRAY III, ACTING DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

In January, 1787, our Minister to the Court of St. James—John Adams—sent to the printers a book which he thought might prove useful to his countrymen.

Shays' rebellion had recently occurred in Massachusetts, and friends there were writing that confusion and anarchy lay just over the horizon. This rebellion was viewed by some at home as the *popular* uprising inevitably leading to a dictatorship which would restore order and guarantee the security of life and property—at the cost of freedom.

John Adams wrote to convince his countrymen that a salutary restraint is a vital principle of liberty. He also wrote to persuade his fellow citizens that good laws and orderly government *alone* could protect lives, liberties, religion, property, and character.

Later in that year of 1787 when our Constitution was drafted, the framers placed the highest priority on freedom under law—not the one *or* the other, but both *together*, “one and indivisible”!

Alexander Hamilton, a delegate to the Constitutional Convention and a principal author of *The Federalist Papers*, put it this way:

“Government is frequently . . . classed under two descriptions—a government of force, and a government of laws; the first is the definition of despotism, (and) the last of liberty.”

The blueprint for self-government created by the delegates to the Constitutional Convention came under immediate attack. There were more than a few, here and abroad, who warned that our Constitution embodied too radical a departure from conventional concepts of government. It was termed impractical, unworkable, dangerous.

Today the attack continues—for the concept of free men and women governing themselves for the common good is virtually as radical in the 20th Century as it was in the twilight of the 18th. And make no mistake—it *is* radical doctrine!

Our concept of freedom under law is banned, barred, forbidden *and feared* in vast areas of the world where might makes right—where suppression wears the uniform of the police and the robes of justice.

In our country today, there are strident voices proclaiming that the same conditions exist in our land. We are told that American society is "sick" and that law is used to repress freedom.

This is demagoguery, pure and simple. It is a slander and a lie.

But still the questions persist: Where are these United States today, and where are we going? How do we as American citizens evaluate *ourselves*? Do we *believe* in our form of government? Does our government care about people? Is our society out of control? Are the law officers of the nation the tools of an oppressive ruling establishment?

Well, what are the answers? I want to tell you what *mine* are.

The great American adventure born two centuries ago has grown stronger generation after generation.

We are on the threshold of the greatest growth pattern in our history—growth in the quality of life for all our citizens—growth in our total effort to eradicate the imperfections in human society (beginning, always, with our own).

We occupy seven percent of the land surface of the earth. We are six percent of the world's population. We account for almost one-third of the goods and services produced on earth.

Our national economy is bulwarked by increased earnings and a rising gross national product.

Production, incomes, employment, business spending, and consumer buying are all showing sharp increases.

The rate of inflation has been slowed.

We export foodstuffs, medicines, technology, and expertise to help feed, comfort, and care for millions of men, women, and children around the world.

Material accomplishments, however, do not begin to tell our whole story.

Every citizen of the United States is guaranteed legal rights and protections of a magnitude not found anywhere else in the world.

All have the *promise* of individual rights and liberties.

All have an *awareness* of those rights and liberties.

All have a *guarantee of opportunity* to full realization of their rights and liberties.

All have the *assurance* that our Government and body of citizens will support them in the enjoyment of their rights and liberties.

Advantages such as these help make America the freest and most progressive society in the world—more than "advantages," *realities*.

You wouldn't choose to live in any other country. Nor would I.

No, pessimism does not yet reign supreme in these United States.

But there are those who insist that our priceless liberties are being eroded—that freedom is increasingly in jeopardy across the United States.

Two years ago, a well-known author and educator warned that repression "comes to us . . . with official sanction and is imposed upon us by officials sworn to uphold the law."

Who are these officials?

This author identified them as "the Attorney General, the FBI, state and local officials, the police, and even judges."

Biased as I may be, I reject such an attack—and so do the great majority of our citizens. The *facts* are otherwise, and we Americans are not about to accept myths in their place.

The people of the United States know that the law enforcement profession is dedicated to safeguarding the rights of all citizens—and that it demands of its members exacting standards of fairness, impartiality, and restraint.

I do not for a moment suggest that abuses of authority are nonexistent among law enforcement professionals.

Unfortunately, there have been abuses in the past—and as long as it's men and women involved, there will be recurrences in the future.

But no profession is more zealous in policing its own ranks. We know the risks. And we know that the confidence of those we serve must be maintained if we are to discharge the trust and responsibility placed in our care.

As a Nation, we face a crime problem that has steadily been growing since 1955. Today, there are clear signs that the upward thrust of crime is being turned back.

During the first quarter of 1972, crime registered its smallest increase—one percent—in 11 years. (And none of us can rest until even that plus one becomes zero, and then a minus.)

Eighty of our largest cities reported actual *decreases* in crime for this three-month period—compared with 22 cities in 1970, and 59 in 1971.

Important successes are also being scored in the counteroffensive which the law enforcement profession is pressing against organized crime.

These successes are being achieved *within* the provisions of our Constitution and laws—and with the cooperation and support of the citizens of the United States, who know that America's peace officers are guardians of *their* lives, *their* property, and *their* rights.

Let's look at a vital area of our freedoms—the right to a fair and impartial trial as guaranteed all Americans by the Bill of Rights.

A slogan coined some weeks ago insists that militant extremists who have been charged with crimes should be immune from prosecution in our courts of law.

"The only fair trial would be no trial at all," this slogan demands.

This is a "society-be-damned" slogan. It says, in effect, "Hide the evidence; gag the witnesses; ignore the victim; create a privileged class under law."

Citizens of the United States rose above such a lopsided system of injustice centuries ago.

We will not turn the calendar back.

One of the foremost advocates of categorical immunity is an acid-tongued lawyer who has warned of "perverted use" of our courts to "inhibit, terrorize or destroy persons who . . . have incurred . . . hatred, fear or mistrust."

The same advocate also alleges that our "judicial process" has been used "as a form of political repression."

He is wrong on all counts—unless we are ready to concede that senseless acts of violence, including murder, are legitimate forms of *political* expression.

Those who define their lawless activity as political expression seek only to exclude themselves from the legal structure established so long ago under the Constitution, and from the inevitable consequences of their own acts.

Conduct clearly in violation of the law—regardless of the brand name applied to such conduct—is still anathema to the preponderant majority of Americans.

The American still believes that the lawbreaker is to be arrested and tried as prescribed by the law. Guilt or innocence is to be determined in accordance with Constitutional principles and not by mob rule or pressure group tactics.

Today there are those among us who appear to prefer a life style far removed from the mainstream of American society and that choice should be protected. But they demand more.

Their battle cry is, "I want no part of your system, and I intend to destroy it. But while I push for anarchy, I will continue to insist on the protection afforded me by the system that I attack—until it is so weak that it affords protection to no one."

Yet they will continue to receive protection from the system they attack—from the Congress, the Courts, the law enforcement profession—even while the same Congress, Courts, and the men and women of law enforcement agencies work to protect our legal system from these anarchists and separatists. We, at least, *do* believe in freedom!

But let us not think that our Government of laws is in danger only from those who openly proclaim their goal to set aside the whole of the legal structure.

There is another enemy as well, less visible perhaps but just as insidious—persons who in their own way weaken our society, damage our leadership principles, and completely ignore the responsibilities of good citizenship.

Office holders who occasionally compromise principle or a public trust in exchange for gifts and favors, businessmen who pad their expense accounts and deflate their income tax returns, would be stunned if anyone said they were not responsible and law-abiding citizens. They are—*most* of the time.

The workman who patronizes after-hours bars and neighborhood book-makers, those who buy merchandise *at* prices and *under* circumstances that clearly suggest it is stolen, contribute to the survival of crime in our society—though they would be aghast at being called criminals.

The president of a corporation who conspires to break the antitrust laws because it assures a certain profit, the procurement agent who deals in secret kick-back agreements, may give the appearance of being model members of society and each undoubtedly seeks to retain that image.

Yet, each of these persons, and myriad others like them who have a cavalier attitude toward the law when it suits *their* purpose, attack the society of law from within.

If the law is to be defended and obeyed *except* when it is inconvenient, then what purpose is served? And what have we learned from the history and growth of our Constitutional democracy?

Man is said to be destroying his own physical environment—almost through careless disregard. And it should be obvious that man can destroy the social environment in the same way—by his failure to appreciate the indivisibility of freedom *and* the law. To be "law abiding" is no *sometime* thing!

Yes, there is a difference, a vast difference, between the bomber and the bettor, the conspirator and the cheater. The one blasts, the other chips away. But *each* weakens the stature of the law in our society.

The law enforcement officer—the *peace* officer—has the prime responsibility to protect society from those who break or destroy or undermine the law.

But our society can never be protected from itself if responsible citizens, by a subtle change in attitude toward the law, abandon their responsibilities as citizens *when it suits their purpose*.

It is the duty of every citizen and the prime responsibility of leading citizens to be conscious of the continual need for affirmative action to nourish our Government of laws.

Everyone realizes the danger of continual attacks upon police officers and the departments they serve. These attacks erode the capacity of the law enforcement profession to uphold the peace that law should bring.

This same kind of attack is being made upon the society of law—from within—by many who take the easy way out, who abrogate their responsibilities as citizens, who do not care enough to uphold the tradition of our Constitution and its authors.

Do not look *just* to the Congress, the Courts, or the law enforcement profession to protect society from itself.

All of us as citizens have that responsibility. If we bear that responsibility lightly—and only when it suits us—we jeopardize the society of law just as do the anarchists, the separatists, the criminal neophytes, and the professional forces of organized crime.

Our pledge must be to *continue* to be worthy of our matchless heritage.

Our course as a Nation is unmistakably onward and upward. Time and again we have proven that freedom under law *does work*.

Our Government cares about our people. Our police officers are protectors, not oppressors. Our society is not out of control.

As human beings, we do not claim perfection. But it is an enormous triumph that man with all his faults dares to reach for the stars. This is his ultimate glory.

The CHAIRMAN. Now, the charge has been made that you fired people for political reasons. Would you care to comment on that?

Mr. GRAY. That I have done what, sir? I am sorry.

The CHAIRMAN. You fired people for political reasons.

Mr. GRAY. I have had no political reason whatsoever to fire anyone in the Federal Bureau of Investigation. I did it for entirely different reasons, and if the committee would desire, if the chairman would desire, I would submit a detailed accounting of every resignation or retirement that has occurred in the Federal Bureau of Investigation since I came in as Acting Director.

The CHAIRMAN. That is a decision that the committee will have to make.

When did you first hear of the Watergate affair?

Mr. GRAY. It was a Saturday, June 17. I am trying to think. I think I had already gotten into the automobile in Los Angeles. I was supposed to leave Los Angeles at 9:30 that morning and go down to Santa Ana to deliver the commencement address at Pepperdine University Law School. I think I had already gotten into the automobile and was en route and when we arrived at Santa Ana, I believe that the resident, the senior resident agent there, gave me the first indication. Yes, "Between 11 a.m. and 11:30 a.m. Pacific daylight time resident agent, Santa Ana, briefed Mr. Gray." That is the first indication that I had, any information I had regarding Watergate.

The CHAIRMAN. What instructions, if any, did you give?

Mr. GRAY. Right at that time, I didn't give any instructions to that individual. I waited until I could get to a telephone and I called my No. 2 man, Mr. Felt, W. Mark Felt, and I obtained additional information from him. That was at 12:04 p.m. Pacific daylight

time and 3:04 p.m. Eastern daylight time, and I got additional information from him at that time regarding the facts and circumstances, and they were coming in pretty fast. I asked him if we really had jurisdiction in this matter and if we were in it up to the hilt, and he told me that the case was first, as I recall now, was first considered to be a burglary in the early morning hours.

Then there was some thought it was a bombing and then electronic devices were seen there. Our people knew instantly this was an intercept of communications case, or at least we thought it was, and we started in right away.

The CHAIRMAN. What were your instructions?

Mr. GRAY. I told him to go to the hilt and spare no horses.

The CHAIRMAN. Was that done?

Mr. GRAY. Yes, sir, that has been done and those instructions were repeated. You know these were just the first phone calls. I had additional phone calls that day, those instructions were repeated. Those instructions were also related by Mr. Felt to the Attorney General of the United States, who concurred in my decision to conduct an aggressive investigation. Certainly it was obvious to me as the facts began to come in, and particularly at about, well, it was later on that evening when I learned the identity of one of these individuals. It was 3:45 p.m. Pacific daylight time that I was called and actually FBI headquarters advised the Los Angeles office to advise as to McCord being identified as an ex-FBI agent and security officer for the Committee to Reelect the President, and when I got that information I knew that we were in a situation that could have all kinds of possibilities. I didn't know quite what we had hold of, but I was not such a naive jackass as to think that the credibility of the Federal Bureau of Investigation, as an investigative agency, was not going to be on the line in this one.

The CHAIRMAN. You mean it would be on the line.

Mr. GRAY. That is right. It would be right on the line.

The CHAIRMAN. Well now, what kind of investigation was conducted? Did you direct it?

Mr. GRAY. I directed it from the standpoint that I set the tone, and time and again during the days that ensued and during the telephone conversations that followed I emphasized the aggressive nature of the investigation we must conduct. At all times the Attorney General concurred in that, and that was the type of investigation that we conducted. In setting out the instructions to the Washington field office, which was the office of origin, and in all the other instructions that went out, we had the general instructions to the effect that this was to be given the highest priority, to be pursued with vigor. The special agent in charge was to take it under his personal control, and was to utilize whatever special agents were necessary to promptly pursue the investigative leads sent to that particular field division.

The CHAIRMAN. Now, did you, or anyone else to your knowledge, state who should be checked on, who should not be checked on?

Mr. GRAY. No, sir, because this was a very, very fast developing investigation, and I can state that there were no restrictions or limitations placed. Really, you have the feeling sitting in my position that when you push that button and whenever you say give it an

aggressive and, in the words of the FBI, full court press, they are going all out, and that is the way they went.

The CHAIRMAN. What is your policy now, or what would be your policy, if committee members, and committee members only, were desirous of seeing that file?

Mr. GRAY. I have taken a position, Mr. Chairman, from day 1—and even though I am well aware of the precedential nature of the statement I am about to make, and even though I am well aware it could be interpreted to shatter precedent, I feel that this situation is so unique that it can be distinguished from any other, so that the offer I am about to make cannot be utilized later on as an entrance way into the files of the Federal Bureau of Investigation which I will continue to resist—but I am prepared to offer, and I have been prepared from the inception, that any Member of the U.S. Senate, this committee or any Member of the U.S. Senate, who wishes to examine the investigative file of the Federal Bureau of Investigation in this matter may do so, and I will provide knowledgeable, experienced, special agents to sit down with that Member and respond to any question that Member has.

The CHAIRMAN. There would be present an official of the Bureau at all times?

Mr. GRAY. Correct, sir, that is what I am saying.

The CHAIRMAN. That no staff member would be permitted?

Mr. GRAY. No, sir, I would not go beyond the offer that I have made because of the nature of these records.

The CHAIRMAN. I certainly think—now these are the raw files?

Mr. GRAY. They are, sir. They are memorandums, the whole works, we have nothing to hold back.

The CHAIRMAN. I certainly think there should be no leaks, and I agreed with Mr. Hoover, and certainly agree with you, that the raw files of the FBI should never be publicized. I have seen too many.

Mr. GRAY. I certainly agree with you, Mr. Chairman, because the integrity of those files, I think, is one of the most sacred trusts committed to us if we are to carry out the mission given to us by the Congress and the President.

The CHAIRMAN. Senator McClellan.

Senator McCLELLAN. Thank you, Mr. Chairman.

I will defer the questions I have at this time. But I want to express my appreciation to Mr. Gray for a very frank, candid and informative and, I think, a helpful statement that he has made here in the opening of these hearings. On the basis of that statement, of course, he would be entitled to confirmation but since there are challenges and accusations which, if proven, might be worthy of consideration, I will withhold any pledge of support of his confirmation. But I do want to state that I have noted with interest and approval some of the changes he has made in the brief time that he has been Acting Director of the Bureau, and I commend him for apparently being aggressive and moving in and trying to examine, thoroughly examine, the processes and the traditions and procedures of this institution and making changes that do, in my judgment, bring about some improvement. It will never be perfect, but it is an institution in our Government that certainly serves every citizen in this country. But there should be no favoritism in it; there should be a dedication to the functions and to the objectives of those functions which it is authorized to perform.

I will withhold, Mr. Chairman, any questions at this time. I am sure Mr. Gray will be back with us before the proceedings are over and at that time I will have, I think, some questions based upon the accusations against him.

Mr. GRAY. Thank you, Senator McClellan, and I appreciate your position.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. Mr. Gray, as I understand, you joined the personal staff of Vice President Richard Nixon in June 1960?

Mr. GRAY. Yes, Senator Ervin. I retired from the U.S. Navy on June 30, 1960, and went over to room 361, Senate Office Building, which was the office of the then Vice President, Richard Nixon.

Senator ERVIN. How long did you remain a member of the personal staff?

Mr. GRAY. From shortly after June 30, 1960, until about January 6, 1961. I am not sure of that January 6 date, but I know I went back to Connecticut to practice law in early January. I may have a slippage on that date but that is pretty close.

Senator ERVIN. It is understandable that a person cannot remember a specific date.

Did you continue in the practice of law in Connecticut until you became Executive Assistant to Robert H. Finch, Secretary of the Department of Health, Education, and Welfare in January 1969?

Mr. GRAY. Yes, sir; I did.

Senator ERVIN. And you remained with him until you became Assistant Attorney General of the United States in charge of the Civil Division and Director of the Office of Alien Property, Department of Justice in December 1970.

Mr. GRAY. It is correct, Senator, that I joined the Justice Department in December 1970. I had left HEW in January of that year to resume private practice.

Senator ERVIN. Did you remain in that position until you were appointed Acting Director of the FBI?

Mr. GRAY. I had two positions later on. On February 15 of 1972, I was nominated to be Deputy Attorney General. I became Deputy Attorney General-designate, and Attorney General Kleindienst and I began a transition period regarding the duties of his office, and I was serving as Deputy Attorney General-designate and as Assistant Attorney General in charge of the Civil Division and Director of the Office of Alien Property until I was named Acting Director of the FBI, sir.

Senator ERVIN. Now, as I understand it, you made 16 speeches between July 13, 1972, and the general election on November 7, 1972, is that correct?

Mr. GRAY. The numbers I am not sure, but if you are taking them from the exhibit, Senator, and counting off, why I will accept your count on them. I have not counted the number of them in that period.

Senator ERVIN. Would you mind just stating very briefly the general type of theme that you emphasized in those speeches?

Mr. GRAY. I think, Senator, I would have to say that for the first time in my life as an American, I had a forum where I could get up and talk about America and somebody would listen to me. Basically I would say the theme of those speeches is that America is a great and

good land and a land populated by good people. Those speeches were made with pride in my heart for our Nation. They were made along constitutional lines because I am interested in constitutional history, always have been, and they were made along lines of law enforcement. But I can say to this committee under oath that I did not design, write, plan or intend any one of those speeches to be political speeches and as I said in my opening statement, I would submit to the fair consideration and judgment of the members of this committee and the Members of the U.S. Senate as to whether or not I am correct. You may look at them differently but I am telling you how I entered upon them.

Senator ERVIN. I infer that the speeches you made during this time might be designated as patriotic speeches, extolling the virtues of America, and speeches dealing with law enforcement problems?

Mr. GRAY. That is correct, sir.

Senator ERVIN. Now, in the speech that you put in the record, "Freedom Under Law," which you made before the City Club of Cleveland, Ohio, on August 11, 1972, you stated:

Our national economy is bulwarked by increased earnings and a rising gross national product.

Production, incomes, employment, business spending, and consumer buying are all showing sharp increases.

The rate of inflation has been slowed.

We export foodstuffs, medicines, technology, and expertise to help feed, comfort, and care for millions of men, women, and children around the world.

Now a person might place an interpretation on that passage, in view of the particular issues that had been joined between President Nixon and Senator George McGovern, that it was calculated to help President Nixon and hurt Senator McGovern, could he not?

Mr. GRAY. I think someone could draw that conclusion but I think properly to interpret it and place it in perspective, you have to see what came before it. I was addressing myself to those voices in our land who say that American society is sick and that law is used to repress freedom, and I characterized that as demagoguery, pure and simple. Then I went on to say:

But still the questions persist: Where are these United States today, and where are we going? How do we as American citizens evaluate ourselves? Do we believe in our form of government? Does our government care about people?

The CHAIRMAN. Speak a little louder, please.

Mr. GRAY. I am sorry. [Reading:]

The great American adventure born two centuries ago has grown stronger generation after generation.

We are on the threshold of the greatest growth pattern in our history—

And I went on along those lines and then I tried to show the positive examples, but certainly I would have to admit to you that an individual could draw that other conclusion.

But I will say to you again, Senator Ervin, under oath, that this was not planned, designed, or intended to be a political speech and I don't think anybody who heard it in Cleveland interpreted it as a political speech.

Senator ERVIN. I infer from your testimony that you give the committee your assurance that neither this speech nor any other speech you delivered during that time was intended to have political consequences?

Mr. GRAY. I gave that assurance to this committee, and I gave that assurance to myself then and I do now. I did not do it and I would not do it. I would be in flagrant violation of the instructions from the President of the United States.

Senator ERVIN. On October 27, 1972, you publicly stated in an official release that since around 1950 the FBI has gathered and maintained so-called biographical data on Members of Congress and candidates for Congress. When did you and how did you first learn of this practice?

Mr. GRAY. Senator Ervin, you will recall that you sent me a letter on this subject, a very thorough letter. In fact the questions were designed to probe, and they did probe, and I sent a response to you. I have not asked your permission but I would now ask your permission and the permission of the chairman that a copy of this letter be inserted in the record.

Senator ERVIN. You made a very full response to my request for information on this point. I think it would be illuminating and would obviate some of my questions if my letter to Mr. Gray and his reply to me were inserted in the record, Mr. Chairman.

The CHAIRMAN. It will be admitted at this point.

Mr. GRAY. Thank you, sir.

(Mr. Gray subsequently submitted the following documents for the record:)

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C., November 3, 1972.

Hon. L. PATRICK GRAY III,
*Acting Director, Federal Bureau of Investigation,
Washington, D.C.*

DEAR MR. GRAY: As you know, in the course of the Subcommittee's study of government data collection, I have sent a number of letters, beginning in June, 1970, asking the Justice Department and the FBI to detail all of their programs of data collection respecting individuals not employed by the Federal Government, and certain programs involving those persons as well. Since the responses I have received so far from the Department and the Bureau were presumably intended to be complete replies to my requests, I am concerned about the existence of yet another program, that respecting Congressmen and Senators, which was not alluded to in past correspondence from the Department or the Bureau.

In any case, I am extremely disturbed by press reports and a statement distributed by your office on October 27 concerning a Bureau program involving the collection of information on incumbents and candidates for federal office. Although the reports are contradictory and extremely sparse in detail, it appears that the Bureau has regularly been compiling information on elected Representatives and Senators and on their opponents for decades. The statement and other documents released from your office states that the practice in one form or another started as far back as 1950, and presumably had two purposes; to assist the Bureau in its Congressional relations and to aid in protecting the persons concerned against "violent offenses" against them.

These stated justifications require elaboration. It is my understanding that the Bureau, as an agency within the Justice Department, relies on the Attorney General's office for its Congressional relations. And, to my knowledge, crimes against federal legislators were not made federal offenses until 1968. In any case, it is not immediately apparent how the program could have assisted the Bureau in performing either of these two functions.

Because of these and other unresolved issues surrounding the program, I should like your response to the following questions:

1. When was the program begun? Was it instituted by formal or informal directive? By whose order in the Bureau? the Justice Department? elsewhere? Please supply copies of the directives which ordered the initiation of this program. Please

supply copies of all Departmental and Bureau directives, orders, regulations, "routing slip directives," and other written instructions describing the program, its purposes and the responsibilities of Bureau agents in carrying it out, including those of January 13, 1972, August 7, September 13 and September 19, 1972.

2. List the persons or categories of persons about whom information was collected under the program. Please list separately those members of the 92nd Congress about whom information was and was not collected under this program. List separately those nonincumbent candidates for federal office about whom information was and was not collected. What has been the policy with respect to the disposal or destruction of information collected upon persons after they are no longer Members of Congress, or candidates for office? Is the information retained or destroyed? If the information is retained, how many separate individuals had files maintained on them in the Bureau as of October 27? What was the reason for retaining information on persons no longer Members of Congress or candidates?

3. Under what authority was it initiated and conducted? Under what authority has the Bureau been charged with investigating "violent offenses" committed against each of the categories of persons included under the program before 1968? after 1968? Please supply copies of Departmental and Bureau regulations under which it was authorized, together with citations and copies of the statutory and other authority from which the authority stems.

4. Please describe in detail the types of information collected, the sources relied upon, and the methods used for collecting the information. Include, of course, both covert and overt collection methods. Please supply copies of all instructions to Bureau employees governing the kinds of information desired, and methods of collecting such information. Please explain the terms "readily available sources," "reference publications," "local files" and "local publications," and identify representative examples of each. What information in "local files" was used, and how was it collected? What kinds of biographic data was collected? What sources, not readily available to the public or not published, were used. Please submit copies of representative "dossiers" or collections of information on incumbents and candidates prepared under this program, suitably sanitized to protect the identity of the individuals involved, but in sufficient detail to enable the Subcommittee to determine the scope, methods, and contents of the program.

5. Please describe the uses to which the information was put, both as a matter of regulation and as a matter of tradition or practice. Please submit copies of all regulations, directives or instructions governing use and access to this information. List also the names or titles of all individuals within the Bureau, the Justice Department, and other government offices, including the White House, who were authorized or who in practice actually did have access to such information from time to time. List also all persons by name or title not connected with the above offices, who were authorized or did, in fact, have access to such information.

6. Please describe how this information was stored or maintained. For example, was it in field offices or in Washington Headquarters; in separate dossiers, or as part of other records such as the "Crime Records," separate from the general files or as part of them; in manual files or in other form?

7. Please describe your efforts since taking office to determine the existence of such a program. Did you inquire into the possible existence of such a program prior to this weekend? What was the result of your inquiry? To what do you attribute the discrepancy, if any, between the results of your earlier inquiry and the information which has just come to light? Do you feel the inquiry or the reply was inadequate? Do you plan any administrative action as a result? If so, what?

8. What will become of the program in question? Please submit copies of all directives and instructions which will govern future collection and retention of information on elected federal officials and other persons subject to this program. Will the existing files be destroyed? Please state when and in what manner. Will any copies be retained, either by the Bureau or by any other officer or official of the Government? Are any copies of such files held elsewhere than in the Bureau, to your knowledge? Will subjects of these files be informed of the existence or contents of files on them, or be permitted to review them prior to their destruction?

9. Does the Bureau have any program of collecting information on federal elected officials, other than the one under inquiry? If so, please answer the above questions for each such program. Are similar programs in effect for candidates of other federal offices, either elected or appointed? For state offices, such as governor or state representative, or for local offices? If so, please answer the above questions for each such program.

I am also disturbed about press reports of requests from members of the White House office, John Ehrlichman for one, that the Bureau collect and supply

information to assist in the presidential campaign. These reports refer to an order issued in your name on September 8 and returnable on September 11. The report, in *Time* magazine of Monday, October 30, is enclosed.

I would appreciate a detailed response to the allegations contained in this article, plus copies of the supposed order and any similar ones issued during the time you have been Acting Director. I would also appreciate copies of any other requests, oral or written, from officials in the Justice Department, the White House, or elsewhere in the Executive Branch for information of a similar nature or for a similar purpose, whether or not the request was complied with. Please include a description of the Bureau's response in each case, together with copies of relevant documents, directives, etc.

I appreciate that the above responses may take some time to prepare. Under the circumstances, I know you can understand the importance of a prompt and comprehensive reply to this inquiry. May I request that you respond as quickly as possible with the information you have readily at your command, saving further replies as more information becomes available.

With kindest wishes,

Sincerely,

SAM J. ERVIN, Jr.,
Chairman.

JANUARY 12, 1973.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: I regret that my illness followed by surgery has delayed this response to your letter of November 3, 1972. Also, I am grateful to have this opportunity to set forth the facts concerning the reports that for some years the FBI has been collecting biographical data on Congressional candidates.

In the release I made concerning this particular program on October 27, 1972, I stated it was being discontinued because it is not essential to FBI operations, and "I believe it is obvious that it can be misinterpreted easily as a program to investigate Congressmen and Congressional candidates." A copy of that release is enclosed for your ready reference.

Not only was the program misinterpreted, but so was my release. For example, the pages from "Time" magazine of November 6, 1972, which you enclosed with your letter contained the following paragraph:

"Gray revealed last week that he is discontinuing a 22-year FBI practice of maintaining biographical data on Congressional candidates. He said that the information had been used mainly to help check out any threats made against them."

Neither of those sentences is accurate. I did not say the FBI would stop maintaining biographical data on Congressional candidates. Such a statement would imply that FBI personnel could not even maintain copies of the "Congressional Directory," copies of "Who's Who," or even daily newspapers which contain biographical data on Congressional candidates. Neither did I say that the information had been used mainly to check out threats made against the candidates. I stated the purpose of the program was to provide briefing material for FBI officials who might desire it before calling on newly elected Congressmen and Senators, adding that later it became apparent the information could be of use in investigations dealing with offenses against Members or Members-elect of Congress under the provisions of Public Law 91-644.

A number of the news accounts I saw concerning my announcement of October 27, 1972, contained implications that the FBI was compiling secret dossiers on Members of Congress and the inference could easily be drawn from these accounts that there was some sinister motive involved. The FBI's record, I believe, leaves no doubt that it has been in the forefront of protecting individual freedoms rather than trying to encroach upon them.

Your understanding that the FBI relies on the Department of Justice for its Congressional relations is accurate insofar as legislative matters are concerned; however, due to the many inquiries and requests for information which we receive from Members of Congress, it has been necessary to maintain a Congressional Services Unit within the FBI to respond to these requests. Assaults on Federal legislators were not made Federal offenses until 1971; however, Federal legislators, like all citizens have been covered for many years under laws such as those regarding kidnapping and extortion. But let me reiterate, the information collected under the program in question was gathered to assist FBI officials responsible for rendering services to the Congress.

Before responding to your questions, let me describe for you the program that I ordered discontinued and how it operated. I believe this will greatly enhance the understanding of this matter.

Around 1950, the officials of the FBI then responsible for dealing with the Congress decided it would be most beneficial to them if they had some biographical data on newly elected Members and a knowledge of any prior contacts by FBI representatives with these new Congressmen and Senators. Initially, they orally requested FBI field office officials to furnish the desired information. In 1960, the practice was begun of requesting such information by sending routing slips to the various FBI field offices. This has been followed each election year since that time.

The information was gathered for our own internal use and not in response to any regulation or statute. At first, information was sought only on nonincumbent candidates for Congress. In 1960, the requests were expanded to include nonincumbent candidates for Governorships, since FBI officials also felt their contacts with Governors could be enhanced by some prior knowledge of the individual's background.

No investigation was conducted to secure this information, and no investigative file was opened either in the field offices or at FBI Headquarters. The biographical information was collected by individual Agents covering the home area of the candidate. It was gathered from local newspapers, campaign brochures, and reference books such as city directories or books which publish biographical information—all sources readily available to the general public. This information was augmented by a summary of any data already in the files of the field office. This might include correspondence exchanged with the candidate; memoranda concerning personal contacts; results of investigations involving the candidate, either as a subject, a victim, a witness, or a reference; or information voluntarily submitted to the FBI.

The material collected by the field office was sent to FBI Headquarters where it would be held until the results of the election were known. If the candidate was defeated in his bid for office, all of the material submitted by the field office would be promptly destroyed and no record of it kept. If the candidate was successful, a memorandum summarizing the material submitted by the field office would be prepared. Into this summary memorandum also would be incorporated a brief abstract of any information already contained in the files at FBI headquarters.

Here again, the information might include correspondence exchanged with the candidate; memoranda concerning personal contacts; results of investigations involving the candidate, either as a subject, a victim, a witness, or a reference; or information voluntarily submitted to the FBI. The raw material forwarded by the field office would be destroyed, and only the summary memorandum would be retained and incorporated into FBI files.

Now to your specific questions.

1. When was the program begun? Was it instituted by formal or informal directive? By whose order in the Bureau? the Justice Department? elsewhere? Please supply copies of the directives which ordered the initiation of this program. Please supply copies of all Departmental and Bureau directives, orders, regulations, "routing slip directives," and other written instructions describing the program, its purposes and the responsibilities of Bureau agents in carrying it out, including those of January 13, 1972, August 7, September 13 and September 19, 1972.

The program was begun around 1950 on an informal basis and apparently on oral instructions of a former Assistant to the Director. Copies of the only written instructions we are able to locate concerning this program are enclosed. These include the routing slips sent to various FBI field offices this year under dates of January 13, August 7, September 13, and September 19, 1972, and routing slips sent to various FBI field offices in 1970 under dates of July 12 and October 6, 1970. The latter two items were retained only as samples, and no copies of such communications to the field offices sent out in prior years have been retained.

2. List the persons or categories of persons about whom information was collected under the program. Please list separately those members of the 92nd Congress about whom information was and was not collected under this program. List separately those nonincumbent candidates for federal office about whom information was and was not collected. What has been the policy with respect to the disposal or destruction of information collected upon persons after they are no longer Members of Congress, or candidates for office? Is the information

retained or destroyed? If the information is retained, how many separate individuals had files maintained on them in the Bureau as of October 27? What was the reason for retaining information on persons no longer Members of Congress or candidates?

Information was sought under this program on major nonincumbent Congressional candidates. Biographical data was collected on each Member of the 92nd Congress who had not previously served in the Congress. No data was collected on incumbents since biographical data on them is published in the "Congressional Directory." Congressional candidates were the only candidates for Federal office on whom biographical data was collected. If the candidate was defeated, no information concerning him collected under this program was retained, the information being promptly destroyed as soon as results of the election were confirmed. Data collected on successful candidates was summarized in a memorandum prepared for the information of FBI officials which subsequently became a part of the FBI's general files. Preparation of such memoranda was started in late 1954. The so-called "raw material," which generally was in the form of newspaper clippings, campaign brochures, or excerpts therefrom, was never made a part of FBI records and has been destroyed. Information collected in this program on all present Members of Congress as well as former Members going back about 20 years is maintained in FBI records. The FBI does not have authority to destroy information contained in its records, and this applies whether the person is a Member of Congress, a candidate, or a private citizen.

3. Under what authority was it initiated and conducted? Under what authority has the Bureau been charged with investigating "violent offenses" committed against each of the categories of persons included under the program before 1968? After 1968? Please supply copies of Departmental and Bureau regulations under which it was authorized, together with citations and copies of the statutory and other authority from which the authority stems.

The program was not in response to any statute or regulation. It was begun informally on oral instructions from an official of the FBI whose purpose was to obtain biographical data to assist him and other FBI personnel in carrying out their responsibilities in dealing with Members of Congress. As to the authority under which the FBI has been charged with investigating violent offenses committed against persons included under the program, I already have referred to Public Law 91-644 enacted in 1971. Also, as I mentioned earlier, Members of Congress and candidates have been covered, as have all persons, under Federal laws dealing with such crimes as kidnaping and extortion. As previously indicated, the only written instructions we were able to locate concerning this program are the routing slips sent out to the field offices in 1970 and 1972.

4. Please describe in detail the types of information collected, the sources relied upon, and the methods used for collecting the information. Include, of course, both covert and overt collection methods. Please supply copies of all instructions to Bureau employees governing the kinds of information desired, and methods of collecting such information. Please explain the terms "readily available sources," "reference publications," "local files" and "local publications," and identify representative examples of each. What information in "local files" was used, and how was it collected? What kinds of biographic data was collected? What sources, not readily available to the public or not published, were used. Please submit copies of representative "dossiers" or collections of information on incumbents and candidates prepared under this program, suitably sanitized to protect the identity of the individuals involved, but in sufficient detail to enable the Subcommittee to determine the scope, methods, and contents of the program.

The information requested from the field offices was biographical in nature together with a summarization of any data which might already be in the field office files. The biographical data came from news articles, campaign literature, and standard reference publications such as "Who's Who" and Martindale-Hubbell. Frequently, the information was submitted merely by forwarding copies of the news articles or campaign literature to FBI Headquarters or by copying the pertinent data from the news articles or the reference publications. No covert collection methods were used. The routing slips previously referred to contain all the instructions sent to the field offices regarding this program. "Readily available sources" means those public sources which are available to any citizen, such as newspapers, magazines, and campaign literature. "Reference publications" means such items as "Who's Who," Martindale-Hubbell, and city directories. "Local files" refers to the files of the FBI field offices. "Local publications" means newspapers and other periodicals published in the local area. Information in

"local files" could be the results of prior investigations concerning the candidate in which he may have been a subject of the investigation, the victim of some crime being investigated, or a witness or reference interviewed. The information could concern previous contacts between the candidate and FBI representatives, or it could be information volunteered to the FBI. The kind of biographical data collected is the same type as that which is published about Members of Congress in the "Congressional Directory," and I know of no sources, except for local and Headquarters FBI files, not readily available to the general public which were used in the collection of this data. I am not at liberty to furnish copies of the summary memoranda prepared from the material collected under this program; however, I can advise you that I am giving serious consideration and study to the ultimate disposition of the summary memoranda prepared as the end product of this Congressional Relations program.

5. Please describe the uses to which the information was put, both as a matter of regulation and as a matter of tradition or practice. Please submit copies of all regulations, directives or instructions governing use and access to this information. List also the names or titles of all individuals within the Bureau, the Justice Department, and other government offices, including the White House, who were authorized or who in practice actually did have access to such information from time to time. List also all persons by name or title not connected with the above offices, who were authorized or did, in fact, have access to such information.

As indicated, the primary use of the information gathered under this program was to assist FBI personnel responsible for contacts with the Congress. It was helpful to them to know what, if any, prior experience the newly elected Members might have had concerning law enforcement activities or of any prior contacts they may have had with FBI personnel. Likewise, it was important to know if the new Member had been the subject of any prior FBI investigation, such as an applicant investigation, or had been the victim of any crime investigated by the FBI. There are no special regulations or instructions governing the use of and access to this information. All FBI personnel have access to information in the files of the FBI if they need the information in connection with their official functions. No information in FBI files is available to anyone outside the FBI unless through official dissemination to another Executive Branch agency as part of the results of an investigation or in answer to an official inquiry regarding a specific individual. Our dissemination policy is the same with respect to all persons whether they be public officials or private citizens—the information is disseminated outside the FBI only in connection with official investigations or in response to official inquiries. Therefore, it is not possible to identify by name or title all of the individuals who might have access to such information.

6. Please describe how this information was stored or maintained. For example, was it in field offices or in Washington Headquarters; in separate dossiers, or as part of other records such as the "Crime Records;" separate from the general files or as part of them; in manual files or in other form?

The information gathered under the program in question was recorded in a single summary memorandum which was incorporated into the general records of the FBI at FBI Headquarters.

7. Please describe your efforts since taking office to determine the existence of such a program. Did you inquire into the possible existence of such a program prior to this weekend? What was the result of your inquiry? To what do you attribute the discrepancy, if any, between the results of your earlier inquiry and the information which has just come to light? Do you feel the inquiry or the reply was inadequate? Do you plan any administrative action as a result? If so, what?

I must assume that this question is directed to the statement made by me on numerous occasions to the effect that I had not located any secret files or political dossiers within the files of the FBI. I did not specifically ask the Assistant Director of the Crime Records Division if his Division maintained secret files or political dossiers, nor did I ever ask anyone in the FBI if we maintained files on Congressional or other political candidates. My inquiries were directed solely to the maintenance of secret files or political dossiers and these were made to all members of the Executives Conference of the FBI on several occasions when the subject came up for discussion and to the senior officials of the Files and Communications Division of the FBI on numerous occasions.

No one of us in the FBI ever considered that the summary memorandum, the product of the program I terminated on October 27, 1972, constituted a secret file or a political dossier. It is for this reason that I believe the existence of this program was not reported to me in response to my inquiries. I have ordered a thorough inquiry into this matter, and I am now in the process of completing my review of the entire matter.

8. What will become of the program in question? Please submit copies of all directives and instructions which will govern future collection and retention of information on elected federal officials and other persons subject to this program. Will the existing files be destroyed? Please state when and in what manner. Will any copies be retained, either by the Bureau or by any other officer or official of the Government? Are any copies of such files held elsewhere than in the Bureau, to your knowledge? Will subjects of these files be informed of the existence or contents of files on them, or be permitted to review them prior to their destruction?

The program was discontinued on October 27, 1972, and all information which had been collected under it this year was promptly destroyed. My instructions in this regard were issued orally, not in writing. I am giving serious consideration and study to the ultimate disposition of the summary memoranda prepared based on the information collected under this program.

9. Does the Bureau have any program of collecting information on federal elected officials, other than the one under inquiry? If so, please answer the above questions for each such program. Are similar programs in effect for candidates of other federal offices, either elected or appointed? For state offices, such as governor or state representative, or for local offices? If so, please answer the above questions for each such program.

The FBI has no program to collect information on Federal elected or appointed officials and this particular program has been terminated. Where there is a requirement for an official investigation, the FBI will collect such information, such as for a Presidential appointment. As previously indicated, the Congressional program was expanded in 1960 to include nonincumbent candidates for Governor; however, this Congressional program has been terminated.

In response to the allegations in the "Time" Magazine article you referred to in your letter, I enclose for your information a copy of a memorandum setting forth the facts and circumstances as we know them.

Sincerely yours,

L. PATRICK GRAY, III,
Acting Director.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., October 27, 1972.

For immediate release.

"The FBI is not investigating and has not investigated Members of Congress or Congressional candidates," Acting FBI Director L. Patrick Gray, III, declared today. "The only exceptions have been where a Member was alleged to have violated a Federal law or where the Member is being considered for a top-level Government appointment.

"It has just come to my attention," he said, "that since 1950 personnel at FBI Headquarters responsible for dealing with Congress have, as a matter of routine practice, gathered biographical data on major candidates for the House of Representatives and the Senate from newspapers, magazines, campaign literature, and various reference publications. FBI Field Offices from time to time have been requested, by means of a routing slip directive, to assist by providing information that was readily available from local files and local publications.

"Initially, the purpose of this was to provide briefing material for FBI officials who might desire it before making a call on a newly elected Congressman or Senator. In short, the routine was a part of the Congressional relations program of the FBI. Later, following the enactment of Public Law 91-644 dealing in part with violent offenses against Members of Congress and Members of Congress-Elect, it became apparent that such information would be of immediate use in following investigative leads arising in the event such an offense were to be committed against a Member or a Member-Elect of Congress.

"I became aware of this program," Mr. Gray continued, "as a result of inquiries alleging that an FBI Agent in Lorain County, Ohio, had been making inquiries about the background of the Democratic candidate for Congress in Ohio's 13th District. This Agent's inquiries were not authorized, and were in violation of specific instructions that the gathering of information on Congressional candidates is to be made from readily available published sources only, and not through any outside inquiries. The FBI is conducting an internal administrative investigation of this Agent's actions to determine why this instruction was not followed.

"At the same time," Mr. Gray continued, "because the program of gathering briefing material on Congressmen and Congressional candidates has been brought to my attention through this incident, I have given consideration to the need for such a program. Such a program is not essential to FBI operations, and I believe it is obvious that it can be misinterpreted easily as a program to investigate Congressmen and Congressional candidates. Therefore, I have decided to terminate this program as of today."

FBI ROUTING SLIPS

JANUARY 13, 1972.

Re Coming elections.

Primaries will be held this year in each state to nominate candidates for Congress (House and Senate) and some Governors. Pertinent background information and data from your files on major non-incumbent candidates in your district should be forwarded informally by routing slip, not letter, to Crime Records as soon as they are nominated. Under *no* circumstances should you make outside inquiries such as checks of credit bureaus or newspaper morgues. Public source material readily available to you and data from your files will suffice. Continue to furnish pertinent data as it develops between the primary and general election. Also be alert for any special elections to fill Congressional vacancies and submit pertinent data on the major candidates before the election date. These matters must always be handled *with extreme discretion* to avoid the implication that we are checking on candidates.

AUGUST 7, 1972.

Re Bu r/s January 13, 1972: Coming elections.

By r/s of 1-13-72 you were requested to furnish pertinent background information from public sources as well as data from your files regarding nonincumbent candidates for Congress. It has now been over a month since the primary in your state was held, and we have not received the requested information. Please submit this information within three weeks from the date of this r/s. Make *no* outside inquiries such as checks of credit bureaus or newspaper morgues concerning this matter.

SEPTEMBER 13, 1972.

Re Coming elections.

Attached is a copy of the routing slip sent your office regarding nonincumbent candidates. Information has not been received from your office although it is noted the primary in your state has been held. Please submit the necessary information to reach Crime Records Division by 10-1-72.

SEPTEMBER 19, 1972.

Re Coming elections.

Attached is a copy of the routing slip sent your office regarding nonincumbent candidates. It is noted the primary in your state has been held. Please submit the necessary information to reach Crime Records Division by 10-9-72.

AUGUST 12, 1970.

Re National Elections Crime Research Section.

Primary elections have been or are being conducted in each State to choose candidates for the forthcoming November elections for all House members and for certain Senators and Governors.

You are requested to furnish background data and any information in your files re major nonincumbent candidates for Senate, House and/or Governor in those districts covered by your office. This matter should, of course, be handled extremely discreetly and the information should be submitted to the Bureau on a strictly informal basis as soon as the pertinent data is available.

OCTOBER 6, 1970.

Re National Elections Crime Research Section, re my routing slip Aug. 12, 1970.

Inasmuch as all primary elections have now been held, it is requested that you expedite transmittal of background data and any information in your files regarding major nonincumbent candidates for Senate, House and/or Governor in those districts covered by your Office. Bear in mind that this matter should, of course, be handled extremely discreetly and that the information should be submitted to the Bureau on a strictly *informal* basis as soon as possible.

MEMO

JANUARY 12, 1973.

Re Information for Campaign Trips: Events and Issues.

Under date of September 1, 1972, Geoff Shepard of the White House staff, prepared a memorandum for the Deputy Attorney General on the subject of "Information for Campaign Trips: Events and Issues." This requested two categories of information: (1) identification of the substantive issue problem areas in the criminal justice field; and (2) a list of events relating to the criminal justice area that would be good for John Ehrlichman to consider doing. The memorandum indicated an interest in this information in 15 specified states. It requested the information by close of business on September 7, 1972.

Under date of September 8, 1972, the Deputy Attorney General forwarded to Acting FBI Director L. Patrick Gray, III, a copy of the White House memorandum requesting an evaluation of the questions. This noted that the White House deadline already was passed and asked for a response as quickly as possible. (A copy of this memorandum and a copy of the White House memorandum are attached.)

The memorandum from the Deputy Attorney General was received in the office of the Acting Director of the FBI at 10:32 a.m., on September 8, 1972. Mr. Gray was out of Washington at the time and the matter was handled by his Executive Assistant, David D. Kinley. He forwarded it to the Assistant Director of the Crime Research Division, Thomas E. Bishop. Mr. Bishop discussed the matter with Acting Associate Director W. Mark Felt, and thereafter Mr. Bishop had one of his subordinates prepare a teletype to 21 FBI Field Offices which he approved to be sent late on September 8, 1972, setting a deadline of the opening of business on September 11, 1972. This teletype set out virtually verbatim the text of the request in the White House memorandum of September 1, 1972.

The material received from the Field Offices in response to the teletype was summarized into a memorandum on September 11, 1972, which was approved by Messrs Bishop, Felt and Kinley and was then delivered to the office of the Deputy Attorney General late on the same date. The information supplied by the Field Offices required no investigation to obtain it—it was information readily available within the Field Offices pertaining to forthcoming meetings and conferences on matters of similar interest in law enforcement and criminal justice fields.

Mr. Gray was out of Washington during the entire period of September 8 to 11, 1972, returning to the city after 7 p.m., on September 11, 1972. His first knowledge of this matter was on the late afternoon of September 12, 1972.

Personnel involved in the handling of this project have stated they did not question the propriety in complying with the request since it dealt with information of a broad nature concerning police and the criminal justice system, since it had been requested by the White House, and since the request had come through the offices of the Deputy Attorney General and the Acting Director.

U.S. GOVERNMENT,
September 8, 1972.

To: L. Patrick Gray, Director, FBI.

From: Ralph E. Erickson, Deputy Attorney General.

Subject: Information for Campaign Trips: Events and Issues (Attached. White House Memorandum.)

Would you undertake to evaluate the questions asked of us by John Ehrlichman in the attached memorandum and give me the benefit of your response.

Although we are beyond the due date of this memorandum already, please make your response as quickly as possible.

THE WHITE HOUSE,
Washington, September 1, 1972.

Memorandum for: The Deputy Attorney General.

Subject: *Information for campaign trips: Events and issues.*

In order for John Ehrlichman to give the President maximum support during campaign trips over the next several weeks, the following information is required for each of the states listed at Tab A.

(1) Identification of the substantive issue problem areas in the criminal justice field for that particular state. Please limit yourself to problems of sufficient magnitude that the President or John Ehrlichman might be expected to be aware of them. Brevity is the key, and often all that is necessary is to flag a sensitive problem so it can be avoided or more extensive preparation can be undertaken should we choose to speak about it.

I went on a trip to Anchorage, Alaska, to visit the field office there, to visit the Seattle field office, the Portland field office, speak in Spokane, Wash., to the Washington State Bar Association, visit the field office at Butte, Mont., and the dates of all those were around the 11th, I think, of September, and I will pin it down here. Yes, and I came back, it was on the 12th of September in a meeting with my personal staff in the afternoon that I learned about this. This was the first indication that I had of it.

Senator ERVIN. I think it might be helpful to the committee if you could indicate in an extremely brief fashion the nature of the information in the dossiers, or whatever you chose to call them, relating to Congressmen and candidates for Congress which had been collected by the FBI under this practice.

Mr. GRAY. Right. The idea was started, conceived in 1950, was pursued actively from 1954 on, and the idea was generated by those who were then in charge of meeting with Members of Congress and handling requests from Members of Congress and providing information to Members of Congress.

The concept of the operation was to go into a district, acquire the names of the individuals who were candidates, and acquire public source information regarding those individuals as well as any information in the files of the FBI at the division level, regarding any contacts that these individuals might have had with the FBI—to bundle all this public source material together, send it back to FBI headquarters where it was distilled and a summary memorandum prepared if the individual was elected. No summary memorandum was prepared if the individual was not elected, and all public source material acquired was destroyed. So that all you had, if you had an incumbent, or rather a candidate running in a given district, we would gather that material on him. Then if this candidate was elected, public source material on him would be distilled into a summary memorandum and that would be sheet No. 1 or sheets No. 1 through however long the memorandum was regarding this individual. Our people who were in what was then called the Crime Records Division would utilize that in making their contacts with the Members.

Senator ERVIN. What was done with the data that was related to the candidates who lost?

Mr. GRAY. They were destroyed, Senator.

Senator ERVIN. Destroyed.

Did the summary which was made from these files indicate whether there had been investigations into the personal conduct or the political views of the candidates or Members?

Mr. GRAY. No. The only information we had was the public source information that we acquired or any information that we might have on the individual that was contained in the FBI files at the division level or at the headquarters level. Now, if that individual as a private citizen had been the subject of a FBI investigation; yes, sir, that would be contained in the summary memorandum.

Senator ERVIN. But, if he had not been the subject of a prior investigation it would not be?

Mr. GRAY. No, sir, and we did not conduct any investigation of these individuals who were candidates in a given district.

Senator ERVIN. Now, of course, this practice had originated long before you became Director?

Mr. GRAY. Yes, sir, that is correct, Senator.

Senator ERVIN. And your investigation of the history of the practice satisfied you that this information was gathered for the benefit of those FBI employees who may have a reason to contact these Congressmen for the FBI in the dealings between Congress and the FBI.

Mr. GRAY. Yes, sir. Right here at the national level men like Inspector Dave Bowers, who conduct this kind of relationship with the Congress, who really—really it is a congressional services unit and that is what I have changed it to in the reorganization. Those men are doing that now and are in what we call today the congressional services unit.

Senator ERVIN. As I understand from your letter and other public statements made by you, this practice has been discontinued and the FBI relies upon such things as the "Congressional Quarterly" and other public information for any information of this character?

Mr. GRAY. Right. I shut it down over the recommendations of the people in the Bureau that it be continued and I said absolutely not, it will not be continued. It is too readily subject to misinterpretation and we don't need it.

Senator ERVIN. As you know, the Senate has imposed upon me and other members of the Senate Select Committee on Presidential Campaign Activities a very solemn and serious responsibility in connection with the so-called Watergate affair and various ramifications connected with it. I would have been happy if I could have asked you some of these questions I am now going to ask you after that committee has discharged those responsibilities. However, in view of the fact that your nomination has been submitted now, I am compelled in the nature of things to ask you these questions.

Mr. GRAY. Senator Ervin, I understand that. I would hope, of course, we would not get into the Watergate substantively, but I can readily see that the members of this committee have got to be assured that I went at this with the FBI's standard procedure, with its accustomed vigor, and I will do my very best to respond to any of your questions. I have absolutely nothing to hold back in connection with that and if we are going to take two bites of that apple why so be it, let's get on with it.

Senator ERVIN. I have received by telephone the assurance of the Attorney General that he and the Department of Justice will cooperate with the committee in the effort of the committee to investigate these matters. I take it from your statement a moment ago that you are also prepared to cooperate with the committee.

Mr. GRAY. Absolutely, sir. Our raw data, our memoranda, whatever this committee wants, whatever the Ervin Select Committee wants, is available to the members.

Senator ERVIN. I am frank to state that I am just a little bit troubled by the limitation that you announced, that only members of the committee, that is only Senators, shall be allowed to inspect these raw files, because I have got 10,000 other jobs besides that of investigating Watergate and I think that is true of all the other members of the committee.

Mr. GRAY. I understand that, Senator.

Senator ERVIN. The Senate resolution authorizing and requiring this investigation specifies that the only people who can have access

to these files would be either the members of the committee or the chief counsel to the committee or the counsel for the minority or other members of the staff of the committee who might be designated by the chairman and the ranking minority member of the committee.

MR. GRAY. You are talking about your Ervin Select Committee?

Senator ERVIN. Yes.

MR. GRAY. I have no quarrel with that. We will comply with the resolution of the Senate. But I am talking about the procedure now, because Senators here who are members of this committee obviously are going to want to know how Gray handled the Watergate before they are going to confirm this bloke for my position and I am prepared to tell you.

Senator ERVIN. In other words, I would think that the minority ranking member, who is now elected vice chairman of the committee, Senator Baker of Tennessee, would not want anybody but the most reputable person to look at the files but we would like to have a member of the staff selected by both of us to do this work instead of doing it in person.

MR. GRAY. Senator, as far as your committee is concerned, we in the FBI will abide by the joint resolution. I have some people I have to take some orders from, too. On the one hand, there were some who criticized Mr. Hoover for being a feudal baron and now maybe it seems I sense a little criticism of me because I am taking orders, but I am trying to comply. I am saying to this committee that my position has been from the beginning that we have nothing to hide and I am going to state it on the public record because I have stated it on the private record.

Senator ERVIN. Yes, that is the reason that I am concerned that Senators not be the only ones who will have to do this work and so I understand—

MR. GRAY. I meant, Senator Ervin, for this committee I am willing to send over the materials and I am willing to send over two agents and a Senator can sit down with them and question them any way they want.

Senator ERVIN. And I might state that as far as I am concerned and as far as I can control the matter, it is not the purpose of the committee to take and put any raw files or anything of that character in evidence. We just don't want to have to put the taxpayers to the expense of setting up a little FBI of our own to conduct investigations which have been made by the FBI. We want to learn from the FBI files who are witnesses possessing some knowledge which is worthwhile for the committee to hear.

MR. GRAY. Right, and we have analyses and all other kinds of books and summaries and we will provide that to the Ervin Committee. We have no problem on that.

Senator ERVIN. Mr. J. Edgar Hoover never had a more ardent admirer in the United States than myself, and there is nobody in the United States who has respected throughout the years the work of the FBI more than I have respected it. As a practicing attorney and as a judge I had many contacts with the FBI agents. I have been impressed by the highest standard of conduct and the high character which they possess.

MR. GRAY. Thank you, Senator Ervin.

Senator ERVIN. I read somewhere in the press that the FBI had interviewed hundreds of witnesses in connection with this Watergate affair but that former Secretary Stans, instead of being interrogated by the FBI, had been permitted to file with the FBI a statement prepared by him or for him. Can you inform me as to that?

Mr. GRAY. That is not correct. That may be confused with the fact that a deposition was taken from him instead of his appearing before the Federal grand jury. I believe I am correct on that, but subject to checking my files and giving you an accurate answer on that, let that be what I think you are talking about. But we interviewed Secretary Stans, and my recollection is that we interviewed him four times, no, three times: on July 5, July 14, and July 28, 1972.

(Mr. Gray subsequently submitted the following statement:)

Upon checking the record I find that a deposition was taken from Secretary Stans on August 2, 1972, by two assistant U.S. attorneys at the Department of Justice in lieu of Federal grand jury testimony. In further checking, I find that we interviewed Secretary Stans four times; one time on July 5, twice on July 14, and one time on July 28, 1972.

Senator ERVIN. Now the reason I asked that question is that I know, as a lawyer, that you cannot cross-examine a statement. That is the reason that the rumor or statement I read gave me some concern.

There is one other thing I would like to ask. Did you ever know Mr. Donald H. Segretti, a California lawyer?

Mr. GRAY. Did I know him personally, sir?

Senator ERVIN. Yes.

Mr. GRAY. No, sir.

Senator ERVIN. The Washington Post, on October 15, 1972, reported that Lawrence Young, a California attorney, who I believe was a college mate of Mr. Segretti, stated in a sworn statement that Mr. Segretti told him, among other things, that on August 19—well, I will say before reading it that Mr. Young stated in an affidavit supplied to the Washington Post that he and Mr. Segretti and Dwight L. Chapin were college mates—I believe it was at Southern California, I am not sure of the institution—and that Mr. Segretti told him that he had been interviewed by the FBI on one or more occasions, that he had been subpoenaed as a witness to testify in the Watergate case, and that on August 19, 1972, two days before the Republican National Convention, that he, Mr. Segretti, went to Miami Beach, and that while he was there a presidential aide showed him copies of two interviews he had with the FBI, including one that was not yet 24 hours old.

Mr. GRAY. I think we only interviewed Segretti once but I have to check that. Let me just check this record here. I know we interviewed him on the 26th of June and am just trying to see whether there was another date on which we interviewed him.

My recollection, first, is that we only interviewed him on the 26th of June. I don't know whether we interviewed him a second time. We didn't look into that allegation at all as to whether or not he was shown any FBI interview statements.

Senator ERVIN. Then you can't give me any information on that question.

Mr. GRAY. I can give you information on it but I can't tell you whether or not he was shown those statements—that is what I cannot

tell you. To give you that information I am going to have to take time to tell you how we progressed on this investigation.

Senator ERVIN. Well, that wouldn't be a likely procedure to be permitted by the FBI, would it?

Mr. GRAY. Of course not. We certainly would not.

Senator ERVIN. So you, at the present time, can neither affirm nor deny that statement.

Mr. GRAY. No, I don't because I can't; I can't say with any degree of certainty testifying under oath that he was or was not.

Senator ERVIN. I take it that you give the committee your assurance that if any such event happened, that is if any copy of the FBI interview was given to Mr. Segretti it was not given by you or with your knowledge or consent.

Mr. GRAY. It was not done with my knowledge or consent, that is true. But I can go into it further if you want me to explain how it possibly could.

Senator ERVIN. Yes, I would like to have that.

Mr. GRAY. When we started out this investigation, it was the most closely held investigation that we have conducted in the FBI because of the fact that we did not know who might become involved. Dissemination of information on this was very limited, at my explicit order, and with the concurrence of the Attorney General of the United States.

Now there was that contact between the case agents and the Assistant U.S. Attorneys that traditionally occurs in an investigation. There was contact also with the assistant attorney general of the criminal division, and in accordance with then standard FBI operating procedures, on June 19 there was delivered to me a summary report of what had transpired to date, facts and circumstances, in Watergate. Coupled with that was a letterhead memorandum, as I recall it, and I will introduce those documents for the record here, a letterhead memorandum transmitting this information to the Attorney General, and a letter prepared addressed to H.R. Haldeman. I said no, and I stopped it right then and there. That was in accordance with then standard FBI operating procedure. The material just came up, and I said no.

Now, as time went on we finally began delivering the investigative reports to the assistant attorney general of the criminal division and we have a listing of the dates on which we did that and I will submit that for the record. Then, I think it was the middle of July, about the 19th, I was asked by the White House, by John Dean, to provide them with a letterhead memorandum because he wanted to have what we had to date because the President specifically charged him with looking into any involvement on the part of White House staff members.

I asked my legal counsel to prepare a memorandum regarding whether or not we had a duty to send any material to the White House. The answer came back: On our own initiative, no; in response to a directive from an individual acting for the President of the United States, that is another matter and we do.

So I had prepared, caused to be prepared, a letterhead memorandum, dated July 21, and we will submit that for the record, and that was submitted to the Attorney General. I have every reason to believe

that that went over to Mr. Dean at the White House. I have no reason to question that it should or should not, because I work for the President of the United States and I think the President of the United States is entitled to ask the Director of the Federal Bureau of Investigation: "What information do you have that implicates individuals who are members of my staff?" And I submitted it.

Later on, Mr. Dean asked to review the interview reports of the Federal Bureau of Investigation, and I submitted those to him. So you see the possibility here, Senator, and I think what is being driven at in this, the allegation is really directed toward Mr. Dean having one of these interview reports and showing it to Mr. Segretti down in Miami. I can tell you this, that when this newspaper report hit I called John Dean and I asked him if he had done this, and he said: "I did not. I didn't even have those documents with me."

Senator ERVIN. Now, am I correct in inferring that it had been the practice to supply information collected by the FBI, either in the form of summaries or in the form of copies of interviews, to officials of the Department of Justice or the district attorneys.

Mr. GRAY. Our regular procedure, Senator Ervin, of course, is to work very closely with the assistant U.S. attorneys and with U.S. attorneys, and then at FBI headquarters levels to work with the Assistant Attorney General having cognizance of the case, and the answer to your question is "Yes; we keep them informed." In this case we were even tight with information there.

Senator ERVIN. Let me see if I understand another thing you said. Some information or a summary of some information collected by the FBI in regard to some aspect of the Watergate matter, accompanied by a proposed letter, was to be sent to Mr. Haldeman?

Mr. GRAY. Yes, sir; that happened on June 19, and I will submit those documents for the record. I will show them exactly as they came up to me, and I said "No."

(Mr. Gray subsequently submitted the following documents:)

JUNE 19, 1972.

To: The Attorney General from Acting Director, FBI.

Re James Walter McCord, Jr., and others, burglary of Democratic Party National Headquarters, Washington, D.C.

Enclosed is a memorandum containing the results of investigation of the burglary of the Democratic Party National Headquarters, Watergate Apartments, Washington, D.C., on June 17, 1972.

A copy of the memorandum has also been furnished to Honorable H. R. Haldeman, Assistant to the President. Investigation concerning this matter is continuing and reports of investigation will be furnished to the Criminal Division as soon as they are received.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., June 19, 1972.

HON. H. R. HALDEMAN,
Assistant to the President,
The White House,
Washington, D.C.

DEAR MR. HALDEMAN: Enclosed is a memorandum containing the results of investigation of the burglary of the Democratic Party National Headquarters, Watergate Apartments, Washington, D.C., on June 17, 1972.

A copy of the memorandum has also been forwarded to the Attorney General and investigation by the FBI is continuing.

Sincerely yours,

L. PATRICK GRAY, III,
Acting Director.

JAMES WALTER McCORD, JR., AND OTHERS, BURGLARY OF DEMOCRATIC PARTY
NATIONAL HEADQUARTERS, WASHINGTON, D.C., JUNE 17, 1972

INTERCEPTION OF COMMUNICATIONS

At approximately 2:30 a.m., June 17, 1972, officers of the Washington, D.C., Metropolitan Police Department (MPD), acting on information received from the security guard, Watergate Apartments, 2600 Virginia Avenue, N.W., Washington, D.C., that locks in the building had been tampered with, arrested five individuals in the office of the Democratic Party National Headquarters. These individuals have been identified as: James Walter McCord, Jr.; Bernard L. Barker; Frank Anthony Fiorini; Virgilio R. Gonzales; and Eugenio Rolando Martinez y Creaga. These individuals had in their possession burglary tools and a quantity of eavesdropping and photographic equipment.

At the time of the arrests, it was observed that several ceiling panels had been removed, as well as a telephone jack and an air conditioning cover, apparently in preparation for concealment of the eavesdropping devices.

All subjects have been charged with burglary, in violation of Section 1801, Title 22, District of Columbia Code, and all except McCord are being held in lieu of \$50,000 bond. McCord is being held in lieu of \$30,000 bond. A preliminary hearing is set for June 29, 1972. All subjects have declined to be interviewed concerning this matter.

At the time of their arrests, the subjects were in possession of \$2,400, including thirteen new \$100 bills. A search of rooms rented at the Watergate Hotel by these individuals, pursuant to a search warrant authorized by Assistant U.S. Attorney Charles Work, Washington, D.C., disclosed an additional \$3,500 in new \$100 bills of the same series and originating serial numbers as those found at the time of the arrests.

Investigation reveals the following information concerning the background of the persons arrested:

James Walter McCord, Jr., of Rockville, Maryland, who at the time of his arrest gave the name Edward Martin, has been determined to have been employed as an FBI Agent from October, 1948 to February, 1951; having been employed by Central Intelligence Agency (CIA) August, 1951 to August, 1970; and is presently reported to be Chief of Security for the "Committee to Reelect Nixon," 1701 Pennsylvania Avenue, N.W., Washington, D.C. In addition, McCord, in February, 1972, was reportedly in charge of security for the family of former Attorney General John N. Mitchell.

Bernard L. Barker, who is also known as Frank Carter, is reported to be a Cuban national who is in the real estate business in Coral Gables, Florida. He is indicated to have been of interest to the CIA in the past but is not of current interest. He is reported to be very active in anti-Castro groups in Florida.

Frank Anthony Fiorini, also known as Fred Frank Fiorini, Attila F. Sturgis, Anthony Sturgis and Edward Joseph Hamilton, was arrested on July 30, 1958, for illegal possession of arms in Florida. Prosecution was declined concerning that matter. Sources in the Miami area report he is a "soldier of fortune" and allegedly was a gun runner to Cuba prior to the Castro regime. Sources in Miami say he is now associated with organized crime activities, the details of which are not available.

Virgilio R. Gonzales, also known as Raoul Godoy, is a native of Cuba, currently residing in Miami, Florida. CIA records do not indicate Gonzales is known to that agency; however, further check is being made in this regard.

Eugenio Rolando Martinez y Creaga, also known as Eugenio Rolando Martinez, Gene Valdes and Jean Valdes, is a native of Cuba. He was arrested November 24, 1958, for violation of immigration laws in Miami, Florida, and was deported to Havana, Cuba, on January 2, 1959. He reportedly arrived in the United States by boat on June 18, 1968, from Cuba. Sources in Miami report Martinez is a friend of Barker and is possibly in the real estate business with Barker. CIA records do not indicate that Martinez is known to that agency; however, further check is being made in this regard.

It is to be noted at the time of the search of the subjects' hotel rooms, a stamped sealed envelope was located. This envelope contained a check drawn by E. Howard Hunt in the amount of \$6.39 and a bill from Lakewood Country Club, Rockville, Maryland, to Hunt in care of Weybright & Talley, New York City. Hunt has been determined to be Everette Howard Hunt, Jr., who was employed by CIA from November, 1949 to April, 1970, and on whom the FBI conducted a Special Inquiry investigation in July, 1971, for a White House staff position. Mr. A. P.

Butterfield, Deputy Assistant to the President, advised that Hunt was used as a consultant by the White House on "highly sensitive, confidential matters" about nine months ago. To Mr. Butterfield's knowledge, he has not been used since. Hunt was interviewed, admitted the check in question is his, but refused to discuss this matter or the individuals involved without consulting his attorney.

It is noted that shortly after the subjects were arrested, a Washington, D.C., attorney, named Michael Douglas Caddy, appeared at the 2nd District, MPD, stating he was representing the five subjects. It is known that when the subjects were arrested, they refused the opportunity to make a telephone call and had no way of contacting Mr. Caddy. He was asked how he became aware of the arrests but refused to furnish any information stating he would recontact Assistant U.S. Attorney Work in a few days after thinking the matter over. Subsequently, he advised FBI Agents he received a call at 3:00 a.m., June 17, 1972, from a person whose identity he would not reveal. It is noted that Caddy, during FBI investigation of Hunt, was listed by Hunt as a personal reference and at that time Caddy advised he had known Hunt for about two years.

Investigation of this matter is continuing by the FBI to determine whether there is a violation of the Interception of Communications Statutes or any other Federal statutes.

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

Investigative reports delivered to Assistant Attorney General Henry Petersen, Criminal Division of the Department:

<i>Date</i>	<i>Number of reports</i>
June 30, 1972	13
July 3, 1972	13
July 7, 1972	10
July 14, 1972	22
July 19, 1972	23
July 20, 1972	1
Aug. 1, 1972	24
Aug. 11, 1972	11
Aug. 25, 1972	9
Sept. 28, 1972	12
Oct. 13, 1972	6
Oct. 20, 1972	8
Dec. 6, 1972	18
Dec. 22, 1972	2
Jan. 11, 1973	7
Jan. 15, 1973	2
Jan. 26, 1973	1
Feb. 1, 1973	1
Feb. 9, 1973	1
Feb. 13, 1973	1
Feb. 16, 1973	1
Total	186

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., July 21, 1972.

JAMES WALTER McCORD, Jr.,
Burglary of the Democratic Party National Headquarters, Washington, D.C.

There follows a summary of pertinent investigation conducted of the captioned matter through July 20, 1972:

Burglary and Arrest: At approximately 2:30 a.m., June 17, 1972, officers of the Metropolitan Police Department (MPD) apprehended five individuals in an executive conference room of the Democratic Party National Headquarters located on the 6th floor of the Watergate Apartments, 2600 Virginia Avenue, N.W., Washington, D.C. At the time of arrest the subjects had in their possession burglary tools, electronic and photographic equipment and were wearing surgical-type plastic gloves.

Those arrested were identified as James Walter McCord, Jr., using the alias Edward Warren; Bernard L. Barker, using the alias Frank Carter; Eugenio Rolando Martinez y Creaga, using the alias Gene Valdes; Frank Anthony Sturgis, also known as Frank Anthony Fiorini, using the aliases Joseph Di Alberto and Edward Hamilton; and Virgilio Gonzales, using the alias Raoul Godoy.

All subjects refused to be interviewed, refused to state for whom they were working, from where they came or their purpose for being in the building. They were all charged with Burglary, Section 1801, Title 22, District of Columbia Code, and were held on \$50,000 bond except for McCord, a Rockville, Maryland, resident, whose bond was set at \$30,000. All but Sturgis have since been released from District of Columbia Jail on bond.

McCord, who appears to have been the leader of this group, retired from the Central Intelligence Agency (CIA) on August 31, 1970, and at the time of his arrest he was Chief of Security for the Committee to Reelect the President. The remaining subjects are all known to have Cuban backgrounds and either worked with or participated in CIA activities against the Castro Government.

Involvement of Everett Howard Hunt, Jr.: After the arrests of the subjects in the Democratic Party National Headquarters, pursuant to an authorized search warrant, a search was made of the rooms rented by the subjects, using aliases, at the Watergate Hotel. Among the items located was an envelope containing a check of E. Howard Hunt in the amount of \$6.39 in payment for a bill from Lake-wood Country Club, Rockville, Maryland, to Hunt in care of a publications firm in New York City. Hunt, when contacted, admitted the check was his but refused to discuss the matter before consulting his attorney. Also located in the subjects' rooms were personal telephone directories which contained names, telephone numbers and addresses of numerous persons in Miami, New York and Washington, D.C. One of the names contained in the telephone book of subject Martinez is "Hunt (W. House)," together with the telephone number of Hunt's office at the White House.

Investigation developed that Hunt was employed by the CIA from November 8, 1949, to April 30, 1970, when he retired. On May 1, 1970, he became employed by Robert R. Mullen Company, 1700 Pennsylvania Avenue, N.W., Washington, D.C., a public relations and fund raising organization. Beginning July 6, 1971, Hunt was employed on a consultant basis by the White House staff, working with Mr. David R. Young and Mr. Charles W. Colson. He is reported to have been used as a consultant on declassification of the Pentagon Papers. His services were last utilized in this capacity on March 29, 1972. Information was developed that on the recommendation of a member of Mr. Colson's staff, Hunt was terminated as a consultant effective April 1, 1972, and was to be hired immediately thereafter by "1701" (1701 Pennsylvania Avenue, N.W., is the address of the Committee to Reelect the President).

Investigation developed that between January 1, 1972, and June 20, 1972, Hunt was in frequent and regular contact with the office and residence of Bernard L. Barker, Miami, Florida. Investigation further developed that Hunt, frequently utilizing the alias Ed J. Hamilton, together with George Gordon Liddy, who frequently used the alias George Leonard or G. Leonard, traveled extensively around the United States contacting former CIA employees for the purpose of setting up a security organization for the Republican Party dealing with "political espionage."

Involvement of Michael Douglas Caddy: Michael Douglas Caddy, also known as Douglas Caddy, is an Attorney at Law having offices at 1250 Connecticut Avenue, N.W., Washington, D.C., and is associated with the law firm Gall, Lane, Powell, and Killeulen. Caddy gratuitously appeared at the Metropolitan Police Department where subjects were taken after being arrested and claimed to represent them. Prior to Caddy's arrival, none of the subjects made any phone calls which might have precipitated his appearance. Investigation disclosed telephone calls were made during the early morning hours of June 17, 1972, from the telephone of Everett Howard Hunt at the Robert R. Mullen and Company to the Barker residence in Miami, Florida, and from Barker's residence to the residence of Caddy.

Upon Caddy's appearance before the Federal grand jury at Washington, D.C., he was held in contempt of court for failing to answer questions on the basis he had an attorney-client relationship with Hunt. Contempt action was upheld by the U.S. Court of Appeals on July 19, 1972. Caddy subsequently testified he received a telephone call from Hunt at around 3:00 a.m., on June 17, 1972.

Involvement of George Gordon Liddy: As is set forth elsewhere in this memorandum, Everett Howard Hunt traveled extensively endeavoring to recruit former CIA employees for security work for the Republican Party in late 1971 and early

1972. Investigation has developed that Liddy accompanied Hunt on a number of these trips. Liddy, a former FBI Agent, was employed from April, 1969, to July, 1971, by the U.S. Treasury Department in the office of Law Enforcement. When he resigned from the Treasury Department, Liddy accepted a position on the White House staff and in December, 1971, resigned therefrom to work for the Committee for the Reelection of the President.

The telephone notebook of Martinez which was recovered when the rooms of the subjects were searched at the Watergate Hotel contained a notation "George" with the telephone number of 202-333-6575. The telephone notebook of Bernard L. Barker, located in the above mentioned search, contained a notation "George" with the telephone number WDC 333-0362. Investigation developed that both of these numbers were at the office of the Committee for the Reelection of the President, 1701 Pennsylvania Avenue, N.W., Washington, D.C.

It is noted that Mr. Maurice Stans, Chairman of the Finance Committee for the Committee to Reelect the President, advised that the \$25,000 cashier's check payable to Kenneth H. Dahlberg, dated April 10, 1972, was turned over to Liddy, counsel for the Finance Committee, for a legal opinion as to how it would be best to handle the receipt and recording of this check as the funds allegedly had been contributed prior to April 7, 1972, although the check was dated April 10, 1972, after the effective date of new disclosure and reporting law. The check was cashed by subject Bernard L. Barker at his bank in Miami, Florida, but Mr. Stans had no idea how Barker obtained the check. (See write-up elsewhere in this memorandum concerning the tracing of funds and the write-up concerning the Howard Johnson Motel wherein it is shown that Liddy was observed giving a large sum of money in cash to subject McCord.) Liddy is reported to have been discharged by the Committee to Reelect the President because Liddy declined to be interviewed by FBI Agents concerning this case.

Howard Johnson Motel Lookout: Investigation developed that James Walter McCord, Jr., rented Room 419 at the Howard Johnson Motel, 2601 Virginia Avenue, N.W., Washington, D.C., from May 5, 1972, to May 28, 1972, and Room 723 from May 29, 1972, until June 17, 1972. Room 723 was found vacant by motel employees the evening of June 17, 1972. This motel is located directly across the street from the Watergate Apartments and Room 723 faces the suite occupied by the Democratic Party National Headquarters at the Watergate Apartments.

Alfred Carleton Baldwin, III, a former FBI Agent, has been identified as the individual who occupied Rooms 419 and 723 from about May 11, 1972, to June 17, 1972. Baldwin advised that during a period of this time he monitored, through the use of electronic equipment set up by McCord, telephone conversations of Spencer Oliver, a Democratic Party official. McCord told Baldwin that four extensions of Oliver's telephone located at the Democratic Party National Headquarters, were being monitored.

Baldwin stated that while he was occupying Room 723 on one occasion, the specific date which he cannot determine, George Gordon Liddy and Everette Howard Hunt came to the room and had a conversation with McCord. On this occasion Liddy took an envelope from his suit jacket and counted out about \$16,000 to \$18,000 in \$100 bills, which he gave to McCord. McCord pocketed the money and all three individuals left the room.

On the evening of June 16, 1972, McCord came to Room 723 and requested Baldwin to purchase six batteries and some "speaker wire." Baldwin obtained the batteries but did not buy the wire and McCord subsequently departed to locate some wire. He returned about 11:00 p.m. to 11:30 p.m., carrying the wire and various other electronic components appearing to have come from Lafayette Radio.

About 12:00 a.m. to 12:30 a.m., June 17, 1972, McCord received a telephone call and told Baldwin that "we're going across the street," pointing to the Democratic Headquarters. McCord told Baldwin to watch and if anything unusual occurred to contact McCord by walkie-talkie.

About 2:15 a.m., June 17, 1972, Baldwin noticed lights going on in the Watergate Apartments and subsequently police beginning to arrive. He attempted to utilize the walkie-talkie to alert McCord and received a response in a whisper, "We hear you, they got us." About this time Baldwin noticed two men leaving the alley on the east side of the Watergate and identified them as Hunt and Liddy. Hunt came to Room 723 and used the phone to contact an attorney. Hunt told Baldwin to telephone Mrs. McCord and advise her that her husband had been arrested. He also told Baldwin to pack up the electronic gear and deliver it to Mrs. McCord in McCord's panel truck which was parked in the basement of the

Howard Johnson Motel. He further told Baldwin to pack up his own belongings and go home. Baldwin delivered the electronic equipment together with McCord's wallet which had been left in the room to Mrs. McCord at about 4:00 a.m., June 17, 1972. She drove him back to his own car and he thereupon drove to his home in Connecticut.

Travel Miami—Washington, D.C.: Travel June 16, 1972.

Investigation at Tamiami Tours, Miami, Florida, identified subjects Bernard L. Barker and Eugenio R. Martinez as individuals who on June 12, 1972, purchased four round trip tickets from Miami to Washington, D.C., on Eastern Airlines flight 190 for June 16, 1972. These tickets, which were found on the subjects at the time of their arrest, were purchased in the names of G. Valdes (alias of subject Eugenio Martinez), F. Carter (alias of subject Bernard L. Barker), J. Di Alberto (alias of subject Frank Fiorini) and R. Godoy (alias of subject Virgilio Gonzales).

At time of their arrest June 17, 1972, the subjects, except for McCord were determined to be registered at the Watergate Hotel, Washington, D.C., under the aliases shown on the foregoing airline tickets.

Travel May 22-30, 1972. Subject Eugenio Martinez has been identified as the individual who on May 17, 1972, bought six one-way tickets at Tamiami Tours for travel from Miami to Washington, D.C., on National Airlines flight 100 departing May 22, 1972. These tickets were purchased by Martinez in the names of Frank Carter (alias of Barker), J. Granada (believed to be Reinaldo Pico, presently in South America on business), Joseph Di Alberti (alias of Fiorini), Raoul Godoy (alias of Gonzales), Jose Piedra (alias of Felipe De Diego) and G. Valdes (alias of Martinez).

Investigation has determined that the foregoing individuals under the aliases shown were registered at the Hamilton Hotel, Washington, D.C., from May 22, 1972, to May 26, 1972, at which time they moved to the Watergate Hotel, Washington, D.C., where they stayed until May 30, 1972.

Investigation further discloses these individuals were joined at the Watergate Hotel by two additional persons using the names of George Leonard (believed to be George Gordon Liddy) from Kansas City, Kansas, and Edward Warren (believed to be Everette Howard Hunt) from New York City. Warren paid the Watergate Hotel bill for these individuals, totaling a little over \$1,000 in cash.

Felipe De Diego, an employee of Barker's real estate firm, has been interviewed and admits being with the subjects during the period May 22-30, 1972, in Washington, D.C. According to De Diego, he was requested by Barker to make this trip but he does not know the purpose of the trip and during his stay in Washington, D.C., the group appeared to be waiting to hear from some unidentified individual.

It is noted that on May 28, 1972, there was a reported break-in of the Democratic Party National Headquarters, Watergate Apartments, Washington, D.C.

In addition to the foregoing the Security Guard at the Watergate Apartments reported that sometime over the Memorial Day week end (he cannot pin this down any closer) papers were found stuffed in the doorway of the 6th floor stairwell in an apparent attempt to keep the door from working. Democratic Party National Headquarters is located on the 6th floor of the Watergate Apartments. *Tracing of Funds:* There follows a summary of investigation to trace funds that may have been used to finance the operation involving the burglary of the Democratic National Headquarters on June 17, 1972.

Bank Account of Bernard L. Barker: Barker as Barker Associates, a real estate firm, maintains an account at the Republic National Bank of Miami. A review of the records of this account shows that on April 21, 1972, Barker presented a cashier's check dated April 10, 1972, payable to Kenneth Dahlberg, drawn on the First Bank and Trust Company of Boca Raton, Florida, and endorsed by Dahlberg. Upon checking with the latter bank and determining that the cashier's check was "as good as gold" Barker was given \$25,000 in cash by the Republic National Bank.

Barker on April 21, 1972, also presented to the Republic National Bank four checks dated April 4, 1972, totaling \$89,000, drawn on the Banco Internacional, Mexico City, payable to Manuel Ogarrio and endorsed by Ogarrio. Since these checks were payable to a third party, Barker was told he would have to deposit these checks and wait for them to clear before he could receive any money for them. On May 8, 1972, Barker was given \$89,000 in cash by the Republic National Bank for the foregoing checks.

Bernard L. Barker at the time of his release on \$40,000 bond on July 14, 1972, said he received the four checks totaling \$89,000 from two men and turned the money over to them. He took the 5th Amendment when asked to identify these individuals.

Kenneth Dahlberg—\$25,000 Cashier's Check: Kenneth Dahlberg is a prominent industrialist and Regional Chairman of the Finance Committee to Reelect the President, who lives in Minneapolis and winters in Boca Raton, Florida. After several refusals to be interviewed, Dahlberg on July 6, 1972, consented to be interviewed regarding the foregoing \$25,000 cashier's check cashed by subject Barker. Dahlberg stated this check represented cash contributions he had obtained while in Boca Raton and he furnished this check to Maurice H. Stans, Chairman, Finance Committee to Reelect the President on April 11, 1972, in Washington, D.C. According to Dahlberg he has no knowledge of what happened to this check after he surrendered it to Stans. Dahlberg stated he was not acquainted with subject Barker or any of the other subjects involved in this matter. It is to be noted that during the period June 23, 1972, to June 26, 1972, when we were endeavoring to interview Dahlberg concerning this check, he made three telephone calls to Washington, D.C., to the Committee to Reelect the President.

\$89,000 Banco Internacional Checks: On July 10, 1972, Manuel Ogarrio, an attorney, Mexico City, advised that he purchased the four foregoing bank drafts totaling \$89,000, drawn on the Banco Internacional as a favor to an American client of twenty years standing whom he refused to identify other than as a reliable American company with operations in Mexico. According to Ogarrio his client gave him a check for \$100,000 which he negotiated into the foregoing four bank drafts and cash. He signed the checks making them negotiable and turned them and the remaining \$11,000 cash over to his client. He received no commission for doing this and has no knowledge as to how Barker came into possession of these checks. According to Ogarrio he believed the purpose of the transaction was to convey money to the Republican Party anonymously. On July 11, 1972, Ogarrio in a reinterview stated that he learned on July 10, 1972, that the foregoing endorsed bank drafts were forwarded to Maurice Stans of the Republican Party.

Bank Accounts of James Walter McCord: McCord maintains a personal checking account and a business account in the name of McCord Associates at the Maryland National Bank, College Park, Maryland. The records of these accounts show he made a \$10,000 cash deposit to his personal account on April 12, 1972; a \$10,000 cash deposit to his business account on May 31, 1972; and a \$10,000 cash deposit to his business account on June 12, 1972.

In addition, McCord on behalf of the Committee to Reelect the President on February 22, 1972, opened an account in the name of Dedicated Friends of a Better America, with McCord as Chairman, at the National Savings and Trust Company, Washington, D.C. This account was closed April 17, 1972, and during the period it was opened over \$90,000 passed through this account.

Interview with Maurice Stans: Maurice Stans, Chairman, Finance Committee to Reelect the President, was interviewed July 14, 1972, at which time he advised that a \$25,000 cashier's check was given to him by Kenneth Dahlberg in Washington, D.C., on April 11, 1972. Stans in turn gave this check to Hugh Walter Sloan, Jr., who at the time was responsible for the supervision of funds received by the Finance Committee. According to Stans, Sloan then gave this check to George Gordon Liddy who was acting as legal counsel to the Finance Committee for a determination as to how this check should be handled since it was dated April 10, 1972, but the funds which it represented had been contributed prior to April 7, 1972, the effective date of the new Federal Disclosure Act. Sloan subsequently advised Stans the money from the check had been received by the Committee. Stans could furnish no explanation as to how Barker came to be in possession of Dahlberg's \$25,000 cashier's check.

Stans advised that on April 6, 1972, he learned from Sloan that the Committee to Reelect the President had received \$100,000 in the form of bank drafts on Mexican banks. Stans, when informed the Mexican drafts totaled \$89,000 replied that Sloan had told him \$100,000 in Mexican bank drafts had been received and this is all he knew about the matter. Stans could offer no explanation as to how these bank drafts came into Barker's possession nor was he aware of the identity of the American firm which allegedly made this contribution.

When Stans was requested to make Sloan available for immediate interview, he advised that Sloan had resigned two weeks ago. Sloan was subsequently contacted on July 17, 1972, and he declined to be interviewed until he had a chance to discuss this matter with his attorney.

Interviews at the White House: Everette Howard Hunt and George Gordon Liddy were known to have been employed at the White House as consultants and White House telephone numbers used by these individuals were found in subjects' possession. Accordingly, various White House staff members acquainted with Hunt and Liddy during their White House assignment were interviewed.

At the request of Mr. John W. Dean, Legal Counsel to the President, he, Dean, sat in on all interviews conducted with White House personnel. Those interviewed included Charles W. Colson, David R. Young, Alfred Wong, Bruce Kehrl, Fred Fielding and Kathleen Chnow. All stated they were unable to furnish any information concerning Hunt's or Liddy's involvement in these matters involving the burglary of the Democratic National Committee Headquarters.

According to Mr. David R. Young, both Hunt and Liddy worked for him on a project to classify and declassify Government documents.

It was determined from Mr. John Dean that the personal effects of Everette Howard Hunt had been removed on June 20, 1972, from Hunt's office in the Executive Office Building and brought to his, Dean's, office. This material which was turned over to the FBI on June 27, 1972, included ancillary equipment for the transceivers and other equipment identical to items known to have been purchased by James Walter McCord, Jr. [The June 27 date was subsequently changed to June 26.]

Interviews at Committee to Reelect the President: Numerous interviews were conducted with personnel employed at the Committee to Reelect the President and in each interview at the Committee's insistence an attorney of the Committee was present. Several persons subsequent to interviews conducted at the Committee contacted the FBI Washington Field Office and requested to be further interviewed away from Committee headquarters and without the knowledge of Committee officials. These persons advised that the presence of the attorney during the interview prevented them from being completely candid. These sources further advised that all Committee people subpoenaed before the Federal Grand Jury were subsequently debriefed by Committee attorneys as to what occurred at the Federal Grand Jury hearing.

One of the foregoing persons confidentially advised that Hugh Walter Sloan, Jr., who supervises Committee finances reportedly maintains a brief case full of money in his office safe. During the period February—April, 1972, according to this source Sloan allegedly disbursed large sums to various Committee officials for unknown reasons such as \$50,000 to Jeb Magruder, \$100,000 to Herbert L. Porter and \$89,000 to George Gordon Liddy.

Another cooperative source at the Committee advised confidentially that Committee officials during interviews were sending FBI Agents on fishing expeditions to keep them from getting to the truth. This source advised that Mrs. McCord following her husband's arrest on June 17, 1972, told Committee official Robert Odle words to the effect "Well, it looks like your project failed." This source identified Odle as one of the individuals who was less than candid in his interview with FBI Agents.

Photographs of Democratic Party Correspondence: On June 22, 1972, Michael Richardson, Rich Photos, 1600 W. Flagler Street, Miami, Florida, advised that about noon, Saturday, June 10, 1972, one white male who he tentatively identified from a photograph as Bernard Barker, came to this store which is located in a heavily populated Cuban area. This individual presented two rolls of exposed Kodak tri-X black and white 35 millimeter film on which he said documents had been photographed. He requested immediate development and printing of 8 by 10 prints. Richardson did a rush job and determined there were four exposed document negatives on one roll and 34 document negatives on the other roll for a total of 38 exposed negatives. Richardson made one 7 by 10 print of each of the 38 negatives.

Richardson said most of the documents had an emblem and were headed "Chairman Democratic National Committee." The documents photographed appeared to have been on onion skin paper and most were typed. A few consisted of handwritten notes. On at least one of the documents, there was the signature "Dick." Several letters had the handwritten name of Lawrence O'Brien. One or more of the documents concerned a resume of an unrecalled woman who headed a local campaign for Senator Hubert Humphrey. Richardson said all documents were photographed with a shag carpet background and hands covered with clear-type gloves held down each corner of each document.

Richardson made no written record of the transactions and maintained no copy of the negatives or prints. Richardson tentatively identified one of the two men who accompanied Barker as being Fiorini, but was unable to identify the third man.

Investigation at the Howard Johnson Motel, 2601 Virginia Avenue, N.W., Washington, D.C., determined the carpet utilized by the motel is similar to that noticed in the photographs by Richardson.

Direction of Investigation: Investigation is being directed to developing evidence of an Interception of Communications violation against not only the subjects, but

all those who may have assisted them such as who recruited them, who financed the operation, who planned the operation, etc. Section 2511, Title 18, U.S. Code, makes it a violation for anyone to willfully intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept any wire or oral communication. It is also a violation of that Section for anyone to willfully use, endeavor to use or procure any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication. The possession of any electronic, mechanical or other device which is primarily useful for surreptitious interception of wire or oral communications is a violation of Section 2512, Title 18, U.S. Code, provided the device or any component thereof has been sent through the mail or transported in interstate or foreign commerce. Section 371, Title 18, U.S. Code, the general Conspiracy Statute, makes it an offense if two or more persons conspire to commit any offense against the United States.

Senator ERVIN. In other words, so far as you know that proposed letter never was sent?

Mr. GRAY. I know it was not sent.

Senator ERVIN. I have seen statements in the press to the effect that the Attorney General stated in substance that such investigation as was made in respect to the action of Mr. Segretti did not indicate the commission of a crime on his part and for that reason the investigation into his activities was not as complete as it was with respect to the other aspects of the Watergate.

Mr. GRAY. I wouldn't say that because the aspects of the investigation of Segretti with regard to any participation in a crime against the United States was as thorough and as complete as any other. But we were dealing with a crime and we were not dealing with political activity and we did not investigate into the political activity of Segretti, but we did investigate into his involvement with violations of law with regard to the intercepted communications statute.

Senator ERVIN. Thank you very much.

I want to say, Mr. Gray, you made a very moving and very eloquent statement.

Mr. GRAY. Senator Ervin, I appreciate your comment.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Thank you, Mr. Chairman.

Mr. Gray, I want to welcome you to the committee.

Mr. Chairman, this nominee is no stranger either to the committee or to any of its individual members. For a little over 2 years now we have had the benefit of his judgment and his counsel incident to the several high Government positions he has occupied.

Mr. Chairman, I believe that Pat Gray has the personal attributes and the experience that will, in my judgment, make him a very fine Director of the FBI. I say that not only on the basis of the personal and official association that we have maintained over the past 2 years but also upon the basis of an examination of the record which has been made available to us. This includes the portfolio of speeches, some 35 in number, which I have carefully read and his replies to the questionnaire submitted to him by the Department of Justice at an earlier time when he was being considered for nomination as a circuit judge.

With regard to the questionnaire, I want to say that I not only read it—I studied it. It is a very profound document in that it goes into considerable detail with respect to Mr. Gray's private legal experience as well as his experience with the Government. It details the litigation in which he was engaged—in most instances as sole counsel. It is an admirable record, accompanied by a superb personal statement.

It is on this basis of the record and our long association, that I have reached the conclusion that I will support the nomination of Mr. Gray for Director of the FBI.

He has been serving since May of 1972 as Acting Director of the Bureau. Since that time, he has been the object of some criticism and complaint. It is, of course, the committee's duty to consider these changes further during the course of these hearings.

However, it will take a clear preponderance of the evidence, to charge my present judgment on the nominee's qualifications.

Anyone appearing before this committee is entitled to a fair and forthright hearing, and I know, Mr. Chairman, that under your leadership, that is exactly the type of hearing we shall have here. Upon the basis of these hearings, of course, we will make our recommendation to the Senate.

Again I want to say I am gratified that you are here Mr. Gray and to indicate that I am very impressed with the summary of your activities since you undertook the acting directorship of the FBI.

Mr. GRAY. Thank you, Senator Hruska.

Senator HRUSKA. Thank you, Mr. Chairman.

The CHAIRMAN. We will recess now until 2:30.

(Whereupon, at 12:30 p.m., the committee was recessed until 2:30 p.m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator HART.

Senator HART. Mr. Chairman, thank you.

Mr. Gray, welcome. I was very late getting in this morning and I apologize. I was one of the few successful fellows in getting a doctor's appointment so I had to keep it.

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. You should today, Senator, they are precious commodities.

Senator HART. On Monday, you were gracious enough to stop at the office and I did indicate to you areas of concern, shared by others. I am sure, on the committee, that we would want to have developed for the record.

Inasmuch as I was not here this morning, either to hear your statement or the bulk of the questioning, I hope I am not repetitious. If I am, please tell me.

The Senate and the public would hope that these hearings would be helpful in providing information in two somewhat separate and distinct areas.

The first involves your performance in the admittedly brief tenure as Acting Director. Questions there have been raised about whether the Bureau is becoming more politically responsive to the White House, or at least more politicized. I am told that you made reference to that in your prepared statement and I am sure we would want to clarify that for the record.

The second area the committee and the public would want developed, if possible, involves really not you personally but certainly

your own views with respect to it are important, and this is the structure and policy of the Bureau, the organization and the policies and the practices of the Bureau. In this area, I am told, there has been precious little congressional oversight since the early 1920's. That is a long time and the agency has become immensely important, and, while recognizing the necessity for it, increasingly Americans sense its potential hurt in the kind of free society we seek to develop here. In the past few years there have been some suggestions made about improving some aspects of the Bureau's operations and I would like to discuss those with you, too.

However, it would seem to me, Mr. Chairman, that I should not get at this time into the broader structure and policy questions. The questions I heard of Senator Ervin's, and I am sure others, bear on the first; namely, the nominee's record as Acting Director. It might, for continuity and understandability, be better if we stayed on the period as Acting Director and the issues involved there, and defer the structural questions, if that is what we may call them, until later. I will proceed that way.

This morning, when I was here, you did discuss with Senator Ervin the newsstory that indicated that, at or about the time of the Republican Convention in Miami, a report, or several FBI reports, were shown to an individual who was a potential or did become a grand jury witness. This bears on the Watergate as it had developed up to that point.

You explained that, while you were not in position to say that this had or had not happened, you had asked John Dean in the White House whether the story was correct and that Mr. Dean said to you "I didn't show them to the subject and didn't have them with me." That is a fair summary?

Mr. GRAY. That is correct; that is correct, Senator.

Senator HART. Now, tell me again, help me to understand, why it would be possible that a Bureau file or files would be in the hands of somebody at the Republican Convention.

Mr. GRAY. I don't know that I can explain that a Bureau file or files were in the possession of somebody at the Republican Convention, but I can start from ground zero as I did this morning and explain exactly what I had explained to Senator Ervin, which is essentially this: That at the outset of this investigation I resolved that the investigation would be very closely held. There were those contacts between the case agents working the case and the assistant U.S. attorneys who were also working on the case here in the U.S. attorney's office. There were also those contacts in the Federal Bureau of Investigation in the General Investigative Division which had cognizance of this case, with the office of the Assistant Attorney General, Criminal Division, where the information was also closely held.

Then I went on to say that at the very outset, and in accordance with standard FBI operating procedures, there was a memorandum prepared setting forth facts and circumstances of the case as of that date, June 19, 1972, and accompanying that memorandum was a letterhead memorandum, which is a type of writing that we have in the Bureau, and a letter transmitting this memorandum of facts and circumstances, one to the Attorney General, and one to Mr. Haldeman, and I nixed that. I said, "No, we'll not do this."

Then I went on to say that over the ensuing days there were reports delivered to Mr. Petersen, interviews, you know, our FD-302's, our raw interview forms, and our teletypes, and I went on to say I would put a listing of these deliveries and the dates of delivery into the record as an exhibit.

Then I went on to say that on the 19th of July, it was requested by Mr. Dean, acting in his capacity as Counsel to the President of the United States, and in discharge of his responsibility, to inquire into the involvement of White House people on the staff of the President in this matter and make a recommendation to the President, and that he wanted a full report in writing.

I then asked for an opinion of our Office of Legal Counsel, and the opinion came back that at our own initiative we had no duty to furnish such a report, but that the request of the head of the executive branch of the Government was certainly an entirely different matter.

Then, on the following day I ordered that a letterhead memorandum summarizing the investigation to date be prepared, and be sent to the Attorney General. I have every reason to believe, and I must assume, that in the normal course of events, although I cannot testify under oath as a fact, that this letterhead memorandum was delivered to Mr. Dean. I believe it may have been but I cannot testify as to the fact under oath that it was, because I don't know.

Then, following that, Mr. Dean made a request to me that I provide him with copies of our FD-302's, our interview reports, our teletypes, and those documents that had been made available to me in order to assist him in the performance of his duties, and I did.

Then I said this morning in a response from Senator Ervin when he asked me is it possible to conclude that this could have occurred, this showing to Segretti, and I said, "Yes, Senator, it is possible that it could have occurred." But when I read the newsstory, I called John Dean and asked him if he did this, and he said, "No, I did not have any FBI reports with me at Miami."

And why did I call John Dean? Because he is the only person over there who had custody of these reports.

Senator HART. You were sufficiently—you thought the matter sufficiently serious, and certainly it was, that when you saw, or the newsstory was called to your attention, you did call Mr. Dean and inquired if, in fact, it had happened?

Mr. GRAY. Yes, I did, Senator, and as a matter of fact, to more fully inform you, every newsstory that has been written regarding this case we have checked very, very carefully just as an adjunct to our own investigative efforts which preceded some of these stories by as much as a month to 6 weeks in time.

Senator HART. When Mr. Dean said to you "No, I did not do it, I didn't have the FBI reports with me," did you ask him if he knew who might have had them with him?

Mr. GRAY. No; because the thought never entered—

Senator HART. Did you ask him whether anybody had done it?

Mr. GRAY. No, I didn't, because the thought never entered my mind. You know when you are working closely with the office of the Presidency the presumption is one of regularity in the conduct of the Nation's business, and I didn't even engage in the thought process that I would set up a presumption here of illegality and I didn't consider it.

Senator HART. There would have been illegality or irregularity if, in fact, that report had been shown to the man in Miami?

Mr. GRAY. Absolutely, I would classify it as a grievous and most serious breach of trust.

Senator HART. Except for asking Mr. Dean did he or not, you are just presuming regularity, there has been no investigation beyond the inquiry to Mr. Dean?

Mr. GRAY. No, I did not and I have got to engage in that presumption in the position I am in. This was the individual to whom I had given the reports. I gave them to him for a specific purpose and I am certainly not going to engage in a presumption he did something else with them and I did not check it.

Senator HART. Would it have been the same if you had given them to me and I had told you that I had not given them to anybody but you had read in the paper I had?

Mr. GRAY. If I were a member of the legislative branch and was in the position such as I found myself in relation to the President, it would have been the same, Senator.

Senator HART. Presidents have been known to have fallible servants and worse.

Mr. GRAY. This is true. This is true.

Senator HART. Then what agency, if not the Bureau, would we expect to pursue them?

Mr. GRAY. I saw no reason under the circumstances to pursue it. I asked the individual to whom I had given them. He could tell from the tone of my voice I was really ticked, and he gave me what I believe to be an honest answer. He said, "Absolutely not. Under no circumstances would I do such a thing."

Senator HART. If your investigation had shown that somebody in some fashion improperly obtained, from Mr. Dean's desk or file, that document, Mr. Dean also would have been ticked, I suppose?

Mr. GRAY. That is correct.

Senator HART. But he would have known whether impropriety had been involved?

Mr. GRAY. That is correct, Senator. But these are not, you know, just documents. These documents have been very, very, very carefully watched and accounted for, and inventoried all throughout the chain. This was not a course of action that I even considered at the time. And I don't consider it now—I really don't.

Senator HART. Well, the presumption runs in favor of Circuit Court of Appeals judges, too, and even there inquiry has developed improprieties on occasions.

Mr. GRAY. This is possible. The human fallibility is there.

Senator HART. That is right. Why wouldn't you think of that and attempt to determine whether, in fact, it did occur?

Mr. GRAY. Well, I didn't.

Senator HART. Why didn't you?

Mr. GRAY. Senator, because I reasoned that I asked the man a straight question with an awful lot of ire and irritation in my voice, and I feel I got a straight answer back.

Senator HART. Well, all that that investigation determined was that Mr. Dean didn't do it.

Mr. GRAY. That is correct, sir.

Senator HART. But——

Mr. GRAY. And I know——

Senator HART. There are other possibilities. The kind of FBI document that had been disclosed at Miami did reach, as you have already told us, the U.S. attorney's office; they had copies, the Justice Department itself had copies. You asked Mr. Dean if the disclosure had been as a result of his showing the documents, and he said no, but we still don't know whether somebody else did.

Mr. GRAY. No, but the situation was such that I made the decision on the scene, at the time, for considerations that I deemed to be proper, and it is a decision that I made. It is a decision that I am accountable for, and if the members of this committee judge it to be an error, so be it. I did not judge it to be an error.

Senator HART. Well, there is nothing easier than being a Monday morning quarterback, when the heat is off and excitement has passed. But if you had pursued the investigation, would you not feel more comfortable today?

Mr. GRAY. No, sir, because I think I would have gotten essentially the same answer from Mr. Dean. I would have gotten "No, I did not do it. Two, these were secure in my safe, and there was no way they could get out, and nobody had access to them but me."

Senator HART. What would you think if you had asked the U.S. attorney's office, "What happened to yours—did you or any of your people misplace them during the period they might have been shown to somebody in Miami?"

Mr. GRAY. No, I did not consider doing that.

Senator HART. As I say, wouldn't you be more comfortable now if you had asked the Attorney General?

Mr. GRAY. No, I would not be more comfortable because, to be more comfortable, I would have had to engage in a presumption these people were dishonest and performed an illegal act. Frankly, I didn't believe the allegation then, and don't believe it now.

Senator HART. They would have done nothing illegal if somebody had filched a file from them and showed it to somebody.

Mr. GRAY. I think it is a serious breach of trust, and I don't think it is conduct of the kind—

Senator HART. What about Segretti himself? Do you think that it would have been desirable to ask him who showed it to him?

Mr. GRAY. No, I didn't consider that, either. I don't think any of my investigators—

Senator HART. We never will know whether that happened?

Mr. GRAY. That is right. There may be an opportunity later on. I don't know what the investigation is going to show as it continues, you know. There are still some steps to be taken, as you know, Senator.

Senator HART. Well, after a brilliant 9 months as a U.S. attorney in Detroit. I am just going to say I think a U.S. attorney, dealing with an agent with a presentation like that, might have said "Why don't you ask those fellows?"

Mr. GRAY. Well, suffice it to say that no one sent any type of a recommendation to me that we do this sort of thing. I think if anybody in the Federal Bureau of Investigation, or in the Criminal Division, or in the U.S. attorney's office, had thought that we should pursue this, that suggestion would have been made to me. I made the decision as soon as I read the newspaper article—and I can remember reading it—to call Mr. Dean immediately. And I am satisfied—

Senator HART. That is why, on a Monday morning, it seems so strange. You recognized the newspaper was reporting an illegal action. It could have involved a number of people apparently. You called one, and he said "I didn't do it." But even now we don't know what these other fellows, who had the documents, did.

Mr. GRAY. Senator, who would have been the most obvious person to have done something like that if it was done? It wouldn't be in the U.S. attorney's office, it wouldn't be in the Criminal Division, it would have been somebody outside of that gamut, you know, unless it was somebody who, well, was a fellow really grabbing those papers. I say to you again that I considered all the factors, I made the decision, and I am accountable for the decision; I would likely make the same decision again.

Senator HART. But you are left, as you replied to Senator Ervin, in a position where you cannot either affirm or deny that the thing occurred.

Mr. GRAY. No, I cannot.

Senator HART. In the discussion with Senator Ervin involving Mr. Segretti—my notes seem to suggest here—you said you investigated him for possible criminal action but did not investigate alleged political activities. Now, as I get it, Segretti's name came up when leads involving Watergate figures were being followed, and at some point in that Watergate story there were suggestions that Segretti had sabotaged the presidential campaign, or had sought to engage people who were alleged to have left false messages and infiltrated, and so on. Is that what you meant by political activity of Segretti?

Mr. GRAY. Yes, that is what I meant, Senator. And actually, you know, we interviewed Segretti very early in the game, on the 26th of June, and when these newspaper accounts came out, this was new information to us because these were things that Mr. Segretti had not told us. What I did at that time was to ask once again my Office of Legal Counsel whether or not on the basis of the information made available to us, Segretti had committed any offenses within our jurisdiction. That opinion was, no. But I still said, "Check with the Department of Justice." That opinion came back, no, and we were not directed to do any further investigation over on this side of the fence with regard to whatever Segretti was doing in answering—in asking questions, setting up any kind of a network, or whatever it was, he didn't tell us about it. The only thing we had to go on was the newspaper accounts of what he was alleged to have been doing. But we made the checks in the Federal Bureau of Investigation, because I knew this question was going to come up, and I wanted to meet it head on, and we did.

Senator HART. So far as you know, did anybody investigate Segretti with respect to the so-called political activity including the infiltration and espionage and so on of a political campaign?

Mr. GRAY. Senator, however you want to characterize it, we did not interview Segretti or investigate into any of the political machinations in which he is alleged to have indulged.

We interviewed him on the basis that he participated in Watergate or he didn't. He fell within the IOC statute, intercepted communication statute, or he didn't.

Senator HART. What if some of those other activities involved the Corrupt Practices Act or Federal campaign laws, but did not involve Watergate?

Mr. GRAY. Certainly under those cases I would have assumed that the Department of Justice would have said yes.

First, I would have assumed that my own Office of Legal Counsel would have said, "Yes, there is sufficient information here to establish that he falls within the perimeter of the statute and we should investigate it."

Then I would assume that the Department would have given me such opinion. On the basis of the information I had, I don't think any opinion to investigate it would have been justified.

Senator HART. In an answer to Senator Ervin, and in your answer to my question raising the same fact, you said that, earlier in the investigation of Watergate, a letter, a summary of the case to date, something like that, had come up through regular channels to you, and one was addressed to the Attorney General and the other addressed to Mr. Haldeman.

Mr. GRAY. That is correct, sir, and I also said that it came up through the channels without any initiation or instigation on my part. It was part of standard operating procedure within the FBI.

Senator HART. Is it still standard?

Mr. GRAY. To do what?

Senator HART. To have a summary of progress in a criminal investigation?

Mr. GRAY. Yes, it would be, but in this case—

Senator HART. Reported to the White House?

Mr. GRAY. Yes, it would be. But in this particular investigation at this particular time, I wanted to hold every single thing as close as I could hold it, and during, as it turned out, during the first week there were two leaks—

Senator HART. I am not a good questioner, but I must be especially bad today. That answer would suggest to me that every FBI progress report finds a copy sent to the White House, and I know you don't mean that.

Mr. GRAY. No.

Senator HART. I am trying to find out why.

Mr. GRAY. I am talking about the major cases.

The CHAIRMAN. Let us have order.

Mr. GRAY. What we call major special cases. We don't send that information over all the time, but in a major special case the White House is kept informed of progress; or if the case happens to involve, let's say, the Department of Agriculture, the Department of HEW, the Secretary is kept informed. There are cases, however, Senator Hart, in which we make a decision not to keep people informed for reasons of our own choosing because we think that leaks might occur.

This very often happens in cases involving fraud against the Government, for example. This is a specific example. We protect what we call in the FBI the Bureau's investigative interests.

Senator HART. At some stage there was concern that the White House was concerned in this case.

Mr. GRAY. I think there was the possibility right on the first day, as I testified earlier this morning.

Senator HART. Why would it be normal——

The CHAIRMAN. Phil, let him answer.

Mr. GRAY. AS I testified earlier this morning, 3:45 p.m., Pacific daylight time, when we in the FBI learned that Mr. McCord was the security officer of the Committee To Re-Elect the President, that right away posed the possibility that we had a very touchy situation on our hands, no question about it; we were very well aware of it.

Senator HART. Aware that it might involve the White House?

Mr. GRAY. Yes.

Senator HART. Why would this flow of information go to the White House?

Mr. GRAY. Because investigators who start this process down at the bottom, not being, perhaps—and I am, you know, engaging in speculation now—not being, perhaps, as knowledgeable as the upper level, proceeded in the standard Bureau manner.

I have already offered, and the offer was accepted this morning, to introduce those documents into evidence, and they would be a part of the record. I stopped it. That is part of the thing, Senator Hart, that I think I am paid to do up there, to exercise some judgment, and I think I exercised that judgment in that particular instance.

Senator HART. Well, in order to stop the possibility of leaks, and you were concerned about the possibility, you felt that the letter ought not be sent to Mr. Haldeman?

Mr. GRAY. I didn't even think it ought to be sent to the Attorney General. I stopped both of them.

Senator HART. Why didn't you have the same unease with respect to the possibility of the leaks of the FBI reports that you asked Mr. Dean about?

Mr. GRAY. There were several reasons. One of them, of course, is the presumption of regularity that I spoke about earlier, plus the fact that some 30 or more days had transpired, and we hit with the investigative shock effect that we wanted to hit with, so there are two very good reasons, and no reason to assume that Mr. Dean was going to turn right around and do what he is alleged to have done or what is alleged to have been done in the Segretti case. There were——

Senator HART. I am not even suggesting that Dean did it. I am just suggesting there are others who, it might have occurred to me, it would have been wise to follow up.

Mr. GRAY. I told you, Senator Hart, we did begin to loosen up and we did begin to send investigators in and we did have contact with the Assistant U.S. Attorney, so information was flowing in the normal Bureau investigative process.

Mr. Petersen, who is the Assistant Attorney General in charge of the Criminal Division, tells me in the early days only he and his Special Assistant had access to the information that I was providing him.

Senator HART. In the course of the Watergate investigation, did you, from investigators under you in the Bureau, or through the U.S. Attorney's Office, have requests or recommendations that the Bureau interview particular people?

Mr. GRAY. Very few of them, very few of them, because I turned the Bureau loose, as I testified this morning. I pushed the button, I said, "No holds barred, give it the full court press," and they didn't have to come around every time they wanted to interview somebody and ask me and they didn't do it, Senator.

Senator HART. Except on a few occasions?

Mr. GRAY. That is right.

Senator HART. What were those?

Mr. GRAY. One of them, I think—the matter of whether or not to interview John Ehrlichman came up and, of course, you know this is getting pretty high, and they thought they had better get the boss' permission before they went that high, and I checked with Assistant Attorney General Petersen and I said, "Go."

Senator BYRD. You said what?

Mr. GRAY. I checked with Assistant Attorney General Petersen and said "Go."

Senator HART. Was there anyone not a Government official where they questioned you or said should they speak to that person?

Mr. GRAY. They recommended to me that they interview?

Senator HART. Or a person they asked to interview?

Mr. GRAY. None that I can think of. Maybe if you tell me the name of the person you have in mind I may be able to help you, Senator, because there were several things that came up where I momentarily said, "Stop until I check this out to see what kind of a trail we will cross," and it had nothing to do with politics. It had to do with national security. But I will tell you the names of those people. But if you tell me the name of the person you have in mind, I can maybe be more helpful.

Senator HART. No; it just occurred to me that, in as dramatic a case as this, there might have been highly sensitive although non-governmental individuals who some agent thought might be able to provide some information but because of the sensitivity of the person he would go to you.

Mr. GRAY. Well, some of those I initiated on my own, as I read certain reports, where I said to hold up until we check this out because of the fact there might have been some national security overtones involving another agency. Then when I got clarification and assurance that this did not exist, we went ahead.

Very simply, part of that was involved with the \$89,000. We ran that down, we ran it down early in the game.

The CHAIRMAN. You are speaking of the CIA now?

Mr. GRAY. Yes; I am, Mr. Chairman.

The CHAIRMAN. All right.

Senator HART. I take it your concern about a possible CIA lead would relate to national security? Do I so understand that?

Mr. GRAY. Yes, Senator; that is true.

Senator HART. But what I am attempting to get is the name of, the identification of, anyone in addition to Mr. Ehrlichman, whether in or out of Government, investigators of yours came to you and said, "I think we ought to see him or her," and did you condition approval or did you deny approval?

Mr. GRAY. No, I never denied any requests at all.

I placed no restriction or limitation other than these I have mentioned where I said, "Pause until we check and then we will crank up speed," but here is what I will do, Senator Hart. I will check the record again with our investigators to ascertain from them one more time if there is anybody they had in mind to interview that they either recommended to me or did not recommend to me.

I cannot think of one. I cannot think of one now. We will check the record and we will supply information in response.

Senator HART. Would you make the same check with respect to any proposed documentary investigations that might have been suggested to you, such as phone records and bank accounts?

Mr. GRAY. Phone records and bank accounts?

Senator HART. Phone records and bank accounts.

Mr. GRAY. Yes, I know there was a rumor running around, and I would like to address myself to this. It was that the first week Gray was going to collapse this investigation in 24 or 48 hours, and that Gray was not going to permit his agents to subpoena Colson's toll calls.

Senator HART. Colson's what?

Mr. GRAY. Colson's toll calls at the White House, and I called the Washington field agents into my office on Saturday, June 24, and I told them these leaks appeared in the paper and I called them in and said, "One, you know that both are false; two, you know that agents of the Federal Bureau of Investigation cannot suffer from flapjaw. We cannot talk and gossip about our cases," and I literally put my track shoes in their back, and then again I gave them a strong verbal direction that we were going to press this investigation to the hilt.

On the same morning I was apprised that rumors were running around town that Mr. Lawrence O'Brien was unhappy with the FBI, that we were dragging our feet. I picked up the telephone and called Mr. O'Brien and Mr. O'Brien told me he was not unhappy at all, that we were all over the place and he was very happy the way we were pursuing this.

So you may have had reference to the Colson toll call records. I don't know whether you did or not. I don't know whether you had reference to the 24- to 48-hour collapse, but, Senator, I am going to answer every question you want me to answer, and I am going to answer it for you straight.

Senator HART. Well, you promised to provide for the record—

Mr. GRAY. Yes, sir.

Senator HART (continuing). The names of individuals in and out of Government with whom an interview was suggested and you either said no, or attached a condition to it. And will you do the same with respect to documentary investigating materials?

Mr. GRAY. Yes, sir, I will be pleased to do that.

(Mr. Gray subsequently submitted the following document:)

Mr. GRAY. After researching the matter, Senator Hart, I find that the only restrictions which I placed upon any of the investigation, either interviews or relative to documentary materials, were on account of national security considerations. These considerations were resolved within a very short period of time and all interviews which were desired were conducted and all documentary material which we wanted to review was obtained.

Senator HART. Now, you talked to Mr. Dean in the White House about this case; you talked to the Assistant Attorney General in charge of the Criminal Division, I suppose?

Mr. GRAY. Yes, sir.

Senator HART. With the Attorney General at the time?

Mr. GRAY. With the Attorney General at the time?

Senator HART. In the course of the Watergate investigation, did you discuss the course of the investigation with the Attorney General or prospects as you saw them?

Mr. GRAY. I didn't discuss with him as to how I was to conduct this investigation other than the early days. The first day, as a matter of fact, June 17, when I gave the orders that it was to be aggressively pursued, this report was made to him by my No. 2, and he agreed with it, to pursue it aggressively. At no time did I receive any direction from him as to how to conduct the investigation; but, yes, I did make progress reports to him.

Senator HART. Did you discuss the course of the investigation or the prospects with the former Attorney General, Mr. Mitchell?

Mr. GRAY. I did not.

Senator HART. Did you discuss the course or prospects of the investigation with anyone not working either full-time for the White House or the Department of Justice?

Mr. GRAY. Gee, that is a pretty broad question.

I don't know to whom you would be referring.

Senator HART. Anybody outside of Government?

Mr. GRAY. I can think of newspaper men, I can think of visitors—and I would have to review that, but my natural inclination is to answer no, that I would have no reason to do this. In fact, in all the press availabilities and all the rest of it, I was first under the prohibition of the regulations of the Department and then under Judge Sirica's order so my natural inclination is no. But that is such a broad question I hesitate to answer it, but yet I will answer it, no.

Senator HART. I could narrow it, I suppose, by saying, excluding newspaper and media people?

Mr. GRAY. Because I did talk procedurally, you know, in my press availabilities. I would tell them how I was doing.

Senator HART. Yes, but I am now excluding the media.

Mr. GRAY. Yes.

Senator HART. But including, by way of suggestion, not to make it multicategory, persons who had an association neither with the White House nor the Department but with the Committee to Reelect the President?

Mr. GRAY. No, sir. No, sir.

Senator HART. Like Republican Party officials.

Mr. GRAY. No, indeed. No, indeed.

Senator HART. I have a note here on the Ehrlichman letter. Could you provide us with information regarding the request which the FBI relayed from the White House to the FBI field offices asking for information on local law and order issues relative to the campaign?

Let me enumerate the items and it may be that you will want to provide them for the record: The text of the request from Mr. Ehrlichman or his assistant, and I am told it was his assistant; any internal FBI memorandum or comment regarding whether or how the request would be implemented; the text of the message which went out to the field offices; and the text of the material furnished to the White House or Justice Department for transmittal to the White House.

Mr. GRAY. Yes, sir; I would be glad to do that, Senator. In fact, this morning I got Senator Ervin's permission to put that type of material in the record and I believe the only exception would be the response of the White House and we will provide that.

(Mr. Gray subsequently submitted the following documents:)

MEMORANDUM

SEPTEMBER 8, 1972.

To L. Patrick Gray, Director, FBI.

From Ralph E. Erickson, Deputy Attorney General.

Subject: Information for Campaign Trips: Events and Issues (Attached White House Memorandum).

Would you undertake to evaluate the questions asked of us by John Ehrlichman in the attached memorandum and give me the benefit of your response.

Although we are beyond the due date of this memorandum already, please make your response as quickly as possible.

THE WHITE HOUSE,
Washington, D.C., September 1, 1972.

Memorandum for the Deputy Attorney General.

Subject: Information for Campaign Trips: Events and Issues.

In order for John Ehrlichman to give the President maximum support during campaign trips over the next several weeks, the following information is required for each of the States listed at Tab A.

(1) Identification of the substantive issue problem areas in the criminal justice field for that particular state. Please limit yourself to problems of sufficient magnitude that the President or John Ehrlichman might be expected to be aware of them. Brevity is the key, and often all that is necessary is to flag a sensitive problem so it can be avoided or more extensive preparation can be undertaken should we choose to speak about it.

(2) A list of events relating to the criminal justice area that would be good for John Ehrlichman to consider doing. For each suggested event, the following items should be indicated:

(A) Purpose of the event.

(B) The nature of the group or institution involved.

(C) The content of the event.

(D) Names of specific people who can be contacted for the purpose of setting it up (together with titles, addresses, telephone numbers, etc.).

(E) All trade-off factors to be considered in scheduling the event.

I am receiving separate materials from both LEAA and DALE, so you should omit any consideration of problems in the area of Federal aid or drugs. I would expect your list of problems to be fairly brief, but there are certainly criminal justice problems (such as the Fort Worth Five) that we should flag for the President.

I know this is rushing you, but I need the information by close of business, Thursday, September 7, 1972.

Thanks, Ralph.

GEOFF SHEPARD.

California (San Francisco and Los Angeles)
Connecticut
Florida
Georgia (Atlanta)
Illinois (Chicago)
Massachusetts
Michigan
Missouri (Kansas City)

New Jersey
New York City
Ohio
Pennsylvania (Philadelphia and Pittsburgh)
South Dakota
Tennessee
Texas (San Antonio)

9/8/72

(Teletype) (Plaintext) (Immediate)

To SACS

San Francisco
Los Angeles
New Haven
Miami
Tampa
Jacksonville
Atlanta
Chicago
Boston
Detroit
San Antonio

Kansas City
Newark
New York City
Cleveland
Cincinnati
Philadelphia
Pittsburgh
Minneapolis
Knoxville
Memphis

From Acting Director, FBI
Inquiry From White House

Following memorandum received from White House:

"In order for John Ehrlichman to give President maximum support during campaign trips over the next several weeks, the following information is required for each of the states listed.

(1) Identification of the substantive issue problem areas in the criminal justice field for that particular state. Please limit yourself to problems of sufficient magnitude that the President or John Ehrlichman might be expected to be aware of them. Brevity is the key, and often all that is necessary is to flag a sensitive problem so it can be avoided or more extensive preparation can be undertaken should we choose to speak about it.

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(C) The content of the event.

(D) Names of specific people who can be contacted for the purpose of setting it up (together with titles, addresses, telephone numbers, etc.):

(E) All trade-off factors to be considered in scheduling the event.

"Receiving separate materials from both LEAA and DALE, so you should omit any consideration of problems in the area of federal aid or drugs. Would expect your list of problems to be fairly brief, but there are certainly criminal justice problems (such as the Fort Worth Five) that we should flag for the President."

In accordance with above, you should submit by immediate teletype to be received by the Bureau no later than eight A.M., Monday, September eleventh pertinent material which should include matters pertaining to gun control legislation, corruption in police departments, probation and parole, etc. Deadline must be met.

U.S. GOVERNMENT—MEMORANDUM

September 11, 1972.

To Mr. Bishop.

From M. A. Jones.

Subject: Events and issues (attached White House memorandum)

In accordance with the request contained in referenced memorandum, there is attached material from various field divisions and offices of this Bureau for consideration. This material has been broken down by state and locality to conform with the listing submitted by the White House.

RECOMMENDATIONS

(1) That the attached material be approved for transmittal to the White House through the Department.

(2) That after approval, this memorandum and attachments be returned to your (Mr. Bishop's) office for transmittal to the office of Ralph E. Erickson Deputy Attorney General.

Enclosures.

CALIFORNIA

A number of California Sheriffs are planning protests with U.S. Attorney General and possibly airing views to news media re fact Civil Rights Division, U.S. Department of Justice, instituted August 25, 1972, due process civil rights investigations of county jails in 12 major counties in California on allegation pretrial detainees' treatment in all California County Jails may constitute Federal violation. These investigations currently in progress.

Ray Davis, Chief of Police, Walnut Creek, California, and President California Chapter of the International Association Chiefs of Police, directed a letter to Attorney General Richard Kleindienst August 15, 1972, expressing concern over the remarks made by B. H. Holman, Director, Community Relations Service, U.S. Department of Justice, at the National Convention of Police and Community Relations (PCR) officers recently held in San Francisco. Holman urged PCR men to resist all efforts by heads of their respective agencies to "whitewash" PCR programs and turn the men into public relations officers to make their respective departments look good.

San Francisco Bay area police officers are resentful over actions of U.S. Government in indicting 12 Alameda County deputies, who took part in restoring order in 1969 Berkeley riots, for civil rights violations.

Sheriff Richard Hongisto, newly elected Sheriff in San Francisco County, is a controversial figure who has ideas on law enforcement and prison reform which do not agree with those of other law enforcement officials and/or Bay area judges. Hongisto was supported by and associated with the homosexual community during his recent election.

During the past several years California has experienced a large increase in pornographic trafficking. The production, distribution, and sale of pornographic film and literature have continued to increase. This increase is based on the "favorable climate" within California, i.e., the lax attitude of local, state and Federal judges as well as recent Supreme Court decision.

The California Chapter, FBI National Academy Associates, meets September 17-20, 1972, Palo Alto, California:

(A) To bring together FBI National Academy Associates throughout the State of California.

(B) Law enforcement officers who are graduates of the FBI National Academy.

(C) To discuss current law enforcement problems peculiar to the State of California.

(D) Chief John Fabri, First Vice President, Chief of Police, Fremont, California, telephone 796-3232. Estimated attendance 200.

National Conference of Metropolitan Courts, October 11-13, 1972, Mark Hopkins Hotel, San Francisco:

(A) National Convention of Judges from the Metropolitan Courts.

(B) Municipal Court judges meeting throughout the United States.

(C) To discuss problems Municipal Courts are confronted with.

(D) Judge Ray Arata, President, Superior Court, 165 City Hall, San Francisco, California. Estimated attendance 200.

CONNECTICUT

Connecticut is a state which houses the principal manufacturers of firearms in the country, and consequently the question of gun control legislation would be of keen interest to many of the residents of the state, many of whom are employed by aforementioned manufacturers.

FLORIDA

The State of Florida has convened a special House Committee on Capital Punishment in Tallahassee, Florida, to consider the legal aspects of restoring the death penalty in Florida. The Attorney General of Florida in a memorandum to Governor Reubin Askew dated July 7, 1972, made an analysis of the Supreme Court decision of June 29, 1972, in "Furman vs. Georgia, et al," abolishing capital punishment. The Attorney General recommended the creation of a special committee to consider all aspects of the death penalty in Florida and possible new legislation concerning this matter. Hearings were held at Raiford State Penitentiary during August, 1972, where six death row inmates related that as far as they were concerned capital punishment was not a deterrent and two of the six stated they would rather die than spend the rest of their lives behind bars with no hope of parole.

The special House Committee on Capital Punishment on August 31, 1972, by five to one vote, voted to look into legal means to reinstate the death penalty for certain crimes but rejected generally the suggestion that life sentences be given for certain crimes with no possibility of parole.

Additional hearings will be held throughout the State of Florida during September and October so that final recommendations for legislation might be prepared in time for a special one-day session called by Governor Askew on November 14, 1972, to consider legislation relating to the death penalty. Several prefiled bills have been introduced into the Florida Legislature, which provided prosecution for certain offenses originally punishable by death in Florida.

There is considerable interest in recent efforts to remove Sheriff Willis V. McCall of Lake County, Florida.

By way of background, Governor Askew ordered an investigation into the April 23, 1972, death of Tommy Vickers in the Lake County Jail. Vickers was a mentally retarded Negro who was in the Lake County Jail on a minor traffic violation and subsequently died of complications caused by a blow to the stomach. A grand jury in Orange County, Florida, returned an indictment against McCall on June 12, 1972, charging him with simple assault and second degree murder.

Governor Askew immediately ordered the suspension of McCall and trial was scheduled for August 15, 1972, after McCall pled not guilty to the indictment.

On August 19, 1972, McCall was found innocent by a six-member jury who deliberated only one hour and fifteen minutes. McCall remains under suspension, but is running for re-election November 7, 1972.

McCall has long been an extremely controversial figure and interest ran high in the charges and subsequent trial of McCall throughout Florida, but particularly in the area around Lake County. Because of the intense interest in McCall and the fact that he has been involved in numerous problems relating to law enforcement and his relationship with members of the minority race, it is felt that any discussion concerning the McCall case would not result in an objective analysis of the problem but would rather be based upon the strong personal feeling of the supporters of McCall in his long reign as Sheriff of Lake County. Believed any discussion of the McCall case should be avoided as it would not lend itself to an objective analysis.

One major case which is receiving a great amount of local and national publicity is the indictment of six Vietnam Veterans Against the War members on antiriot conspiracy charges. This case involves the indictment by a Federal grand jury on July 13, 1972 at Tallahassee, Florida, of Scott Camil, John W. Kniffin, William J. Patterson, Peter P. Mahoney, Alton C. Foss, and Donald P. Perdue on above charges in connection with plans for disruption and engaging in violent activities at the Republican National Convention. The group is now publicly known as the "Gainesville Six." The trial is set for October 10, 1972, at Gainesville, Florida. During the Federal grand jury session four Vietnam Veterans Against the War members including Robert Wayne Beverly, Jack Lee Jennings, John Victor Chambers, and William Bruce Horton were given immunity to testify but refused to do so and as a result were cited for contempt of court and incarcerated at Tallahassee, Florida. They are now referred to as the "Tallahassee Four" and were recently released on bond as a result of a bail hearing ordered by U.S. Supreme Court Justice William O. Douglas.

Believed since trial in above matter is pending and subjects are represented by battery of "movement" attorneys, any comments whatsoever would be considered prejudicial and immediately capitalized upon by the press.

GEORGIA (ATLANTA)

Stimulated by public and press interest, in May, 1972, Georgia Governor Jimmy Carter declared "war" on organized crime. A special Federal Grand Jury, as well as a special Fulton County, Georgia, Grand Jury, is presently probing "organized crime." Special intelligence squads supplemented financially by LEAA grants have been formed to combat this problem.

Atlanta has very high homicide rate attributable to easy availability of guns. Black Vice Mayor Jackson, Atlanta, has requested state legislation to control possession of firearms.

Federal Grand Jury now sitting at Atlanta to hear testimony concerning alleged inequities in decisions rendered by the Georgia Board of Pardons and Parole.

Busing of school children continues to be of concern. Atlanta city schools operate under majority to minority plan, approved by U. S. District Court, which allows children at school in which they are in majority to transfer to school at which they are a minority. Neighborhood schools appear to be preference of most parents.

Annual State Convention of the Peace Officers Association of Georgia, Jekyll Island, Georgia, September 10-12, 1972. Association is composed of all types and levels of peace officers in Georgia. Raymond Purvis, Deputy Sheriff, Bibb County (Macon), is current President.

ILLINOIS (CHICAGO)

Organized crime particularly in Chicago remains a problem in spite of 312 convictions of organized crime figures fiscal year 1969 through 1971 and 176 organized crime figures currently pending prosecution. Gangland slayings are topical in press particularly Southside Chicago.

Police corruption is extremely topical in press regarding Chicago Police Department. FBI using Hobbs Act has indicted 17 Chicago police officers, convicted six and investigation and grand jury resulted in 50 additional police officers suspended for use of Fifth Amendment.

Chicago Alderman Fred Hubbard, alleged to have embezzled \$100,000 of Federal funded program for better employment opportunities for minority groups in building trades, was recently arrested by FBI, Los Angeles, and returned to Chicago to await trial.

Racetrack scandal involving ex-Governor Otto Kerner, presently on leave of absence from position U. S. Judge, Appeals Court, Seventh Circuit, also allegedly involves additional prominent Chicago-area people. Scandal involves alleged preferential treatment for racing dates in return for racetrack stock at low price. Internal Revenue Service is prosecuting for Income Tax Evasion and Hobbs Act.

Vicious and violent crime is extremely topical in Chicago area press at this time due to two triple slayings in Chicago suburban areas recently and one vicious rape murder in downtown Lake Front Park area.

Gun control is extremely topical in press particularly in view of vicious crimes set forth above. State of Illinois has individual firearms owner identification registration which is extremely unpopular in Southern Illinois. Concealed weapons are illegal in Illinois. Individual firearms are registered in Chicago. Gun homicides in Chicago by youth under 20 are on increase, from 38 in 1965 to 271 in 1970, an increase of 613 percent. Of 216 gun law convictions, Cook County, Illinois, as of August, 1972, only 55 were given jail sentence and only 21 of those received 60 days or more. General opinion is that laws are adequate, but stricter enforcement by courts is essential.

MASSACHUSETTS

Massachusetts Correctional Institutions

There currently exists a controversy concerning the Massachusetts Correctional Institutions which hinges around the appointment of and the alleged liberal policies of the current Massachusetts Correctional Institutions Commissioner John Boone. During past several months there has been considerable unrest at several of the penal institutions within the state including the recent deaths of two prison employees, a convict and his wife who allegedly brought the convict a weapon and/or ammunition when she visited him. A suit has been filed in state court in an attempt to remove Boone alleging that he does not have the necessary qualifications required by state law to direct the system. In addition, several top career prison officials have been removed, replaced, or resigned.

Boston Police Department

Edmund L. McNamara, after two five-year terms was not reappointed as Commissioner of Police by Mayor Kevin White and position is still vacant. A recent state investigation allegedly indicates numerous Boston Police officers including high officials, were paid sums of money by gambling element. There has recently been a reassignment of key administrative personnel coincidental with the disclosure of the alleged "pay offs." Mayor White publicly denies any connection between above situations. This matter has and continues to receive publicity and speculation as Federal and state investigation continues.

MICHIGAN

Substantive problem areas which might become an issue in the criminal justice field are: (1) cross district busing; (2) HUD-housing frauds; (3) "stress" (stop robberies enjoy safe streets). This is a decoy procedure used by the Detroit, Michigan, Police Department in ghetto areas which has resulted in the killing of 14 subjects by police. The majority of those killed have been black and there have been law suits filed against the city in an effort to force a dis-continuance of this program; city officials and police have maintained this program has caused a significant decrease in crime; (4) attacks on police, there is a continued increase in the number of attacks on police, which is a big concern to city and state law enforcement officials; (5) racial problems in police department, young black police officers in the Detroit Police Department have formed a group called "Concerned Police Officers for Equal Justice." There is constant feuding between white and black officers in the Detroit Police Department, which has recently surfaced. An incident has occurred where black officers jumped white officers who had a black under arrest demanding their brother be released. Trial Board action is now being held by Detroit Police officials against both black and white officers because of internal dissension. The black officers group has made statement indicating they would support their own black people against the police department if another riot occurs.

Only event of any significance occurring in the immediate future in Michigan is the combined Michigan Bar Association and Judicial conference being held in Detroit on September 22, 1972.

MISSOURI (KANSAS CITY)

Controversy has arisen over possible placement of maximum security prison in Southeast Missouri as many authorities feel it should be located near urban areas, where the large percentage of inmates originate, so their families may visit them frequently.

NEW JERSEY

The most significant substantive issue in criminal justice field in New Jersey is corruption among police and civic officials. Approximately 150 elected or appointed officials in New Jersey have been charged with taking bribes or kickbacks. Conviction of Newark Mayor Hugh Addonizio for kickback scheme with major La Cosa Nostra figure and conviction of Jersey City officials on similar scheme have triggered allegations of score or more similar cases. Any of these could come to fruition at any time and produce major scandal-type case.

Typical is recent indictment of former New Jersey Secretary of State Paul Sherwin for requiring political contribution kickbacks from highway contractors. Current New Jersey Attorney General George Kugler is under fire for allegedly not taking action on learning of complaints against Sherwin.

Police protection of gambling operations widespread and appears to exist in most major population areas of the state. Business and political forces in Atlantic City are lobbying for legalized casino-type gambling and rely heavily on argument that illegal gambling fosters police corruption. Commissions probing New Jersey racial outbreaks have commented on "pervasive feeling of corruption" as being one of underlying causes of unrest.

Court backlog is also serious criminal justice problem in New Jersey. Newark FBI has approximately eight hundred defendants awaiting trial and substantial number of convicted defendants have not been sentenced due to workload in presentence reports by probation office.

One of the more pressing problems in metro area such as Newark is the abuse of the trucking industry. Hijacking runs rampant in these geographical locations. Although the offenders are repeaters in over fifty percent of the hijackings, and the loads stolen amount to hundreds of thousands of dollars, these men are released on bail after each offense. They are not promptly brought to trial and are free to hijack again and again, receiving minimal custody sentences or probation.

NEW YORK CITY

Problem areas in the criminal justice field, New York area, include corruption, which has been longstanding, within the New York City Police Department. Officers have been arrested, being charged with bribery, narcotics, etc., and in addition, State police and New York City police officers have been arrested by the Federal Bureau of Investigation in violation of the gambling laws and other offenses, such as bank robbery. Newburg, New York, Police Department is subject of corruption.

A Commission known as the Knapp Commission conducted an extensive study and held hearings which resulted in the arrest of numerous members of the New York City Police Department. One specific recommendation of the Knapp Commission was the appointment of a special district attorney to look into and handle corruption, which received the approval of Commissioner Murphy. However, this recommendation has not been entirely resolved to date.

At the present time there are a total of eight vacancies on the Federal Bench in the eastern and southern districts of New York, which without question creates a problem in the backlog of prosecutive action.

OHIO

The only substantive issue apparent in criminal justice field in Northern Ohio is Kent State University incident which occurred May 4, 1970. Although the Justice Department has decided to convene no Federal grand jury in this matter, the Kent State University affair is potentially a problem area and administration officials appearing in this area could conceivably be questioned concerning this matter.

The Ohio Association of Chiefs of Police will hold their annual conference September 13 through 15, 1972, at the Sheraton-Dayton Hotel, Dayton, Ohio, with approximately 275 people estimated to attend. Annual meeting includes installing new president, review of policies, and solving problems. Person to be contacted concerning participation is Chief Robert Woods, Moraine, Ohio, Police Department, first vice president to be installed as president, telephone number 513-298-7424.

PENNSYLVANIA

Pennsylvania policy for releasing criminals under a "furlough" plan has upset certain courts and the public. Plan was approved by Governor Milton Shapp.

Yablonski murder trials of Albert Pass and William Prater to begin late October, 1972. Pennsylvania State Supreme Court hearing arguments on pre-trial motions beginning September 25, 1972. Yablonski murder and resulting investigation highlighted corruption in United Mine Workers.

FBI investigating FIA and real estate industry in Philadelphia. Several persons have been indicted, including former director of FIA, for false statements and payoffs.

Fraud Against the Government cases are under investigation in flood areas of Wilkes-Barre, Pennsylvania. Cases involve alleged false statement to HUD and alleged payoffs.

A special Grand Jury is investigating alleged police corruption in Philadelphia at present time. Pennsylvania Crime Commission also having hearings re police corruption.

SOUTH DAKOTA

Militant Indian groups on Pine Ridge and Rosebud reservations contend favoritism shown the non-Indian in criminal matters from the standpoint of investigation and prosecution. They also contend politics controls law enforcement within the Bureau of Indian Affairs (BIA).

TENNESSEE

In recent months there has been unfavorable publicity involving alleged irregularities and misconduct on part of officers of Memphis Police Department. A number of different proposals have been made as to which branch of local government should conduct investigation of police department. The latest development is announcement by city council that a broad council-supervised investigation will be conducted concerning Memphis Police Department. In addition, West Tennessee Chapter of American Civil Liberties Union has also announced it will conduct its own investigation of Memphis Police Department.

Of possible interest in criminal justice field is current controversy regarding vacancy on Tennessee Supreme Court. Following death on June 19, 1972, of one of State Supreme Court Justices, Governor Winfield Dunn of Tennessee announced intention to appoint Thomas F. Turley, Jr., United States Attorney for the Western District of Tennessee, to fill vacancy on State Supreme Court.

Robert L. Taylor, Jr., a Memphis attorney and former Appeals Court Judge, taking position that Tennessee constitution requires that this vacancy be filled by voters, conducted a write-in campaign, receiving 3,301 votes to 555 received by Turley, who declined to sponsor a write-in campaign. Following election, Taylor announced intention to take seat on Supreme Court and a Chancellor at Athens, Tennessee, administered the oath of office to him. Latest development is decision by State Supreme Court restraining either Turley or Taylor from filling this vacancy until matter settled by lower courts. Supreme Court suggested that Governor in meantime appoint a temporary justice other than Taylor or Turley. Governor Dunn has indicated he will make a temporary appointment.

On July 22, 1972, Brushy Mountain State Prison at Petros, Tennessee, was ordered closed by Governor Winfield Dunn because of a wildcat strike by prison guards. At the time, this was Tennessee's maximum security prison. All prisoners were bused to the main prison at Nashville utilizing highway patrolmen as guards.

This action dealt a major economic blow to the town of Petros, and former guards picketed the State Capitol for several days while the matter received state-wide publicity. Subsequently, Governor Dunn has made statements that in time Brushy Mountain Prison may be reopened in some capacity.

There are no problems of sufficient magnitude to be brought to the President's or John Ehrlichman's attention in the criminal justice field. Of political significance, however, there is some concern among some persons in the Chicano community whether or not the La Raza Unida Party should be formed. One side feels that Chicanos should work within the present two-party system and not for a third party.

Senator HART. Now, I am told that explanation has been made that you, yourself, were not in Washington when this request came in, or was made of the Bureau?

Mr. GRAY. That is correct, Senator.

Senator HART. But it was handled by an aide, Mr. Kinley?

Mr. GRAY. Yes; Mr. Kinley is sitting to my left. All he did was route it over to the assistant director of the Crime Research Division.

Senator HART. Who decided to send the request out?

Mr. GRAY. The assistant director of the Crime Research Division in conjunction with his people. They told me, they reported to me later on, you know—when I came back and found out about this and things began to get a little hot around there because of my unhappiness with this—that they thought nothing of it at all.

It was a request that came from the White House. It came to the Deputy Attorney General, it came to us, and they handled it in the regular manner.

Senator HART. Until you returned and expressed your disapproval, do I understand that no questions were raised by any of the officials at the FBI about the Bureau being involved in this type of activity?

Mr. GRAY. That is correct, Senator.

Senator, let me make one thing clear, if I may. I am giving you an explanation of how this happened but I am not ducking the responsibility for what happened. I accept it. I am Acting Director of the FBI and it is my responsibility. Those errors are chargeable to me and I am merely explaining in response to your question. I am not ducking the responsibility.

Senator HART. That reflects credit on the Naval Academy.

Mr. GRAY. No, I just think—

Senator HART. A good captain's answer.

Mr. GRAY. No; I am just thinking it reflects credit on America, sir.

Senator HART. When did you find out about that?

Mr. GRAY. It was a staff meeting on Tuesday, September 12; 5 p.m. on that afternoon. Mr. Kinley and my other young staffers came in and one of the things they had to brief me on was this, and I hit the overhead. That is when it all began to come unglued there as far as—

Senator HART. And at that time no one indicated to you that there had been questions raised initially as to the propriety?

Mr. GRAY. No, not at that time and not in the subsequent investigation that I instituted, and in the memorandums that were submitted to me, and the questions that I personally asked.

Senator HART. All right. Now what, in fact, was involved in the corrective action? As I understand it, the press did not report that incident for several weeks after the correction had been made; am I correct on that?

Mr. GRAY. They didn't—my recollection is that a report did not come out about this for quite a few weeks thereafter because, you

know, we didn't go around publicizing that I was steaming around there raising a lot of Cain and doing some things to make sure that this kind of nonsense did not occur again.

Senator HART. What did you do to make sure that that kind of nonsense did not happen?

Mr. GRAY. Well, one of the things I did—as a direct result of this, and as a part of an overall management survey that I am continually conducting, one of the surveys I mentioned earlier this morning in my testimony—was that I wiped out the Crime Research Division, and I transferred to myself, to my office, my immediate office, Press Relations and Congressional Relations.

Senator HART. Did you discuss this incident at the time you first learned of it, or subsequently, with anyone at the White House?

Mr. GRAY. I did not.

Senator HART. But you do feel that it is not an appropriate FBI field of activity—

Mr. GRAY. It is improper. It should have gone to the U.S. attorney. It had no business being sent to where it was sent: to the LEAA, or Assistant Attorney General in charge of Criminal Division, or to the FBI. It is one of those things that happen when papers are stacked up in a basket and a guy wants to route them out in a hurry, and boom. This one sat around for 7 days, sat around until almost the deadline date for the report.

Senator HART. My last topic bears on these dossiers. I believe that, if not in your prepared testimony, at least in an exchange with Senator Ervin, much of that ground has been covered. One thing, and I think I indicated this to you when we were listing them before the hearing—

Mr. GRAY. Yes, sir; I remember.

Senator HART. I would like to know—we are in agreement that the maintenance of files, such as you discovered had been established and were, in fact, in the Bureau without your knowledge for some time—that the maintenance of that type of file is wrong?

Mr. GRAY. Yes, sir; but that type of file only consisted of that summary memorandum, and we are talking about just one document—that is all. I just want to make that real clear because it was only one document derived from public source information, and from information in the FBI files at the field division level and at the FBI headquarters level, so we are only talking about one document—just one document, not a file. Every time a Senator or Congressman writes to us about something—it may be legislation, it may be a constituent problem, or it may be giving me the devil for something—that goes in our files, you know, and we are not talking about that. I am just talking about the summary memorandum that derived from public source material and FBI files, Division files, and FBI Headquarters files.

Senator HART. You no longer maintain that file, that type file?

Mr. GRAY. We do not develop any more of them, but we still have those summary memorandums.

Senator HART. That is my question. What do we do about those?

Mr. GRAY. We still have the summary memorandums, and you know, Senator, my first reaction was to burn every one of them, and then I said to myself as we argued this, nobody will believe that I burned them, or they will all want to stand there and read each one as I burn them. Then I decided I could not do that anyhow because

that is contrary to the law. I have got to get permission from the Archivist of the United States to destroy files. You have to go to the Archives; and if you have a problem there, you have to go to GSA, and it would be forever before I got these summary memorandums destroyed. But if there were an easy way to destroy these summary memorandums, I would do it because there is no need for them.

Senator HART. They could be hurtful to a citizen?

Mr. GRAY. They could if they got out in certain cases.

Senator HART. Well, wouldn't the redtape and the difficulty be warranted as a means of insuring against that kind of hurt?

Mr. GRAY. Well, the Archivist is required to review material to be destroyed, and I do not want people to read some of this rot that is in those files, that is where the hurt comes in, and I am not going to, as long as I am the guardian of those files, I am going to break my back to protect those files because it is wrong to let some of that stuff out. Somebody has got to read them. And once again, you get the question of who is going to do it. A lot of those——

Senator HART. How many such documents are we talking about?

Mr. GRAY. I do not really know.

Senator HART. We would have to know that before we made a judgment about how difficult the destruction is going to be?

Mr. GRAY. That is right. I do not really know, but we gave this a lot of thought.

Senator HART. Do I assume it would be too complicated?

Mr. GRAY. Because we looked into what we would have to do going through the chain, the writing of the letters, the justification, the examination of the documents, you know. I don't want anybody examining those documents.

Senator HART. We are all in agreement with that. We are trying to get rid of them.

Mr. GRAY. That is right. That is right. If the United States——

Senator HART. You are the fellow who has them.

Mr. GRAY (continuing). If the Congress of the United States would quickly enact a piece of legislation and say that the Acting Director of the Federal Bureau of Investigation is authorized to destroy these summary memorandums, I would do it, and I will give you my word I would do it.

Senator HART. Mr. Chairman, do you want to draft such a bill?

The CHAIRMAN. That is your job. [Laughter.] You are conducting the investigation.

The Chair is going to be gone for about 10 minutes. When you finish, Senator Hart, we will hear from Senator Gurney and then from Senator Kennedy.

Senator HART (presiding). I will recognize Senator Gurney, but before I do, since Mr. Kinley is here, is there any detail that you would be in position to add, either with respect to the complication in destroying the files or the decisions that were taken and discussions that occurred in connection with the request for law and order speech material?

Mr. GRAY. Mr. Kinley reminds me that he has not been sworn, Senator.

Senator HART. I will make a bargain, if he will give us an answer we won't swear him. [Laughter.]

Mr. GRAY. David D. Kinley.

David Kinley is my executive assistant. I neglected this morning to introduce him.

**TESTIMONY OF DAVID D. KINLEY, EXECUTIVE ASSISTANT TO THE
ACTING DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION**

Mr. KINLEY. I have nothing to add to what Mr. Gray has stated about the summary memorandums. I could only add a few brief details about the episode surrounding the request for the criminal justice information.

Senator HART. Fine.

Mr. KINLEY. The request, as we have since been able to reconstruct it, came from the White House and was sent to the Office of the Deputy Attorney General, dated September 1. It had a deadline of September 7 for return of the information. As you will see from the copy of the memorandum which was made available subsequently by Mr. Ehrlichman, about the end of October, to the press, the memorandum asked for criminal justice, or information on criminal justice issues in about 14 States. The memorandum was forwarded with a cover memorandum from the Office of the Deputy Attorney General, requesting that the information be forwarded back to his office as soon as possible because they were beyond the deadline.

That memorandum reached my office on Friday, September 8, late in the afternoon, and I immediately routed it to the Office of the Assistant Director in Charge of the then Crime Research Division.

On the afternoon of Monday, September 11, at 4:55 p.m., the report came back, which we will also make available to the committee, of certain criminal justice issues in the 14 States that were of interest to local law enforcement, and I approved that report and forwarded it immediately to the Office of the Deputy Attorney General.

The next day, or late that—I believe it was late the next day, Tuesday, the 12th, another member of the staff brought to me a copy of a teletype that had been sent to 21 field offices that quoted verbatim the request from Mr. Ehrlichman's office and, at that point, Mr. Gray had returned to the office, and that is when we went to the 5 o'clock staff meeting on Tuesday the 12th to report, to brief him on the entire episode.

Senator HART. I thank you for the information.

The Senator from Florida.

Senator GURNEY. Thank you, Mr. Chairman.

On that same point, had the White House inquired before, on previous occasions, for information about what is going on in the field in the area of criminal activity?

Mr. GRAY. Yes, sir; I believe they had because when I got into this and began investigating it and really literally cross-examining some of the people involved, each of them told me that they saw nothing unusual with this request, and they proceeded in the normal manner, and they said to me the only thing they would have done differently would have been to rephrase the language, instead of setting out the White House memorandum verbatim in the FBI teletype.

Senator GURNEY. In other words, except for the particular time of year, political activity was going on at that time, this would have been a usual request of the FBI, and they would have answered in a usual fashion as they did. Is that correct?

Mr. GRAY. As far as the criminal justice items were concerned that affected us in a given area, it would have been. The thing I took umbrage at was really the full political context in which it was placed by sending that teletype out with the White House memorandum in there verbatim. If we had information in our field divisions regarding criminal justice issues, which in fact we did, we merely had to ask for it, you know. This is a service that has been provided.

Senator GURNEY. Your anger was because you did not want any reflection on the FBI for participation in any political activity?

Mr. GRAY. That is correct, sir.

Senator GURNEY. A couple of items on this Segretti exchange of information you discussed with Senator Hart. As I understand it, you asked Mr. Dean, after the news articles appeared, if he had showed any FBI memorandums to Mr. Segretti, and his answer was "No." Then there were other questions about why you had not asked something else.

My understanding of your answer is that you posed the question so, and the exchange between you and Mr. Dean was such, that had there been any other facts and circumstances that Dean was aware of regarding how the memorandum might have gotten into the lap of Mr. Segretti, if in fact it had been shown to him, Dean would have disclosed them. Is that right?

Mr. GRAY. Certainly the facts and circumstances were such, because I was plenty irate over that telephone, Senator.

Senator GURNEY. One other question on the Segretti business, with regard to the investigation by the FBI of any criminal activities of Mr. Segretti, as opposed to his political activities. It is my understanding that the FBI only directed their investigation into any possible criminal involvement in this Watergate business. As a matter of fact, wouldn't it have been highly improper if the FBI had looked into any so-called political activities? This is not within your orbit.

Mr. GRAY. That is correct.

We would have been charged with doing something that was certainly not within our jurisdiction to do, and this was one of the reasons that after, even after I got the opinion from my own legal counsel, I wanted to make sure I had another legal opinion that we were right. I was always carrying in the back of my mind from day 1 that this eventually had to become a celebrated case and the credibility of the FBI as an institution was at stake, and this had to be as perfect an investigation as we could make it. I did not want it tripped up on any kind of technicalities.

Senator GURNEY. One general question on the Watergate investigation as such: Could you tell us how extensive it was, how many agents were involved in this investigation and how long it took?

Mr. GRAY. Yes, sir.

Senator GURNEY. And, incidentally, I presume that the indictments of the people who were indicted and tried were the result of evidence uncovered by the FBI investigation. Is that true, at least partially?

Mr. GRAY. Yes, sir. It was our information that was being used by the Assistant U.S. Attorneys conducting the grand jury which began on the 23d of June 1972, 6 days after the offenses, alleged offenses at the time were committed, and that was the date of the first witness before the grand jury. But that was only a single witness, and then on the 27th of June began the parade of witnesses as they marched by with our evidence.

As far as the statistics are concerned, for the period June 17 to December 31, 1972, field offices involved were 56, the legal attachés involved were four, the leads covered were 2,670, the interviews conducted were 2,321, the man-hours expended by agents were 21,658, by clerical personnel, 5,263, and this was performed by 343 agents.

Now we had an additional period of time involved in assisting the U.S. attorneys, the assistant U.S. attorneys in trial preparation. This is standard in our investigative work in order to fill in any holes or to assist him as he goes along in his trial, in his preparation for trial and in the trial, and the complete total as of January 31, 1973: 56 field offices were involved, four legal attachés' offices were involved, 2,698 leads were covered, 2,347 interviews were conducted, 22,403 agent man-hours were expended, 5,492 clerical hours expended.

Senator GURNEY. Is it fair to say that this was what would be called a massive investigation? Would that be a fair way to put it?

Mr. GRAY. Every experienced investigator in the Federal Bureau of Investigation has told me, and I think that each of them would testify under oath, that this investigation was conducted with the full court press, it was a major special, it was conducted in accordance with the standard operating procedure of the Federal Bureau of Investigation, and that the Acting Director put no limitations or restrictions upon these agents.

Senator GURNEY. I do want to commend you on your initial opening statement as well as your answers. I think they have been as full, frank and candid as any witness before this committee since I have been on it.

One other thing is a matter of local importance because it involved severe criticism of the FBI at the time. You may recall the incident of the Southern Airways airplane that cavorted around the United States and Cuba, and even Canada, before its final stop landed in Orlando, Fla., my hometown. There some of the plane's tires were either shot or attempted to be shot, and it had to come to a belly landing in Havana when it finally came down. The FBI was criticized for this, and I do not really think the true story has ever come out. Would you mind spending a few minutes describing that incident?

Mr. GRAY. Senator Gurney, I would be happy to.

I was in Connecticut at my home Friday evening late when I received the first telephone call of the hijacking from my command center headquarters in Washington. I received several more telephone calls throughout that evening. Those were all informative calls in nature, requiring no decision on my part at that time.

Then, in the early morning hours, telephone calls picked up again and through the day I stayed in contact going right on down into the evening. In the evening the reports began to come in to the effect that our personnel were in touch, as we are on this circuit, with the airways officials, Southern Airways officials. We always are in touch

with the airline company, with the Federal Aviation Administration, with our own command post, we are all linked there together and also with the White House Situation Room.

But the information began to come in toward the end of the afternoon that this thing was reaching a very severe stress situation, not only from the standpoint of equipment, but from personnel fatigue, and further that the oil condition in the engines was becoming rather severe, and, in fact, the pilot himself, in landing at Key West, stated over the circuit that he would have to have oil or the engines could not continue to function.

Just shortly before 8 p.m., Southern Airways, with whom we were in constant contact, stated that it was their recommendation that that flight not be permitted to leave Orlando, that it would seriously jeopardize the lives of all on board because of the conditions I have previously enumerated.

I can recall after getting that call having about 20 minutes. I sat down and wrote out the pros and cons. I knew what the risks were. I knew that our people had earlier in the day at Knoxville practiced an assault on a similar type aircraft on the ground because I knew that if we disabled that aircraft we had to be prepared immediately to go in and get the people.

We also knew, another factor, that these men who had hijacked the aircraft wanted to go either to Africa or to Switzerland and were asking for charts, and we knew that the aircraft could not go there.

So I made the decision at 8 o'clock, and I called my command center and I told them to mark the time, it was 8 o'clock. "I am ordering that the tires be shot out of this aircraft." This was the recommended—a recommended—procedure, one that had been checked into with the FAA, checked with airlines, and all said, "Shoot the tires out, and you disable the aircraft." There are other ways, we could have sprayed CO₂ into the engines, but these particular hijackers were awfully jumpy and would make that pilot take off even if they saw people out on the ends of the runways there, anywhere near it; they were very jumpy and would let no one approach that plane.

The pilot was not a free agent. There was no way in the world of getting to him. When my special agent in charge, leading the special agents, got under the aircraft while it was immobile and stationary at Orlando, went to the fuel truck that was over there, parked some 50 feet away from the aircraft, in fact, aft of the starboard beam of the aircraft, to see if there were any headphones he could plug in to tell the pilot, there were no headphones, and he came back and began to shoot out the tires. They did shoot them out.

The aircraft, as they were starting to put their fingers on the button to open the doors to assault the aircraft, that plane took off at full throttle and went down the runway. Now no one thought that plane would ever get off the ground. Apparently, in hindsight, it was loaded lightly enough so that it generated its own air cushion and was able to get off the ground.

Since then—well, during the immediate period following that, when I took the full responsibility which, of course, is mine—I had a call from a United Airlines pilot who said to me, "You are taking a lot of heat, but if I am ever in the same situation, come and get me."

I got a letter from a passenger on the plane who related that, prior to the shooting out of the tires, the attitude of the hijackers had been dictatorial, domineering, arrogant. After the shooting out of the tires, all they wanted to do was land the airplane and get back to Cuba where they previously had been and had decided Cuba was not for them, and yet they knew they had to get on the ground and their attitude changed completely, this passenger said.

I just rode up yesterday—on Monday—came back from Florida with a National Airlines captain who, when we ended the flight, came back to talk to me, to say, "I know you have gotten a lot of heat on the Southern Airways situation but if I am in that situation, come and get me. You have my confidence."

This is a rough sequence of the events, Senator Gurney. These were the reasons why we did what we did. We were trained to do it. We had taken every possible step to ready ourselves to do this. In fact, our training program with the airlines companies has been extensive. We have worked very, very closely with aircraft crews and we have helped to train them as to how to react to this type of situation.

Senator GURNEY. I appreciate that. I asked the question because I think a lot of people got the idea the tires were shot out after the plane was in the air and airborne.

Mr. GRAY. No, sir, it was stationary—not mobile at all.

Senator GURNEY. I do not have any other questions, Mr. Chairman.

Senator HART. Senator Kennedy.

Senator KENNEDY. Mr. Gray, I apologize for not being here earlier this morning. I was necessarily absent. I missed your opening statement and some of the questions.

Of the questions I have, some have been covered. I would like to yield, Mr. Chairman, and reserve my right to come back either this afternoon, or the first thing in the morning.

I want to welcome you here and congratulate you.

Mr. GRAY. Thank you, Senator.

Senator HART. Senator Thurmond.

Senator THURMOND. Thank you very much.

Mr. Gray, I wish to congratulate you upon having been nominated as Director of the FBI. I have been looking into your record in the various points that have been alleged against you, and it gives me pleasure to say I intend wholeheartedly to support you. I have been impressed not only with your education, a graduate of the U.S. Naval Academy—one of the finest educational institutions in the country—graduate of law with honors at George Washington University, but I also have been impressed with your administrative experience. I believe you served as military assistant to the Chairman of Joint Chiefs of Staff, did you not?

Mr. GRAY. Yes, sir.

Senator THURMOND. I believe you served as special assistant to the Secretary of Defense?

Mr. GRAY. Yes, sir; I did.

Senator THURMOND. I believe after that you practiced law for 8 years in Connecticut?

Mr. GRAY. Yes, sir; I practiced from January—

Senator THURMOND. And you served as executive assistant to the Secretary of HEW?

Mr. GRAY. Yes, sir.

Senator THURMOND. Special consultant to the President's Cabinet Committee on Education?

Mr. GRAY. Yes, sir.

Senator THURMOND. And Assistant Attorney General.

I have made inquiry about your reputation and your record and I have received only good reports.

I think throughout that period of time if there would have been anything against you it would have come forward. You served in so many capacities here with the Government, somebody would have come forward with something against your character or reputation if you were not above reproach, which I think, of course, you should be. Public office is a public trust and you have only the people to serve, that is your duty.

I might say that I was impressed with the interview you had in Nation's Business when the question was asked what you would do if politicians reached for the reins of power with the FBI. I believe you made this statement and I want to ask you if that is correct.

"I would resist them with every bit of ability I have. I may have to sit down face to face for a full discussion with any politicians who may seek to run the FBI."

Did you make that statement?

Mr. GRAY. I did, sir.

Senator THURMOND. Have you stood by that statement?

Mr. GRAY. Yes, sir.

Senator THURMOND. Do you intend to stand by it in the future?

Mr. GRAY. I do.

Senator THURMOND. Have you allowed any politics to enter into the FBI?

Mr. GRAY. No, sir.

Senator THURMOND. Do you intend to keep politics out of the FBI?

Mr. GRAY. I do, Senator.

Senator THURMOND. Do you intend to perform your duties in a nonpartisan manner without regard to party so far as investigative powers of the FBI go and the other performance of your duties while Director?

Mr. GRAY. Yes, sir. As I said this morning in my opening statement, if I find I cannot do that I will resign and go back to my beloved law firm in southeastern Connecticut.

Senator THURMOND. I was impressed with another statement that you made, and I want to ask you if you made this statement in the words that I have it quoted here:

"The liberties the founders of this country fought so hard to attain are too precious to allow them to be lost in this time of turmoil. The challenge will be met. I know that the people of our Nation have the courage and dedication to face this challenge and resolve to continue to develop and enhance the greatest form of government ever devised by the mind of men."

Are those your words?

Mr. GRAY. They sound like mine from one of my speeches. I can't really remember it, Senator, but they sound like my words.

Senator THURMOND. I believe they appeared in the Congressional Record.

Mr. GRAY. From my speech?

Senator THURMOND. A staff member excerpted it from the Congressional Record.

Mr. GRAY. It sounds like——

Senator THURMOND. Do you approve of those words?

Mr. GRAY. Oh, I do indeed. [Laughter.]

Senator THURMOND. Now, I want to ask you about this: I don't know what will be attempted to be brought out about you but unless something comes out that I can't foresee I intend to give you my full support because I think you are an honest man, I think you are a man of character, a man of integrity, you are a man of ability and dedication and I think you are the type of man we need in government.

I would like to ask you if you have done anything in connection with the Watergate affair to hamper the investigation, to try to obscure any facts and information from coming to light, or have you done everything you could to disclose the facts as they have come to the attention of the FBI?

Mr. GRAY. I would say, Senator Thurmond, we have done everything that we could possibly do, and we have given it the, as I have said time and again, the full court investigation of the FBI, conducted it in the standard manner of FBI investigations, treated it as a major special, and I think my senior investigators, if called here to testify, would state that the Acting Director put no restrictions or limitations upon this investigation.

Senator THURMOND. Are you willing to make your records available to the chairman of this committee for his perusal and inspection in connection with the Watergate investigation or any other matter with which you have dealt since you have been Acting Director of the FBI?

Mr. GRAY. Yes, sir, I am, and, if I may, Senator Thurmond, I would just like to say a few more words on just this point that you are raising.

We, of course, are a part of the Department of Justice. This Committee on the Judiciary is the committee that has cognizance of the Department of Justice, and if we in the FBI have any committee of Congress——

Senator THURMOND. Speak a little bit louder.

Mr. GRAY. If we in the FBI have any committee of Congress to which we should report, it is this committee. I would be very happy to work with this committee. I do not have any hangups about giving information to U.S. Senators. I believe that they are fairminded men, that they are decent men, that they are honorable men, they have the country's best interests at heart. For too long has the FBI been criticized for not having an oversight committee, yet, Mr. Hoover made every effort to inform the Congress, and I will make additional efforts, and I look to this committee as the committee that should look at the FBI. I would intend to work with this committee, as I have already done, and with the House Judiciary Committee, and in working particularly with Congressman Edwards' Subcommittee No. 4, I think it is, with regard to identification problems, national crime information center problems, computerized criminal history problems, we have met with them, we have brought them to the identification division, and we are opening for their information, judgment, and decision the information that they feel they need.

We don't really—we feel perhaps we have a committee here in the Senate Appropriations Committee but that affects only dollars. They get into a lot of other things, too, but we have to have some committee here in the U.S. Senate that we can look to as being our committee, and as we have thought about this what committee is more natural than the Committee on the Judiciary.

Some people have said to me, "Why don't you go up to the Senate and ask for a joint House-Senate committee, an oversight committee of the type that you have for the CIA," and I have said, "I think that our committee is Judiciary but that is not a decision for me to make. That is a decision for the U.S. Senate to make."

I wanted to give you my personal views, Senator Thurmond, on the question that you raised.

Senator THURMOND. You stated you are willing to turn over any records in connection with the Watergate investigation.

Are you also willing to make available to this committee any of the FBI agents who worked upon this investigation if the committee so desires to call them as a witness or to receive any information from them?

Mr. GRAY. Yes, sir.

Senator THURMOND. Have you by deed or act done anything to in any way stifle or discourage the Watergate investigation?

Mr. GRAY. No, sir; quite to the contrary. Even in the first week, on Saturday morning, June 24, I called in all of those agents from the Washington field office, including the assistant special agent in charge and the special agent in charge, and lectured them rather severely about the leaks and then once again exhorted them to give this the full measure of their investigative ability, go at it with no holds barred and investigate to the hilt.

Senator THURMOND. Would you, as Director of the FBI, feel that it is your duty to get at the truth in any investigation, not just the Watergate but any investigation, that comes before the FBI regardless of who it helps or who it hurts?

Mr. GRAY. Yes, sir. That is my duty.

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

Thank you, Mr. Gray.

Mr. GRAY. Thank you, Senator Thurmond.

Senator HART. Senator Bayh.

Senator BAYH. Thank you, Mr. Chairman.

Mr. Gray.

Mr. GRAY. Yes, sir.

Senator BAYH. I appreciate this chance to visit with you formally, although frankly not as much as I did in visiting with you informally the other day.

Mr. GRAY. Thank you, Senator Bayh.

Senator BAYH. Having the duty to sit in one of the seats with my colleagues and explore with some great degree of particularity the qualifications of those who come before us, there have been some things in the past which frankly I did not relish and I have to say there are a lot of things I would rather be doing than sitting here and interrogating you, sir. I have been impressed every time I have had a chance to meet you; first, in your post down at Justice.

In the visit we had the other day in my office, I was impressed with your openness and with your frankness and your honesty. In our personal conversation the other day, I expressed, and I will express it here, the concern I have for the FBI. It is important in our system of jurisprudence that its impartiality be protected and maintained, and its credibility and that of its agents as well as of its Director be as nearly as possible beyond dispute. I expressed that concern to you.

Mr. GRAY. Yes, sir.

Senator BAYH. And I think you concurred in it.

Mr. GRAY. Yes, sir, I do.

Senator BAYH. The questions that I want to direct to you will be directed with this in mind.

I think I frankly said to you without at all intending any personal rebuke or admonishment that I would have much preferred to have had someone come before us who was a professional law-enforcement officer, one who did not have your political background.

Mr. GRAY. I agreed with you in your having to ask those tough questions.

Senator BAYH. The appearance of impartiality and propriety is oftentimes almost as important as impartiality and propriety themselves in establishing and maintaining public confidence. That is why I think some of these questions need to be asked. They have been asked by others, they have been raised elsewhere.

I ask these questions for two reasons: One, to get the facts on the record, if they have not already been given, and second, and perhaps even more important, to lay to rest some of the concern which has been raised by these questions and perhaps thus to enhance your credibility and your capability to serve if you are given confirmation by the Senate.

In this context I would like to direct your attention to some aspects of your political background.

I believe that a political background is admirable, I have been involved in one for 18 years, but perhaps not for the FBI. Is it possible that some of the things that you have done, advertently or inadvertently, while you have been the Acting Director, might have political consequences which would raise doubts about your assessment of how you make the judgment, that you and I agree needs to be made, to keep the FBI out of the political cauldron?

The speeches that have been discussed here a bit are a matter of some particular concern. Let me just throw at you some of these quotes directly from your speeches and give you a chance to comment on them, give your thoughts further or say you don't think it is appropriate or whatever you like.

In Spokane—

Mr. GRAY. Spokane, Wash.?

Senator BAYH. On August 7. You came out strongly advocating the elimination of the exclusionary rule as to legally seized evidence at a time when this case involving this particular question was before the Supreme Court, in the case of *California v. Crivda*. Now, is that kind of a position, the Director being an advocate in a sensitive area in the judiciary process, is that a wise procedure, do you feel?

Mr. GRAY. I feel in that particular case, and not knowing that the California decision was pending, that this was not a wise thing for

me to say and it was certainly something that I would not have done had I known that that decision was pending. Indeed, as a matter of fact, even as Assistant Attorney General in the Civil Division, the young lawyers down there will tell you, I felt that the abolition of the exclusionary rule was really not a thing to be done, and I worked at it very hard with the task force and was gradually convinced that it had merit. But my initial opposition to it was very strong and I set up a task force of young lawyers down there in the Civil Division to really go into that exclusionary rule.

Senator BAYH. As the Assistant Attorney General, wouldn't you have had the opportunity to know about the progress of this particular issue through the courts? Unless you had been fairly well advised that—

Mr. GRAY. Let me say to you, Senator Bayh, I didn't—it is my fault.

Senator BAYH. I am not arguing the merits of the rule, you understand.

Mr. GRAY. No; it is my fault for not knowing that that case was pending. I was open to be shot at, and I have been shot at.

Senator BAYH. Is it fair to suggest—we can't do anything about what happened yesterday and, as I told you, and as I still feel, I have not made up my mind, I think you are a right guy and I am trying to determine what weight to give these aspects that I direct your attention to, but if you are confirmed, I hope we can put a record together that might avoid some of the pitfalls that some of us are concerned about.

Is it fair to say that in the future you would take greater care in avoiding this kind of statement which might be interpreted by some as affecting the outcome of a High Court case?

Mr. GRAY. Certainly, I am going to do that, and certainly I am not going to be speaking as much as I have been speaking in the months that have passed. But, as I stated in my opening statement this morning, there was a very good reason for that, because I felt that the windows and the doors had to be opened and we had to begin talking more with people; but I don't anticipate it is going to be necessary for me to make as many speeches as I made. There are some 41 of them, I guess, between May and the time, November 19, when I was hospitalized. I made those for a very good reason, to try to bring to the people the FBI as it really was, and, quite frankly, I felt the dedicated men and women of the FBI had been maligned too long, and a part of it was due to us, as I said in my opening statement this morning.

Senator BAYH. I thought your opening statement was a very forceful statement, and indeed let me say, frankly, if your speeches in the field had been confined to the duties of the FBI and the importance of fighting crime, the tools you might need to do so, I would not be concerned. But when I read, from a Butte, Mont., speech, on September 7, the following quotation: "There are those who claim that national priorities are distorted away from the individual," and then you go on to say that, "There have been annual increases in Federal outlays for supporting, developing human resources. In the current fiscal year, 45 percent of the Federal budget is for human resources and only 32 percent for national defense, but calamity howlers who

say the little man is forgotten, do not talk about it," that really does not sound like a law enforcement speech. That sounds like the Director of the Office of Management and Budget preparing a press release for the President.

Mr. GRAY. No, I would have to respectfully disagree with the distinguished Senator from Indiana. Because that might be tied in again with my very strong belief in our country. I have felt very keenly that too long have scorn and ashes been heaped on the head of America, and for once I had a forum, if somebody would listen, for me at least to talk for America, and the thrust of these speeches, Senator Bayh, is for America. I think you have got to read these in the full context, not just pick out facts that I am using to demonstrate that America has not slid so far downhill.

As I said this morning, I believe in this great and good land of ours and the good people who have made it the land that it is. So it really isn't fair, I submit to you, Senator Bayh, to pick these quotations out because my intent was to portray America, not to carry the country for Richard Nixon. I have got to persuade people to believe that. That is my task, and if I fail, the Senate will not advise and consent; it is that simple.

Senator BAYH. Did you ever hear of a political speech that was not pro-American?

Mr. GRAY. We can turn that question around, and we are plotting to get on that line. I told you I was not making political speeches, and I mean it.

Senator BAYH. These speeches were not just made at an American Legion hall or a high school graduation or a bar association meeting. They were made in close proximity to a national election in which one of the key issues involved was priorities, whether we are spending too much money on defense and not enough money on domestic problems. Now, you were aware that this was one of the key issues joined in this election?

Mr. GRAY. Yes, no question about it.

Senator BAYH. And here your statement was right on target.

Mr. GRAY. That was one of the statements in that speech that was right on that target. I will say that you can draw that conclusion, as I said this morning, but I also said this morning, Senator Bayh, that there was no intent to make a political speech, no intent to write a political speech, and I don't think that anybody who ever heard me speak thought I was making a political speech.

Senator BAYH. Well, perhaps it is possible that the first part of that statement is accurate, and yet the latter part is not.

We had a good deal of discussion this morning about this Cleveland City club speech. We have to take into consideration not only your whole speech but the whole political campaign that was going on.

Mr. GRAY. That is correct.

Senator BAYH. You are aware that one of the major strategies of the administration was to send out high surrogates to carry the President's message?

Mr. GRAY. I am aware of that, yes, but I was not a high surrogate. Nobody designated me one, and I was not self-anointed, Senator Bayh, believe me.

Senator BAYH. Well, I am willing to accept your assessment that you were not a high surrogate, but when I read parts of your Cleveland

speech—and I would like, Mr. Chairman, to put it all in the record so that anybody who reads this will not take it out of context.

Senator HART. Without objection.

(The address referred to appears on page 23.)

Senator BAYH. "In our country today, there are strident voices proclaiming that the same conditions exist in our land. We are told that America is 'sick' and that law is used to repress freedom."

Run down the same page: "We are on the threshold of the greatest growth pattern in our history—growth in the quality of life for all our citizens—growth in our total effort to eradicate the imperfections in human society."

Then it goes on: "more employment, more medicines, more technology, more material accomplishments." It is a very strong assessment of our strength, and then when I compare the phraseology there with the phraseology of the President's acceptance speech, which I would also ask to be put in the record, the tone is almost identical, and that is why I question the feeling that you had that this was purely patriotism. Here the President says: "It has become fashionable in recent years to point out what is wrong with what is called the American system. The critics contend it is so unfair, so corrupt, so unjust we should tear it down and set up something else in its place. We have more freedom, more opportunity, more prosperity than any people in the world. For the first time in 5 years"—and there is even the reference to crime which you point out in the back part of your speech in Cleveland—"This is the first time we have only had 1-percent increase in crime."

With your being there as the head of the FBI, in an election year, reciting those statistics, which you thought were nonpolitical, I think probably to a lot of your audience they had a very strong political ring.

Mr. GRAY. Well—

Senator BAYH. Even if you didn't intend for them to do it.

Mr. GRAY. Well, Senator, you have your belief, and I have mine. I didn't have that belief, and I still don't have that belief.

Senator BAYH. Did you forward any of these speeches to the White House, or anything like that?

Mr. GRAY. No, sir. I wrote a lot of these speeches myself, and the men who do the speechwriting in the Federal Bureau of Investigation—at least who did it—would say that we worked over every one of them very, very carefully, and usually—in the last analysis—the final draft was mine.

Senator BAYH. You were concerned enough, and I salute you for this. As I recall this morning, you told one of those who preceded me that you checked this out and that agents in the field, or somebody who did the checking, came back with a feeling this was not a political forum and there would be no political ramifications or something?

Mr. GRAY. That is right. I have always been concerned—you know, it has always been perfectly obvious to me—that from the date the President and I met on May 3 at the White House, I am going to get tagged with this. You know, I have got some smarts—maybe not a lot—but I can read that message very clear.

Senator BAYH. I think you have a lot, and I think maybe—

Mr. GRAY. So I have got to govern myself accordingly if I want to

continue to serve in this position with these dedicated men and women and work with the two great political parties in America. I am not a partisan guy and never have been. I almost became a Democrat when I left the Navy in 1960, because my whole family are Democrats. I even went to see Chester Bowles as to whether I would serve Richard Nixon or John Kennedy, so I am not a partisan guy, and this is a part of my credibility, my reputation for truth.

Senator BAYH. But you did check out the City Club to see there would be no political ramifications?

Mr. GRAY. Yes, we did.

Senator BAYH. Who did the checking for you, Mr. Gray?

Mr. GRAY. I asked my Crime Research Division to look at the record, and I found out that, in the record since 1968, that the club had been trying to get the Director to go there and talk, and that the recommendation of the staff of the FBI was that it would be a good forum for us to carry the FBI message.

Senator BAYH. In making your determination of the political impact or lack of political impact that you would have in this forum, were you advised by those who had checked it out, and thus did you have the information that the Democratic presidential candidate, Senator McGovern, also appeared in that forum?

Mr. GRAY. No; I did not have that information. I was not concerned about it.

Senator BAYH. Were you apprised that Sargent Shriver was to follow you the week following in that same forum?

Mr. GRAY. You see I didn't look at it, Senator Bayh.

Senator BAYH. You see that is what concerns me. You have two guys on the other side and you have Pat Gray giving a good old-fashioned American anticrime speech and arriving in a White House jet and you may have been just as innocent as the driven snow, and I am willing to take you at face value, but that certainly would give the impression to the people at the City Club you were carrying a message from the President of the United States.

Mr. GRAY. No; I don't think so, Senator Bayh. I put in the record this morning a memorandum that was written by the Crime Research Division people regarding this because I wanted to know. I wanted to know—I was not trying to carry the political cudgels for anyone—and I said this morning when I came into this position, I viewed it as a return to the service of my country, and I still do and I always will so long as I am privileged to serve in this position.

The CHAIRMAN (presiding). We will recess now; there is a rollcall vote.

About how much longer do you have?

Senator BAYH. About 10 or 15 minutes.

The CHAIRMAN. We will come back.

(Short recess.)

The CHAIRMAN. Proceed.

Senator BAYH. Mr. Gray, let me ask one last question about the speeches in relation to the campaign.

Mr. GRAY. Yes, sir.

Senator BAYH. You point out that the FBI Director had been invited since 1968, which would assume that if the invitation was turned down a month or two before the election it probably would have been forthcoming for 1972.

Now in looking to the future, is it fair to suggest that a reasonable man, who happens to be the FBI Director, given the intensity of the campaign, given the fact that the White House had by specific request asked for an appearance because they thought it would be politically valuable, might find that sufficient to warrant a future FBI Director to conclude that maybe that is one that he had better pass up in the years ahead?

MR. GRAY. Senator, what you say is correct and certainly has merit, but that White House memo went to 20-some-odd other people, and I didn't attach any weight to that. I didn't go up there because of the White House memo. I accepted the speech in early June, and I went out there because this was a very prominent club, and, as I said this morning, in the memorandums that I am going to insert in the record, you will find that this says this was a liberal group, and I want to talk to people.

I said this morning in my speech that I believe in personal dialog, and I believe this was a good forum to take the FBI's message and try to talk about the FBI and try to let the people see the Acting Director of the FBI.

But I agree with you certainly that I don't expect that I am going to be speaking anywhere near as much in the future because I have opened a window, I have carried the message to the American people regarding the FBI.

Senator BAYH. I don't want to pursue this further, but I would like to put in the record a memorandum from Mr. Patrick O'Donnell to the Honorable Patrick Gray. Now, he may have sent it to 25 or 30 other people, but this one is only earmarked to you, and it makes a rather strong pitch about the prestigious meeting place, and points out that both Secretaries Hodgson and Shultz as well as Ambassador Bush have been there and Jim Lynn is quite familiar with the club. I just hope in the future that perhaps when this White House, which is said to be the ultimate in political acumen, assesses a speech to be of political value to them, maybe someone who is not involved in politics, the FBI, will take their word for it and say, "No thanks, I will do that next year."

MR. GRAY. Well, sir, when I got the memorandum, Senator Bayh, I checked—that is why I got the other memorandum that we are going to put in the record from my own Crime Research Division—just to make certain I was not getting myself into a situation where I could be really convicted of engaging in a political act. I know I am being accused and it is right to accuse me, and I don't differ with that because you have to bear this responsibility and I accept that. But I don't think in the future you have to be gravely concerned, because in the future I am not going to make as many speeches.

Senator BAYH. I am not trying to convict anybody, but I feel that under the circumstances it was just not a good place to go. To suggest that it was a liberal forum, I suppose if I were supporting the President as a conservative, I would be looking for liberal votes, so that does not make a very good rebuttal.

MR. GRAY. Well, that is true. I don't match with you in the political area. I don't have that much expertise.

Senator BAYH. We are trying to be out of a political area. I just want to lay that out so if the time comes again to make that decision, you might say, "I remember."

Mr. GRAY. I get the message.

Senator BAYH. I am not suggesting that you take my view as being—

Mr. GRAY. I think your point is well taken, and I am trying to give you my reactions to it, but your point is well taken.

Senator BAYH. I appreciate that.

Let me deal with one last area here.

Mr. Chairman, I have a number of questions, but I think because the hour is late, I would rather pass after I get through this one area.

The CHAIRMAN. You told me 10 minutes. [Laughter.]

Senator BAYH. That is just about what I have, Mr. Chairman, 10 minutes.

I am concerned, Mr. Gray, about your interpretation of the role of the FBI Director as far as to whom you are ultimately responsible. It is sort of a strange breed of cat, isn't it, where you are responsible to the whole country, to the Commander-in-Chief, to the Congress, to each individual citizen.

Mr. GRAY. It is a tough job.

Senator BAYH. Yes, it surely is.

You have been described, accurately, I suppose, and I think it is a virtue, as being a strong team player, a loyal team man. I have here a speech that you made at HEW which really told those assistants down there the great responsibility they had to be loyal to the President. Of course, circumstances have changed now. I think being a strong team player is a valuable asset when you are an Assistant to the Secretary or when you are an Assistant Attorney General.

Now, I would like to get your judgment as to who you feel is the captain of the team as far as the Director of the Federal Bureau of Investigation is concerned, to whom does loyalty flow from the FBI Director?

Mr. GRAY. That is a tough question.

First, we are a creature of the Congress, and the Congress has seen fit to place us in the executive branch. The head of the executive branch is the President of the United States. We are also the investigative arm of the Department of Justice. We report to the Department of Justice. We are to follow the mandate, the dictates, and the rules and the regulations of the Department of Justice. Then, in the last analysis, the individual has his own conscience, and, as I said this morning, if at any time these conflict so that I cannot pursue my duties in an ethical manner in accordance with the Constitution and the statutes of the United States enacted by the Congress, I will resign and go back to my beloved law firm.

I would like to add I am looking for a copy of that speech I made at HEW. I did make it, but I want to point out the last paragraph of that speech in which I say, "We are the servants of the American people."

I would like to make special note of that for the record, that the last paragraph tells there whom I believe we are serving, the last paragraph of that speech.

Senator BAYH. Shall we put the whole speech in?

Mr. GRAY. I would like to put in the whole thing.

Senator BAYH. I was using it as part of the aspect—

Mr. GRAY. No, the whole thing is going to come back, let's put it in. Let the whole thing hang out.

(Mr. Gray subsequently submitted the following document for the record:)

ADDRESS BY L. PATRICK GRAY III, EXECUTIVE ASSISTANT TO THE SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, TO ALL APPOINTEES IN THE DEPARTMENT AT THE DEPUTY ASSISTANT SECRETARY LEVEL AND BELOW, JULY 25, 1969

I am going to talk to you about some lessons learned in the first six months. The approach will be practical, but threaded throughout will be the lofty ideals and the great concerns we have as we join together in HEW to serve the President, the Secretary and the people of our Nation.

At the risk of being tagged here and now as an over 30, "turned off" reactionary, let me emphasize to you the importance of the concept that we are here to serve, not to be served—that we are here to serve, not to enhance our own perfectly normal, human selfish interests. This may be out of tune with some of the thinking surrounding us today.

Each of us is possessed of our own desires, ambitions and goals. This is normal. This is commendable. At the same time, when we embark upon a career in the service of our government, whether that career is to be short term or long term, we must be quite willing to subjugate our own personal goals to a deep, personal commitment to serve our President, our Secretary, and our Nation.

This commitment must be our homing beacon throughout our career in the service of our government.

Each one of us is here in HEW because Richard Nixon was elected to the high office of President of the United States. Further we are here because Secretary Finch has seen fit to place trust and confidence in us and to approve our selection to fill a position in HEW.

In short we owe our positions to the capability of the President to come off the mat, so to speak, and drive through hard, vigorous years of campaigning to win the nomination of the Republican Party, and then go on to win the Presidency of the United States with the valiant help of hundreds of thousands of dedicated, hardworking supporters, campaign workers, and contributors.

So also are we here because Secretary Finch has seen fit to ask us to serve with him and to help him move this Department forward as he and the President seek the solutions to the people problems which, if not solved, might well rupture and destroy the society which the people of our Nation have created.

Obviously, we are a chosen few, an elite group—make no mistake about it—there are thousands of Republicans who are knocking at the door and who would be pleased to be in our positions.

Appreciate this hard fact of life. Appreciate the fact that every single member of the opposite political party is working hard day and night to ensure that the President of the United States is hampered and harassed in carrying out his programs and that the President of the United States is not reelected to serve a second term.

This is a real hard political fact of life. This is in keeping with the nature of our political system. Without such a system, one party government could produce a totalitarian state. We accept this fact of life; so does the opposing party. Accordingly, do not retch or quiver when we insist that the preponderant majority of our colleagues—political appointees—be members of our own party.

Again it is plainly obvious that we must be dedicated and devoted to the concept that our Republican President will be a great President, that his programs will be successful, and that he will be reelected to a second term.

Above all other qualities of character that we hold near and dear, we must have deep, abiding, sincere loyalty to our President and to our Secretary.

Earlier I placed great emphasis on *service*. Now I want to drive home hard the emphasis on *loyalty*. I do not speak of blind, automatic loyalty. I speak of a sincere, an intelligent, a freely made decision to join President Nixon and Secretary Finch because we believe in them, trust them, understand the goals and objectives they hold, and desire to support them with the deepest sense of dedication and total commitment.

Should there be anyone of you here present today who cannot make this commitment, you must—in order to maintain your own dignity, self-respect, and integrity—examine deeply your own hearts and minds and reach a decision—to serve or not to serve.

Do not today understand me to be saying that each of you is to consider yourself as a *fanatic, blind, unreasoning, partisan* Republican of the brand often caricatured by Herb Block and others who are determined that an enlightened, human, understanding Republican President shall not succeed.

No, I am saying that you are here because you have made a profound commitment to support with total dedication the President of the United States; that you have made this commitment intelligently because you wish to join with him in bringing this country together again; that you have made this commitment intelligently because you wish to join with Secretary Finch in assisting him to perform the tough tasks which lie ahead—tasks which must be performed well in order that the President may accomplish his objective.

Our Nation has elected a Republican President. We have a Republican Administration. We have Republican approaches to the problems of our people. We have the knowledge of the President's goals. We have the common sense to know the desires and objectives of the President and the Secretary—we must have the loyalty, the courage, and the commitment to do their will—*not our will*. This means, plainly and simply, that we get on the track with the President and the Secretary and that we stay there and track with them.

You may say, "I am not political"—"I am an Independent"—"I do not care what party is involved, I vote for the man"—"Politics is a dirty business," and so on. From the vantage point of my ancient age, let me assure you that no American can afford to ignore politics, to ignore the machinery of government, to adopt an attitude of "Let George do it." This attitude is guaranteed to ensure the demise of the two party system—our form of democracy. No American can afford to avoid involvement, particularly in today's world, when the thing to do is to become involved, to participate, to take a position.

Now let's go on to other lessons learned:

Loyalty includes also a dedication to your immediate superior and to those who work with you in our cause, on our team.

Loyalty includes an avoidance of criticism of our leaders and of our colleagues. Criticism which is destructive in nature is cancerous—it will destroy us and our entire team. Snide remarks and facetious comments lightly made often come back to haunt us. Too often have I heard this form of banter engaged in innocently. Too often have I seen the results published in newspapers or made the subject of remarks by the boob-tube word mashers.

Loyalty includes having the common sense and decency to deal with others in a manner calculated to bring credit to the President and the Secretary. We are the President's people—we are the Secretary's team—and when we speak, we speak *for* the Secretary but we do not speak *as* the Secretary. We do not wear the Secretary's mantle. Therefore, while we speak from *strength*, we do not speak with *arrogance*. Courtesy is the key. Our errors here become the Secretary's errors and place him in a very delicate position. Instead of strengthening him, we weaken him.

Loyalty includes the touching of all required bases as we set out on our daily rounds to carry out the will of the Secretary. We deal directly and candidly. We deal with those who ought to know and who have a responsibility to the Secretary, too. In short, we do not "end around."

I believe that I may have placed the concept of service and loyalty in the proper perspective and I want to go now to a few more pitfalls and pratfalls that can harm us, the President, and the Secretary.

Not one problem that we handle in HEW is simple. This is the lot of a Department responsible for the problems of people at the national level. Accordingly, not one task assigned to you is of a nature such that you can give it the so-called "light touch." You have to shred the problem; look at it from every angle; learn to work in depth; learn to dig hard; learn to turn in a work product that is as thorough, as logical, and as clear as you can make it. You should be concerned with the overview, the big policy, the grand decision. But you also are in a training period, a development period—we all are. Do the tasks assigned well and you will find that your personal job satisfaction is enhanced and your responsibilities are increased. Above all do not seek out only the so-called "glamour work"; put your shoulder to the wheel and be eager to tackle the "nitty gritty" chores, too.

The President and the Secretary appreciate another hard fact of life. Simply stated it is that intelligent members of an elite group—our team—will generate a wide diversity of views and rather strong opinions regarding the highly charged issues facing our Nation today. This is great and we do not want to stifle the minds and stagnate the thought processes of the members of our team. At the same time,

and although we believe in and foster the thorough airing of our views and opinions within our own family, we must present a united front in support of a decision once made by the President or the Secretary. Our support must be total and absolute.

In conversations with others, we do not refer to RHF as "Bob." He is the Secretary to all within the Department and to outsiders. Be extremely careful at all times to maintain the dignity of his office, but do it with warmth and humility—not with arrogance. We have enough problems in HEW now without creating more by being inept or overbearing.

Even though each of us is close to the Secretary, resist at all times the temptation to enhance our own image by "puffing," or by our actions demonstrating how close we are to the Secretary. We would not be here if we were not close to the Secretary and those with whom we will come in contact know this political fact of life. You will demean yourself and the Office of the Secretary by taking "name dropping" advantage of your position.

Lobbyists—You will come in contact with them; they have a legitimate reason for existing. Be a courteous listener, but a most careful talker. Make no commitments whatsoever in the name of the Secretary: Moreover, do not even talk in such a manner to "lead on" a lobbyist—you trap yourself in a very difficult situation and you can hurt RHF badly by this sort of conduct. Again, be a courteous and attentive listener, but a most careful talker.

Telephone Conversations—The telephone is obviously an invaluable communication tool, but do not say in a telephone conversation that which you would not care to see in print the next day. Once again the concept is that of tact, courtesy, patience, understanding, care and concern—but no commitments in the name of the Secretary, and no "puffing."

Mail—The principles I have spoken of thus far apply as well to all mail leaving the Department. When preparing correspondence for the Secretary's signature, or when reviewing it, never treat it lightly, no matter how simple the subject. The reasons are obvious—every letter portrays the image of our office and of the Department; further every letter reflects the substance of our positions and policies.

Security—Recent examples should be sufficient to impress upon each of us the critical importance of the general security of our office and our official, as well as unofficial, papers. Every Department of government is loaded with prying eyes—eyes that are prying for one reason or another. Be assured that none of this prying has as its objective the enhancement of the Nixon Administration or the enhancement of our Department. We deal with critical issues of great importance to many diverse groups in our land. Be mindful of security at all times; above all leave a clean desk when you leave for the day and be certain that critical papers are under lock.

The effective functioning of any group is related to the degree of cohesiveness and common purpose which has been established and accepted throughout the group.

Let's look to see if we have the ingredients in our make-up to generate that sense of cohesiveness and common purpose.

Why are we here?

A. Because we believe in President Nixon and Secretary Finch.

B. Because we are dedicated to them and their work.

C. Because we ask only to serve; not to be served.

D. Because we have no greed for personal aggrandizement.

E. Because we feel a deep sense of personal pride, honor and **humility in being asked to serve.**

How do we operate?

First, we will operate as the Secretary desires us to operate.

Second, our mission is to do just as much for the Secretary as we can to remove from his shoulders unnecessary burdens.

Third, we do our work in accordance with the guidelines laid down by the Secretary.

Fourth, we are staff assistants to the Secretary—not decision makers or policy makers, even though we may well have a strong input to him prior to the moment decisions are made and policies established. Once made, we support them to the hilt!

Fifth, we operate in such a way as to reflect credit upon the Secretary for choosing us to occupy the important positions to which he has appointed each of us.

Sixth, we do not throw around the weight of the Secretary's Office. We are courteous and considerate in all of our dealings with the people in the Department, yet we are not to be hoodwinked or misled into presenting slanted information to the Secretary.

I believe that each of us can agree that we have the ingredients required to function effectively in behalf of the President and the Secretary.

Our objective—to assist, to the fullest extent, the Secretary in his objective to make this the *best* Department in the Nixon Administration; to establish this Department as a Department on the move, a Department composed of compassionate and understanding people who are determined to generate and manage plans and programs designed to enrich the lives of all Americans; to make this Department so attractive and so meaningful in its work that members of the civil service, and others not now in government, will be eager to join HEW and assist the Secretary to achieve his objectives. Imaginative, creative, dedicated, and competent people form the heart and flesh, the bone, sinew and muscle of any organization whether it be the corner grocery store, or a major Department of the Government of the United States. We must have them and we must work with them in such a manner that they can realize their full potential in the best interests of the people of the United States.

Senator BAYH. Moving to the question which I asked, as you pointed out it is a tough question, but it is the ultimate question.

Mr. GRAY. It is indeed and that is the way I answered it this morning in my statement. I have said this, and I made that statement during the Watergate to my people, if anybody puts any heat or pressure on me I am going to resign and go back to southeastern Connecticut. The guys in the FBI know that.

Senator BAYH. I think you are honest and you mean that and you will do your best to accomplish that.

Now, may I ask one or two more questions, because I think you realize that was a very nebulous answer that really didn't get down to the—

Mr. GRAY. No, I will answer it specifically.

By statute I am responsible to the Attorney General. This is what the Congress has said. He is my boss.

Senator BAYH. Let me ask a couple of specifics in light of the fact that two recent Attorneys General have also been the campaign manager for their President, Robert Kennedy and John Mitchell, which puts a difficult situation in a different light.

If I may ask you to, just very quickly, hit that Ehrlichman memo again that went out to the field. The response I thought I heard you give to Senator Gurney's question was that this was just sort of a pro forma thing, just sort of a standard operating procedure, that it happened all the time. Did I hear you answer that to the affirmative? It seemed contrary to everything you said before.

Mr. GRAY. What I was answering there with Senator Gurney was the fact that none of these people thought there was anything irregular about this because of the fact that these kinds of requests do come to us, from the White House, through the Deputy Attorney General's office, or through the Attorney General's office.

Senator BAYH. If you look at the Ehrlichman memo, that *prima facie* is almost like you were asking that local FBI agent to be the local campaign manager, to pick out the sensitive spots so we can avoid them, to pick out the key crime-related events that are occurring in the area that the President might want to attend. I don't think that is—or is that the normal procedure?

Mr. GRAY. No, that is not what was asked really. All this involved was reporting back what are the criminal justice issues in your area.

Senator BAYH. Well, I suppose—

Mr. GRAY. I said earlier, Senator Bayh, that this thing was wrong, it was improper, and John Ehrlichman has said this. What more can I say in response—

Senator BAYH. I just thought I misunderstood you, I am glad I didn't misunderstand you.

Mr. GRAY. No, but we get a lot of these types of requests. The thing that was lacking here was the judgment by my people who said this was another request from the White House, another request that has come from the Deputy Attorney General.

Senator BAYH. You said none of your assistants objected to it?

Mr. GRAY. No, they didn't.

Senator BAYH. Did Mr. Bishop have to say anything plus or minus about it?

Mr. GRAY. No, and I talked to him personally.

Senator BAYH. I read some place that when you were at Quantico at the FBI Academy there, this question came up and you were quoted as saying, "Wouldn't you do that for the President." Is that an inaccurate quote?

Mr. GRAY. It is totally and completely and terribly and blatantly false.

Senator BAYH. I am glad I asked the question so you could lay that to rest.

Mr. GRAY. Yes, sir.

Senator BAYH. Now, here is—

Mr. GRAY. I think that appeared in Time magazine, didn't it?

Senator BAYH. I don't know.

Mr. GRAY. Yes, that was in the writeup in Time magazine, I think in the January 15 issue.

Senator BAYH. You answered it so I am not going to pursue it.

The serious question, the blockbuster I asked a minute ago, really the test you are going to have to face in my estimation, is to whom you must belong.

First to yourself and to your conscience, but what official? You have refused to buck certain memos on to people with reference to the Watergate and this kind of thing.

Mr. GRAY. That was June 19.

Senator BAYH. But apparently you feel there are limits beyond which you as Director are not responsible to the Attorney General?

Mr. GRAY. Are?

Senator BAYH. Are not responsible.

In other words, there are some things you just don't have to give to the Attorney General?

Mr. GRAY. No, I don't feel that way at all because the Attorney General and I had previously agreed in this case that there would be an aggressively pursued investigation and we would hold it closely in the initial phases and that will be in the documents that I have introduced into the record today, sir. I was not operating on my own and I won't. You know I have had some conflict over this. As a matter of fact, when I was Assistant Attorney General I almost resigned because, you know, it came awful close to conscience butting up to what I was told to do and you jolly well have to face up to this sort of thing.

Senator BAYH. What if you are asked by the Attorney General or by Mr. Haldeman, by a White House staff official very close to

the President, for a field investigation, an FBI check, of a nationally known newspaper columnist or a nationally known television columnist, either one of which may have just made very critical remarks about the President of the United States?

Mr. GRAY. I would say, "Mr. President, there is no jurisdiction, and we have no right to conduct any such investigation unless there is jurisdiction."

From May 3, the first day I talked to the men of the FBI, I have emphasized that we will not proceed beyond the perimeters of our jurisdiction and I have even required them to submit to me the reason for an investigation; and state therein where doth our jurisdiction lie.

Senator BAYH. If it is for a Federal job application, we had this one unfortunately where a television commentator was being investigated for—

Mr. GRAY. I don't know the facts on that but if the request came over to me and it was official, and on its face correct, and stated that "XYZ is being considered for appointment to the position, will you please conduct a background investigation," I probably would go ahead and do it.

Senator BAYH. You would say the same thing about your concern for candidates or Members of Congress?

Mr. GRAY. I don't know what the same thing is, Senator.

Senator BAYH. If you were asked for a field check?

Mr. GRAY. If I were ordered to conduct an applicant investigation—I see what you mean, if I were ordered to conduct a field check—

Senator BAYH. In other words, you have a hot campaign and somebody wants to get something on somebody else, you would say no.

Mr. GRAY. No. I would say no. No jurisdiction.

Senator BAYH. That is all, Mr. Chairman. I reserve my questions. I don't want to monopolize the time.

The CHAIRMAN. Marlow.

Senator COOK. Thank you, Mr. Chairman.

Mr. Gray, I am fast reading through the Cleveland speech and I am finding it very difficult to find political consequences, I must confess to you. As a matter of fact, if we start taking paragraphs out of context in relation to their full meaning on freedom under law and the right of a trial by jury, then I would hope that we don't go so far as that the liberal-minded would deny the freedom of the podium to the individuals in this country.

There is something that I really would like to discuss with you.

Senator BAYH. Will the Senator yield? May I say that the whole speech is in the record and I am sure that he did not intend to infer I was taking the speech out of context.

The CHAIRMAN. The whole speech was put in the record this morning.

Senator COOK. I merely made the point to the Senator. He quoted a small part of it. For the benefit of the press, I would love to—if I had the time—read the whole speech, Mr. Chairman.

The CHAIRMAN. It is in the record.

Senator COOK. I must say to you I doubt very seriously that there is anybody sitting back at those tables there who will read the whole

speech simply because it is in the record. I don't want to do them an injustice, but I doubt seriously that they would do that.

Mr. Gray, on our list of people requesting to testify, appears the name of Mr. Jack Anderson, and also the name of Mr. Les Whitten, who is an associate of Mr. Anderson. Now, I would like for you to discuss the actions of your Department in regard to the altercation with Mr. Whitten in, I think, January, and also the great hue and cry—if it be true, by the way, your entire organization should be condemned—that his first amendment rights were violated; whether Mr. Whitten was indeed involved in, and was in the possession of, documents that were stolen from the Bureau of Indian Affairs and, to the best of your ability, to put into this record whether the suggestion of a search warrant originated with your shop, or with the U.S. attorney's office, because I would like to know whether your Department is shadow boxing with the first amendment, or whether it isn't.

Mr. GRAY. Yes, sir.

This case arose as a result of the theft of documents from the Bureau of Indian Affairs. We had been directed by the Department of Justice to look into this matter, to conduct an investigation, and, indeed, we began such an investigation. Also, this particular column was printing excerpts from various of these documents, as I recall, stating, in fact, that this column had access to these documents, and was going to print these documents.

So we did endeavor to track down these documents in many areas, in many parts of the country. It was again one of these investigations that was going from the office of origin to many other field offices through the nature of leads, and it is true that we did have an informant in this case, who was a member of the Metropolitan Police Department, and it is true that the Metropolitan Police Department advised us that this informant had information to the effect that these documents were in a certain location in North Carolina, that these documents were initially going to be delivered at North Carolina to representatives of this column for a sum of money, and then later we were informed that the documents were going to be shipped to Washington and would come in through a bus—a commercial bus—and that the documents were going to be picked up at the bus station.

(Mr. Gray subsequently submitted the following document:)

Mr. GRAY. Upon checking the records, I have learned that information received from the informant was to the effect that he was to pick up the files in Pembroke, North Carolina, in his automobile, and transport them back to Washington, D.C., for transfer to Jack Anderson. Anita Collins was to accompany him on this trip, and this trip was to occur within a few days after January 23, 1973.

Senator COOK. As a matter of fact, they really came from South Dakota, did they not?

Mr. GRAY. I don't really know that, Senator Cook. I couldn't respond to that. I don't know that much detail, but I will provide a response for the record.

(Mr. Gray subsequently submitted the following document:)

Mr. GRAY. Upon reviewing our records, I found that they came from Rosebud, South Dakota.

Senator COOK. All right.

Mr. GRAY. We were also informed that when the informant and a woman, Anita Collins, went to the bus station to pick up these documents the informant asked, "What do we do if the police apprehend

us," and he was told, "We say we are returning these to the Government."

They picked up the documents. They returned them to Hank Adams' home or his place of residence at the time which I believe was a Holiday Inn. That area, of course, was under surveillance and our agents were watching it.

(Mr. Gray subsequently submitted the following document:)

MR. GRAY. Upon checking the records, I have learned that Hank Adams did not live at the Holiday Inn at the time the documents were delivered to him, but rather across the street from the Holiday Inn.

We also had information that that evening or the following day, the transfer for money was to be made, and when an individual showed up we waited until these documents were brought out of the house and the people actually had them in their possession before we moved in to make the arrest, so that it was in our judgment a valid arrest. We had been in contact with the Department of Justice attorneys who had been apprised of the facts. The arrest was authorized by the assistant U.S. attorney. That basically takes it right up to the arrest position.

Senator Cook. It is my understanding that it is Mr. Whitten's contention that he was in the process of returning, which seems rather strange that one would pick them up, two people would pick them up, at a bus station and deliver them to someone's room so that someone else could bring them back to the BIA or somebody else the next day.

Mr. GRAY. We had no information to that effect from the informant, and we have checked with everyone at the Bureau of Indian Affairs that we could check with, and not one of them said that they had any such appointment with Mr. Adams. But we also know from our investigation that much will be made of the fact that a week or 10 days or so prior to that, Mr. Adams had said to a Bureau of Indian Affairs official, Mr. Oxendine, just in passing with regard to the return of the documents, "Maybe they will be returned, maybe they won't. I don't know." Something to that effect, I know. No commitment was made and Mr. Oxendine was asked by our investigators point blank whether or not any commitment had been made to return any documents and his testimony or his statement to our interviewer was "no."

Senator Cook. Was Mr. Whitten apprehended by your agents with these documents in his possession?

Mr. GRAY. He was actually standing with the box containing the documents in his hands and the seats in his automobile were placed in a down position indicating, certainly at least to us, they were going to be placed in that automobile. One box was on the ground right there beside Mr. Whitten.

Senator Cook. My understanding is it constituted some 150 pounds of what, 2,000 pounds of documents, that apparently they surmised were removed from the Bureau, is that correct?

Mr. GRAY. That is correct, Senator.

Senator Cook. Let me ask you one of the problems that puzzles me. Was it at the request of your Department or was it at the request of the U.S. attorney that apparently you proceeded further and by reason of subpoena to acquire the telephone records of Mr. Anderson?

MR. GRAY. No. This was, actually, an action initiated by the assistant U.S. attorney in charge of the Federal grand jury, and these subpoenas were prepared in his office and were executed, I believe, by the assistant clerk of the grand jury. The time frame was picked out and there was no attempt made to inquire into anyone's sources, but attempts were made to locate the documents that still remained out of the hands of the Bureau of Indian Affairs. Of the toll calls, 96 were selected as the most probable because of their location. This is the reason for them. We didn't just go through all the toll records and call everybody and check everybody. That was not the purpose at all.

Senator COOK. Well, let me ask you the hard question. If it really wasn't the purpose why was it necessary to subpoena records way prior to the actual Indian takeover of the BIA buildings because that occurred on November 3. It is my understanding that the grand jury, through the U.S. attorney, requested through the subpoena that the records be acquired for some 60 days or even longer, 6 months.

Mr. GRAY. Six months, sir.

Senator COOK. Six months prior to that time. Why was that necessary?

Mr. GRAY. I don't know what the assistant U.S. attorney's intentions might have been there. I can surmise that he may have been looking for any calls that would indicate a prior concert of action or arrangement to participate in this kind of thing in return for something. I don't know. This is a complete surmise on my part, but suffice it to say when the toll calls were obtained we only looked at those following the event itself in order to locate the papers. We were not looking for something that happened before.

Senator COOK. Has any action been taken on any records, on any facilities in regard to either Mr. Anderson or Mr. Whitten, his associate, since the 2d day of or the 15th day of February, when the grand jury returned a no bill?

Mr. GRAY. Has any action been taken?

Senator COOK. By your Department.

Mr. GRAY. Against them?

Senator COOK. No; have any activities in regard to any records that you may have had, have you—are you continuing this or have you—because of the no bill return, have you discontinued that, or are you pursuing it?

Mr. GRAY. No, sir; it has stopped; the grand jury has spoken.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. We will recess now—

Senator BYRD. Mr. Chairman, until when will you recess?

The CHAIRMAN. 10:30 tomorrow morning.

Senator BYRD. Could we not pursue this for a little while? I have waited all day patiently and I have only a few questions. I may not be able to be here tomorrow.

Thank you.

Mr. Gray, I want to commend you on the statement which you made earlier today.

Mr. GRAY. Thank you, Senator Byrd.

Senator BYRD. This nomination, Mr. Gray, troubles me in view of the fact that it is the first time that the Senate will have had an opportunity to pass on the confirmation of an FBI Director. We have been saying a lot around here about the Senate's constitutional powers, and its proper place in the system of checks and balances, and so on, so I think that the Senate ought to approach its prerogative in this instance with a great deal of diligence. I have been concerned with respect to your apparent political activities over a long period of time. If this were a nomination to a Cabinet office, it wouldn't trouble me at all in that regard, because I would expect the President to name people to Cabinet offices who have been active politically in his behalf.

But in view of the fact that this is the directorship of the FBI, it does concern me because I fear that the FBI could, under a politically oriented Director, become the political arm of the White House—whether it be a Democrat in the White House or a Republican in the White House. I think this would be a danger to the protection of the constitutional liberties of all of our people. I think the politicization of the FBI could—I am not saying it would happen at all—but it could be the first step toward the conversion of the FBI into a sort of American Gestapo.

Now, you have assured the committee that you will not be active politically in the future. Of course, Mr. Nixon will probably not be active in the future, either. He has indicated that he has run his last time, and he has 4 years in which to serve, but I think that the committee and the Senate ought to be very, very careful about confirming a nominee whose background has involved a great many partisan political activities of service to his party. Of course, I think we could avoid this risk, with all due respect to you personally. I have certainly nothing against you personally; I think you are a very charming man; I have no question as to your honesty, your character, your integrity. But I think the Senate could avoid this risk entirely if it insisted that the President send up a nomination of someone who had not been politically active to the extent that I am led to understand that you have been.

Now, I have no secret files. All the information I have has been gleaned from press accounts which are available to the public, and I don't consider it my role to try to persuade any other Senator to interpret press accounts as I interpret them. I have not approached any other Senator with the idea of trying to persuade him to vote against your confirmation. I don't presently intend to.

Mr. GRAY. Thank you, sir.

Senator BYRD. But I have to weigh the facts as I see them and as I understand them, and reach my conclusion, and that is as far as I now think my role goes in this instance.

It has been said that you have been very active in behalf of the Republican Party for several years. Would you explain that?

Mr. GRAY. Yes, sir, I would be happy to put my activity on the record here.

On July 1, 2, 3 or 4, after June 30, 1960. I left the Pentagon for room 361, Senate Office Building, and served on the staff of the then Vice President, Richard Nixon, and my first assignment was to work with analysts regarding mail. Every assignment I received thereafter

was logistical in nature—go out and find space, put together a group of lawyers to answer mail, find volunteers, rent the basement of the Solar Building, and that type of thing.

Then, of course, I returned to Connecticut in early January of 1961, and the first political operation that I can recall was Mobilization of Republican Enterprise, which was a thing that Congressman Bob Ellsworth was heading up to bring together Republicans at the grassroots—precinct worker type people—ready to go out and ring doorbells. Everybody was given a portfolio or a kit and told to go out and do these kinds of things.

I did nothing with the kit. The kit I destroyed last year when I was cleaning up.

From May to June—the middle of June 1962—I served with Angelo Santaniello to try to help get the gubernatorial nomination for Peter Mariani, an electrical contractor, from southeastern Connecticut. For roughly 45 days, I did the in-house work, and wrote Pete's speeches, and rode around with him to round up some delegates who would vote for Pete at the Republican State Convention to get the gubernatorial nomination of the Republican Party.

From June to November of 1962, I served as finance chairman of the New London Republican Town Committee. In checking the records back there, they can't even remember me in the Committee of One Hundred, but I know the Republicans set up a Committee of One Hundred and I know that I was assigned to the campaign operations subcommittee chaired by Joe Burns, vice president and general counsel of Fuller Brush. Even Joe didn't remember that I served on it. But I know I served on it. I know I attended one meeting near the Wilbur Cross Parkway in Hamden, at a place called the Carriage Inn, in 1966.

Also in 1966, Bill Cottison, an advance man for former Vice President Nixon, came to New London and introduced himself, and said he was there to advance Mr. Nixon's appearance on behalf of Joe Goldberg. I referred him to the Republican town chairman and let him work with her to make regular arrangements he had to make.

In 1968, I met with Mr. Nixon in New York in his office in January, spoke with him, and just talked about 20 minutes in general terms, and told him that I hoped that he was going to run for the Presidency. Later in 1968, I wrote a letter for the candidate's signature on the Small Business Investment Company industry, setting forth his position in response to questions that that industry had asked him. I was asked to do so because at that time I was a member of the board of governors of the National Association of Small Business Investment Companies. I was not asked to participate in the campaign in 1968, and I did not. I stayed right in my law office and practiced law and wrote this letter.

And then I served—in fact, I didn't think I was going to get into Government. I didn't think I was going to be invited to join the Nixon administration. The newspaper publisher in my town, a fellow named Barnard Colby, of the New London Day, got a letter from Harry Fleming to recommend people for Government, and he said, "I sent your name in, Pat."

I got one of the forms back; I filled the bloody form out, and sent it back in.

In the meantime, I had been trying to get in touch with Bob Finch in Sacramento to say, "I really want a place in this administration to help in the transition." It wasn't until January 12, 1969, that a meeting was finally arranged for me and Bob Finch in the Plaza Hotel in New York on a Sunday morning at breakfast, and he said, "I would like you to come to HEW with me," and that is the way I came to HEW.

May I say, Senator, if I am such a big friend of the President and such a partisan politician, how come I am outside looking in and trying real hard to get in? That is the situation I was in.

In 1970, after leaving HEW, I attended one meeting of the Republican State platform committee, and I was assigned to the education subcommittee. I attended one hearing in Hartford. I could not attend any more because at the same time I was embarked upon a program in the South trying to assist in making the transition from the dual to the unitary school system as a special consultant to the Cabinet Committee on Education.

In 1970, in the Robert H. Steele for Congress campaign in Connecticut, I agreed to meet Counselor Finch at the airport, took him to a testimonial dinner in Norwich—actually it was not Norwich, it was outside of Norwich, at a boys' school, and served as a toast-master at dinner that evening—and in 1970, I visited Tom Meskill's staff during the transition on what to do about personnel, how to handle personnel.

Then in 1971, I gave \$250 to the Republican Party in Connecticut and became what is called a keyman in Connecticut. It is another gimmick to raise money. You know, if you give 250 bucks, you get a keyman card, and that is the extent of it.

Senator Byrd, I wouldn't want my remarks to be taken in any way, if you please, sir, to be in any sense of the word a backing off from the thought that I left the U.S. Navy to help Richard Nixon be elected President. I am a Nixon supporter; I admire and I respect and I have an affection for the President. I have for every President.

Senator BYRD. Well, Mr. Gray, I have a considerable amount of respect for him, too.

You indicated earlier today you "have never been a partisan guy."

Mr. Chairman, has anyone made reference to the statement by Mr. Gray when he was at HEW when he was speaking to appointees in the Department?

Mr. GRAY. Yes, they have, sir, and we put that in the record.

Senator BYRD. The statement has been put in the record?

Mr. GRAY. Yes, sir.

Senator BYRD. Very well. Were any excerpts read from it?

Mr. GRAY. Yes, sir.

Senator BYRD. It sounded very partisan, did it not?

Mr. GRAY. Yes, sir. I think, as I said to Senator Bayh, I think you also have got to read the last paragraph. What I was trying to do was really point out how important it is to come into Government service and to serve well and not seek personal aggrandizement, and I pointed out very carefully that each party recognizes this. There was no knifing or cutting in that speech. You know, when I think in terms of partisanship, I think in terms of knifing and cutting and hammering at people, and I was not doing that. Maybe that is not the way to think about partisanship.

Senator BYRD. I do not necessarily think that, Mr. Gray; I just think you made a pretty partisan speech.

Mr. GRAY. Right.

Senator BYRD. As a Democrat, I could make that same speech and feel that I was whooping it up for my party.

Mr. GRAY. You see, I have not served in political life, Senator Byrd, as long as you have, and that is why I came out of the Navy with perhaps an idealism, and I see that same idealism in political leaders, and you know, to be a political leader is not really a bad thing because the political leaders make the democratic process work. I do not see what is so bad about being a political leader and trying to do right and to do well when you happen to hold a public position of trust and confidence, and that is what I—when you read that speech, that is what I was trying to tell those young people over there, the facts of life.

Senator BYRD. I wish more people felt that way about political leaders, Mr. Gray.

Mr. GRAY. Well, they should feel that way because we ask an awful lot of our political leaders, and we kick them around plenty, too.

Senator BYRD. But I find—I will not belabor the point since the statement is going in the record—but I find it a little hard to reconcile what I consider to be a pretty partisan speech in the context of where you were then making it and, in the time frame, it is a little hard to reconcile that with a statement that you never have been a partisan guy.

I am only concerned about the partisanship now as we approach the confirmation of this nomination.

Mr. Gray, earlier reference was made to the O'Donnell memo urging that you go to Cleveland. I believe you stated that you questioned the propriety of this memo?

Mr. GRAY. I did.

Senator BYRD. Whom did you ask about it?

Mr. GRAY. I asked our Crime Research Division to look into this and tell me if it was a political thing. If it was, I was not going, and that is exactly what I said.

Senator BYRD. When did you accept it?

Mr. GRAY. In June, early June. Mid-June, mid-June somewhere around the 16th of June, in that time frame, 16, 17, 18. We will provide the acceptance letter for the record.

Senator BYRD. And you indicated you had received a request directly from the Cleveland City Club speech—

Mr. GRAY. Yes, sir; you will have this in the record, too.

Senator BYRD. What was the date of that request?

Mr. GRAY. It was in that vicinity, but I will have to put that in the record. We will have to put it in the record, sir.

(Mr. Gray subsequently submitted the following documents for the record:)

In checking our records, I find that the initial invitation from the Cleveland City Club was contained in the June 13, 1972, memorandum from Mr. O'Donnell. Our files did show that the Cleveland City Club had previously requested the appearance of Director Hoover in 1968 and again in 1970. Mr. Hoover had not been able to accept either commitment, but it had been recommended to him that an FBI official appear before this group, if agreeable with them. I submit for the record pertinent correspondence from our files covering these points.

THE WHITE HOUSE,
Washington, D.C., June 13, 1972.

Memorandum for: Hon. L. Patrick Gray.
From: Patrick E. O'Donnell.
Subject: Freedom's Forum—The City Club, Cleveland, Ohio.

The City Club has asked our assistance in attempting to secure your participation as a key speaker sometime during the period following July 1, 1972. Since its founding fifty years ago, Cleveland's City Club has been a focus and one of the bulwarks of freedom of speech in one of America's great cities. The Club maintains a deep interest in affairs of government, economics and politics, both national and international. It offers a prestigious meeting place for the open discussion of important social, political and economic problems.

They meet every Friday at noon and have a 300 maximum attendance. However, if you were inclined, they could "go public" and provide almost a crowd of any size you might desire. Both Secretaries Hodgson and Shultz have recently addressed the Club and just recently Ambassador Bush delivered a well-received speech.

With Ohio being crucially vital to our hopes in November, we would hope you will assign this forum some priority in planning your schedule. In the event you are interested, I have full background material available. Incidentally, Under Secretary of Commerce Jim Lynn is quite familiar with the Club. Many thanks.

JUNE 16, 1972.

To: Mr. Bishop.
From: M. A. Jones.
Subject: The City Club, Cleveland, Ohio, request for appearance of Acting Director Gray.

A memorandum dated June 13, 1972, from Mr. Patrick E. O'Donnell, advised Mr. Gray that his assistance had been requested to secure Mr. Gray's participation as a key speaker before The City Club of Cleveland, Ohio, sometime after July 1, 1972. He pointed out that the Club meets Friday at noon, and although they have a maximum attendance of 300, they could "go public" if Mr. Gray were so inclined. He commented that Secretary Hodgson and Shultz recently addressed the Club as well as Ambassador Bush. The Club offers a prestigious meeting place for the open discussion of important social, political, and economic problems.

The Cleveland Office has advised that The City Club has no political connections and actually the majority of the members could be classified as "liberals." The Club engages in discussing controversial subjects and it is entirely possible that some embarrassing questions could be put to Mr. Gray which might prove embarrassing to him and the Bureau. They also noted that these meetings are carried live on local radio stations.

Although Cleveland points out that this Club discusses controversial subjects, it is believed that it might be advantageous for Mr. Gray to appear before such a group. As indicated, the Club is dominated by liberals and these are the type of people we should be contacting in an effort to "convert them."

Recommendation: Mr. Gray may desire to accept this invitation and, if so, he should indicate some Friday after July 1st when he could appear. (Due to other commitments, it would appear that a Friday in August or early Fall might be the most convenient.) Thereafter, additional details will be obtained from Mr. O'Donnell.

JUNE 27, 1972.

To: Mr. Felt.
From: T. E. Bishop.
Subject: The City Club, Cleveland, Ohio, Request for Appearance of Acting Director Gray, August 11, 1972.

In a memorandum from Jones to Bishop dated 6/16/72, there was set forth details concerning an invitation extended to Mr. Gray by The City Club of Cleveland, Ohio, for him to be a key speaker at a Friday noon meeting of the Club sometime after July 1, 1972. It was recommended and approved that Mr. Gray accept the invitation if possible. Mr. Gray noted, "I will do it but push it out ahead. Check with Mrs. Neenan."

After consulting with Mrs. Neenan, on 6/26/72 Bishop advised Patrick E. O'Donnell of The White House, through whom the invitation had been extended,

that Mr. Gray could make this appearance on August 11, 1972. O'Donnell stated that he would check with Lawrence Robinson, Executive Director of The City Club of Cleveland (telephone—area code 216, 861-1260), to ascertain if this date is satisfactory and advise Bishop of the result on 6/27/72.

On 6/27/72, Mr. O'Donnell advised Bishop that Mr. Robinson had informed him that the Club would be delighted to have Mr. Gray speak to it at its noon meeting on Friday, August 11, 1972. He advised that Mr. Robinson stated that he would furnish Mr. Gray additional details concerning the Club and the meeting in question in a letter to be forthcoming in the immediate future.

Recommendation: That Crime Records Division begin preparing an appropriate speech for use by Mr. Gray on August 11, 1972.

J. B. ROBINSON Co.,
Cleveland, Ohio, June 28, 1972.

L. PATRICK GRAY III,
Acting Director, Federal Bureau of Investigation,
Department of Justice, Washington, D.C.

DEAR DIRECTOR GRAY: Thank you for agreeing to speak at the City Club of Cleveland on August 11, 1972!

Patrick E. O'Donnell has been enormously helpful to us and we are writing at his suggestion.

Our usual schedule is to have lunch at Noon, followed by a half hour talk beginning at 12:30 p.m. Questions follow until we close at 1:30 p.m.

We will have an office available for your private use before and after your presentation.

I will be in touch with your Assistant Director Bishop with additional details.

We are looking forward to the privilege of having you here.

Sincerely yours,

LARRY ROBINSON.

THE CITY CLUB,
Cleveland, Ohio, July 7, 1972.

L. PATRICK GRAY III,
Acting Director, Federal Bureau of Investigation,
Department of Justice, Washington, D.C.

DEAR DIRECTOR GRAY: We are very pleased that you have accepted our invitation to speak at our Forum on Friday, August 11. As you may know this Forum has brought many well known people to Cleveland and raised many crucial issues in the past. Many of our speakers have used this opportunity for a major policy statement.

The Forum is carried live by one radio station (WCLV) and rebroadcasted in its entirety by four others. We also get full TV and press coverage.

We begin with lunch at noon, go on the air at 12:30 with your speech, and close with a half hour of questions till 1:30. Please plan your presentation to last 25-30 minutes.

Will you please send us some biographical materials and the topic of your speech so that we may give your coming adequate publicity.

Thanks again for planning to be with us on June 16. We look forward to seeing you then.

Sincerely yours,

ALAN DAVIS, Executive Director.

JULY 12, 1972.

LARRY ROBINSON,
J. B. Robinson Co.,
Cleveland, Ohio.

DEAR MR. ROBINSON: Assistant Director Bishop has advised me of your very kind offer of cooperation in regard to my forthcoming trip to your city and you may be sure I deeply appreciate your gracious hospitality.

Thank you for offering to meet me at the airport, but this will be unnecessary since I previously made arrangements for transportation from there to the City Club of Cleveland. Mr. Bishop or a representative from our local office in Cleveland will be in contact with you prior to my speech concerning any additional details relative to my visit.

With best wishes and warm respect,

Sincerely yours,

L. PATRICK GRAY III, Acting Director.

JULY 13, 1972.

ALAN DAVIS,
Executive Director, The City Club,
Cleveland, Ohio.

DEAR MR. DAVIS: I received your letter of July 7th and am certainly looking forward to being with you at your Forum on August 11.

In regard to your request, I am enclosing a copy of my biographical sketch and my photograph which you may use as indicated in your letter. A representative from my office will be in contact with you concerning the topic of my address.

With best wishes and warm respect,

Sincerely yours,

L. PATRICK GRAY III, *Acting Director.*

SEPTEMBER 4, 1969.

FREDERICK A. VIEROW,
Executive Secretary, The City Club,
Cleveland, Ohio.

DEAR MR. VIEROW: On September 2nd I received your letter inviting me to address your Club's Forum in Cleveland on one of the dates indicated in January or February, 1970.

While I appreciate the kind invitation, the pressure of my official schedule, coupled with the numerous matters which arise daily demanding my immediate attention, precludes my accepting additional commitments. However, one of my assistants would be pleased to make this appearance and if this arrangement is satisfactory with you, please advise me and I will be happy to designate someone.

Sincerely yours,

J. EDGAR HOOVER.

NOTE: Bufiles disclose on 8-20-68 Vierow invited Director to address this Forum on September 20th or 27th, 1968. By outgoing 8-27-68, invitation was declined. The Director has received several invitations in past to speak before The City Club which have been declined. This Forum and group appears to be a good one and as indicated, will have rather extensive radio coverage. It is definitely felt the Bureau would benefit by affording a speaker and would offer an excellent opportunity to explain first hand our jurisdiction and responsibilities. Assistant Director Bishop has indicated he could handle this appearance on any of the dates in February, 1970.

Senator BYRD. Very well.

Reference has also been made to your speech in Butte, Mont. It may be a little repetitious, but I was not able to be here throughout the entire hearing, and I felt, Mr. Gray, that—and you supplied me with a copy of this statement—

Mr. GRAY. Yes, sir.

Senator BYRD. You said you would do this the other day when we visited with you, along with your other speeches.

Mr. GRAY. That is correct, sir.

Senator BYRD. I find that this one in particular, however, sounded like a political speech and not so much like a law-and-order speech. It contained a good many statements with which I could agree, and I find no fault with the statements that were made therein per se. You stated, for example:

The time has come to end this strident demagoguery and look at the facts about America.

Let me ask you, what other nation in history has even come close to the level of assistance that the United States has given to enhance the economic well-being and security of its neighbors around the world?

Since World War II the taxpayers of this country have provided approximately \$130 billion in loans and outright grants to other nations. This has gone not just for our strongest and closest allies, but most especially to weak nations most

in need of it. We have given this aid literally until it hurt—hurt our balance of payments and our trade position with other countries.

But the critics who claim this is a selfish nation do not talk about that.

Another excerpt:

What other nation can and does channel resources so generously through government programs to meet human needs? I refer to programs providing security for the aged, help for disadvantaged children, support for the unemployed, and other basic requirements for human life and dignity. This is done not just at one level of government, but at the local, Federal, and State levels. To those who claim that our national priorities are distorted away from the individual—

And there were a lot of Democrats claiming that last year—

I would point out the Federal outlays for supporting and developing human resources such as those I have described continue to increase year after year, and that in the current Fiscal Year 45 percent of the Federal budget is for human resources and only 32 percent for national defense.

But the calamity howlers here who say the little man is forgotten do not talk about that.

Another excerpt deals with the amount of moneys that are being provided by all levels of government for public, elementary, and secondary schools. And then the statement follows:

But those who charge that this is a society of special privilege do not talk about all of that.

Then at the end, relatively close to the end, this quote:

Your government is doing everything possible to fight drug abuse, which President Nixon has labeled America's public enemy number 1.

Well, I could subscribe to most of that. As a matter of fact, I made some political speeches along the same line. My problem comes, though, in reconciling this kind of speech made by the Acting Director of the most effective law enforcement agency in the world, having jurisdiction of the most comprehensive and most effective intelligence gathering network in the world, this kind of statement made in the course of a campaign dated September 7, 1972, by such an officer. I think it would have to be considered political by almost any objective reader of it and certainly by myself—someone who agrees with most of what is being said and who has stated the same thing in many of my political speeches. But I am a politician, and I have to run for office. I have to be elected and reelected. The Acting Director of the FBI is not a politician. It seems to me he should avoid the appearance of politics. Whatever else could be said about Mr. Hoover, it could not be said that his agency was politically oriented or that he made political speeches during a campaign.

I understand that you take the viewpoint that this was not a political speech. You are entitled to your opinion of that, but I would just have to also be entitled to mine.

Mr. GRAY. Senator, Byrd, may I ask were you reading from the Butte, Mont., speech?

Senator BYRD. Yes, I thought I was. Yes, Butte, Mont., September 7, 1972. And if this has not been placed in the record, I would like for it to be included in the record.

The CHAIRMAN. It will be admitted.

(Mr. Gray subsequently submitted the following document for the record:)

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., September 7, 1972.

"A NATION THAT CARES"—AN ADDRESS BY THE HONORABLE L. PATRICK GRAY
III, ACTING DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

As a fellow Rotarian, I welcome this opportunity to be your guest this evening. We in the FBI deeply appreciate the splendid cooperation which you, as Rotarians and citizens of this great city and State, have given us over the years. This evening I want to talk about A Nation That Cares, a Nation which is concerned about its citizens, their welfare, their happiness, their dignity as human beings.

In our 20th century world these are among the salient questions facing mankind:

What kind of society do we want?

What kind of country is America going to become?

Does our Government care about our people? Does it listen?

Is it a sensitive society, wanting to make life more significant and meaningful for every man, woman, and child?

These are questions which strike to the very heart of our American way of life. They are questions *about which we must take a stand* if we are to face the future with confidence and courage.

I believe that Americans know what it means to care.

We care enough to do our very best.

We care deeply about our *community*, our *fellow man*, our *Nation*.

We realize that unless people care—about *themselves*, about *others*, about their *values and traditions*—our country will die.

This is why America is today a great and respected Nation.

This is why human dignity and equality have achieved unparalleled heights under our democratic system of government.

How important the whole concept of service is to the survival of civilization is pointed out—very succinctly—in these words by a prominent educator:

"I do not believe," says this educator, "the greatest threat to our future is from bombs or guided missiles. I don't think our civilization will die that way. I think it will die *when we no longer care.*"

Unfortunately, there are today a small minority of Americans—not many but a few—who *bitterly and falsely* denounce our country as cruel, sick, callous, and repressive.

They want to create the impression that our Government is an ogre, a monster which simply doesn't care.

Another prominent educator has publicly denounced our national leaders as not giving—in his words—"any clear sign of compassion or concern for the poor, the weak, the sick, the unemployed, the helpless. . . ."

Another speaks of a "selfish and oblivious ruling Establishment."

An author asks, "Is America Falling Apart?" and then categorically states, "The American Constitution is out of date."

The law enforcement profession finds itself constantly attacked by extremists. We are called "pigs." We are accused of repressing the rights of citizens. Every opportunity is seized to portray our police, our courts, our judicial system as cold, insensitive, unfair, and bigoted.

This is extremist rhetoric. This is inflammable rhetoric that does nothing to enlighten or to contribute to our society.

It is not based on facts.

It deals in overkill, emotion, and flamboyance.

It seeks to set group against group, citizen against citizen.

The objective of extremist rhetoric is to create the totally false impression that our political processes—local, state, and Federal—are insensitive and cruel, not responsive to the needs of the day.

These detractors aim not at reform of our institutions, but at their destruction.

In my opinion the vast majority of Americans are becoming tired of this quacking chorus of pessimism, cynicism, and lack of faith.

The time has come to end this strident demagoguery and look at the facts about America.

Let me ask you, what other nation in history has even come close to the level of assistance that the United States has given to enhance the economic well-being and security of its neighbors around the world?

Since World War II the taxpayers of this country have provided approximately \$130 billion in loans and outright grants to other nations. This has gone not just to our strongest and closest allies, but most especially to weaker nations most in need of it. We have given this aid literally until it hurt—hurt our balance of payments and our trade position with other countries.

But the critics who claim this is a selfish Nation do not talk much about that.

Again, what other country has found a means to send people of ability and dedication to help emerging nations around the world in their efforts to elevate their way of life, without asking anything whatsoever in return?

The critics who say we are a crass and ungenerous people do not talk much about that.

What other people supports anywhere near the variety of charitable causes and contributes anywhere near the proportion of its resources for such causes? I refer to approximately \$20 billion per year in private contributions to health, welfare, educational, and religious institutions. And this does not include the millions of man-hours and woman-hours contributed in the form of personal skills and service to these causes by devoted individuals.

But the doomsayers who call ours a decadent society do not talk much about that.

What other nation can and does channel resources so generously through government programs to meet human needs? I refer to programs providing security for the aged, help for disadvantaged children, support for the unemployed, and other basic requirements for human life and dignity. This is done not just at one level of government, but at the local, Federal, and State levels. To those who claim that our national priorities are distorted away from the individual, I would point out that the Federal outlays for supporting and developing human resources such as those I have described continue to increase year after year, and that in the current Fiscal Year 45 percent of the Federal Budget is for human resources and only 32 percent for national defense.

But the calamity-howlers who say that the little man is forgotten do not talk about it.

America is NOT a selfish, unconcerned society that does not care.

Perhaps no society in all of history has been more interested in the personal well-being of its citizens, in human concerns, in giving aid to the unfortunate both within and beyond its boundaries.

I like the quotation attributed to Lowell Thomas, the famous radio commentator and world traveler: "He who allows a day to pass without practicing generosity . . .," he said, "is like a blacksmith's bellows—he breathes but does not live."

This is the spirit of A NATION THAT CARES.

In our democratic society, however, the concept of service takes on a dimension beyond material assistance.

Its greater gift is to provide a climate of freedom in which every individual may pursue his own hopes, dreams and aspirations, and may work out his own destiny as a human being.

This means a commitment to equal treatment, equal justice, and equal opportunity for every citizen of these United States.

What other nation has devoted as large a share of its energies and resources to assuring an education for every American until he or she reaches adulthood? I refer not only to the some \$40 billion provided by all levels of government for public elementary and secondary schools. I am also speaking of the vast and growing public funds for higher education and the objective, already reached in some states, of providing a higher education to every young person who wants it. And I am referring to the huge individual and corporate contribution to private education at all levels and to free public libraries throughout the country.

But those who charge that this is a society of special privilege do not talk about all of that.

What other country has made such a determined effort to combat discrimination and assure equal opportunity for all persons regardless of race, color, or religion? This crusade is succeeding because Americans and their elected officials do care about the rights of others. At the Federal level, the resources and the successes in this field continue to rise, and today there is more legal action against alleged civil rights violators than ever before.

But those who claim that Americans are full of hatred and discrimination do not talk about all that.

Finally, the gift of individual freedom and equal opportunity that we enjoy derives primarily from the free government that we have maintained for two centuries. By that I mean a government in which the individual is protected in his freedoms and his personal goals by laws that he or his representative helped to make. Contrary to the opinion of some, law is not the enemy of freedom. Law guarantees freedom against invasion by others.

We in the FBI and in the law enforcement agencies of our country are proud of the part we are playing to make more secure your rights, your lives, and your property.

Today there is every indication that the upward thrust of crime is being considerably slowed.

During the first quarter of 1972, crime registered its smallest increase—one percent—in 11 years. This gives us hope that very shortly crime will reflect an absolute decline—and that this tide of lawlessness which for so long has beset our people will recede.

Eighty of our largest cities reported actual decreases in crime for this three-month period—compared with 22 cities in 1970, and 59 in 1971.

In Fiscal Year 1972, the FBI's drive against organized crime hit an all-time high with a continuing series of major gambling raids, and the conviction of more than 750 racket figures, including some of the country's ranking syndicate leaders.

Much hard work remains ahead. Organized crime is a tenacious and costly social malady. But effective law enforcement, utilizing the latest techniques of crime detection, is making more difficult the position of the hoodlum mobs.

The tide is also turning in favor of the American people in the area of narcotics.

In 1971, Federal Agents removed five times as much heroin and equivalent opium derivatives from the world market as in the year 1968.

The United States for the first time has won the genuine cooperation of foreign countries which have been sources of narcotics, and they are clamping down on the traffic.

Your Government is doing everything possible to fight drug abuse, which President Nixon has labeled, "America's public enemy number 1."

The role of the law enforcement profession in helping create A NATION THAT CARES is absolutely vital.

My command of the English language does not enable me to express my indignation when I hear police officers called "pigs."

The vast majority of men and women in our profession are honorable people conscientiously devoting their lives to a vital public service.

They are often underpaid and overworked.

They daily risk their lives that you—and millions of other Americans—might enjoy the liberties of this land.

To equate the law enforcement profession with repression, to sanctimoniously accuse the FBI and local police and our whole judicial system of eroding the liberties of the people, is to completely misunderstand the positive role they play in our society.

As Acting Director of the FBI, in meeting police officers of all ranks, I have been deeply impressed by their honesty, their integrity, and especially their compassion as human beings.

I always think of the picture of the police officer bending over a child who has been badly injured, blowing the breath of life from his own body into the mouth of that youngster.

Ours is a profession of service. Its members are in it because they care about their city, their state, their Nation, and they care about the people in them. They give from their own strength, knowledge, and dedication so that others might live in safety and freedom.

That is why our Rotarian motto—SERVICE—reflects the spirit of America and why it has so much to say to Americans.

"You must give some time to your fellow man," said Albert Schweitzer, the famous author, philosopher, and physician. "Even if it's a little thing, do something for those who have need of a man's help, something for which you get no pay but the privilege of doing it."

Today, more than ever, this moral imperative influences the American people. It characterizes our Nation far more than the passing shortcomings that are magnified by the professional critics. It is what continues to make the United States not only a Nation but a state of mind—a state of mind that cares about others and still lights the lamp of hope in a troubled world.

Senator BYRD. Was I not reading from it?

Mr. GRAY. I do not know. I cannot find it in the Butte, Mont., speech unless I have my cover page of the speech mixed up or unless I gave you a different cover page. We will check it later.

Senator BYRD. All right.

Now, as to the request from the White House for election year political advice on criminal justice issues, this was forwarded to the FBI field offices, as I understand.

Mr. GRAY. Is that the Cleveland City Club speech?

Senator BYRD. No.

Mr. GRAY. You are talking about the criminal justice items that came in a memorandum from Geoff Shepard?

Senator BYRD. This request came from Mr. Sheppard. And it requested information to be used in 15 specified States. It was a memorandum entitled "Information for Campaign Trips," and I believe you indicated earlier that this matter was handled by your executive assistant, Mr. Kinley.

Mr. GRAY. I did not say it was handled by him. It was a piece of paper when it came to my office, the Office of Acting Director, came through the routing system, came to Mr. Kinley's desk. Mr. Kinley marked it for the Assistant Director in charge of the Crime Research Division and it was handled that way.

Senator BYRD. Where were you at the time?

Mr. GRAY. I had embarked on a field office visit to Anchorage, Alaska, to Seattle, Wash., to Portland, Oreg., to do a speech in Spokane at the Washington State Bar Association and then into Butte, Mont., and I was in Butte, Mont., when this request—either in Butte, Mont., or in the air—when this request was received at my office on Friday.

Senator BYRD. You indicated, I believe earlier, that you hit the overhead, was it, or the ceiling or words to that effect?

Mr. GRAY. Yes, sir.

Senator BYRD. What action did you take?

Mr. GRAY. Well, part of the action that I took was to abolish the Crime Research Division and transfer its functions throughout the Federal Bureau of Investigation, including the transfer of press relations and the congressional service unit to my office. That was not the only reason that I abolished the Crime Research Division. There were other reasons.

Senator BYRD. I was just going to ask, what would press relations or congressional relations have to do with a decision in regard to a White House request to get information from various field offices?

Mr. GRAY. Because that was the Division within the Federal Bureau of Investigation that normally handled such requests.

Senator BYRD. What action was taken against any persons in connection therewith?

Mr. GRAY. No punitive action was taken against any persons, Senator.

Senator BYRD. Was Mr. Thomas E. Bishop retired or reassigned?

Mr. GRAY. No; he was offered a position as SAC, special agent in charge of a field office.

Senator BYRD. Was this the result of the memorandum that came from the White House?

Mr. GRAY. No; because I was going to abolish the Crime Research Division anyhow as a result of a management survey. However, rather than giving him nothing, I offered him a position. He knew he could have the job as special agent in charge of a field office.

Senator BYRD. When you hit the ceiling, Mr. Gray, did you rebuke Mr. Kinley or Mr. Felt?

Mr. GRAY. Yes; I did.

Senator BYRD. Were there any other such requests that have not yet been publicly exposed?

Mr. GRAY. I know of none. There may be some hidden in the woodwork or Claymore Mines. I have found this to be the case from time to time, Senator, in trying to dig out many things, Senator, but I know of none at the moment.

Senator BYRD. Would you not know of them if they had been made, such requests?

Mr. GRAY. I thought you were talking of some that were lying around there. No, I know of none. I thought you were talking about some action that was going to occur in the future.

Senator BYRD. I was wondering whether any similar requests from the White House for information to be used in the campaign had been made that had not been exposed.

Mr. GRAY. No, Senator.

Senator BYRD. Did you travel by commercial planes during the campaign?

Mr. GRAY. No, sir; I traveled by U.S. Air Force aircraft. I was not traveling during the campaign. I was traveling on my own as Acting Director of the Federal Bureau of Investigation. As I explained earlier, Senator Byrd, this was a part of the way in which I chose to bring the FBI's message to the people of the United States, and I have felt, whether rightly or wrongly, but it is my opinion, that the dedicated men and women of the FBI were maligned too much and it was time to open the window and—

Senator BYRD. Travel primarily by commercial plane?

Mr. GRAY. No, U.S. Air Force aircraft. I did make one trip to San Diego on United Airlines.

Senator BYRD. Why did you travel by U.S. Air Force?

Mr. GRAY. I figure I have too much information in my head and it could be extracted very easily by anyone who might hijack an aircraft. To have the Acting Director of the Federal Bureau of Investigation in your hands and subject to the kind of sophisticated treatment today that can be given to extract information was rather dangerous.

Senator BYRD. Do you know whether or not the Attorney General travels by commercial plane?

Mr. GRAY. He does not.

Senator BYRD. He does not travel by commercial plane?

Mr. GRAY. I am sorry, sir. He does. I am sorry.

Senator BYRD. Does the Air Force bill the FBI for the use of its jets?

Mr. GRAY. Yes, it does bill us and we do pay for it. I might add, Senator, in response to your earlier question, that the Attorney General does not have the information in his head securitywise in detail and in depth that I have.

Senator BYRD. You indicated earlier that the Watergate break-in occurred on June 17. Did the FBI tell Mr. Ehrlichman on that day that Mr. Hunt was involved?

Mr. GRAY. I do not know whether the FBI reported on that day to Mr. Ehrlichman that Mr. Hunt was involved. I will have to furnish that information for the record. I know that probably such information was furnished but as to the exact time I will have to determine that, Senator.

(Mr. Gray subsequently submitted the following document for the record):

Mr. GRAY. Upon checking the record, I find that the FBI did not inform Mr. Ehrlichman that Mr. Hunt was involved. However, late in the afternoon of June 17, 1972, Mr. Alexander P. Butterfield, Deputy Assistant to the President, was contacted by the Washington Field Office to ascertain what connection Mr. Hunt had with the White House.

Senator BYRD. You indicated that you learned of the Watergate incident in California on June 17 by your field office; do you know who contacted the field office from the Washington office?

Mr. GRAY. I do not know the individual. I know that between 9:30 and 10 a.m., Pacific daylight time, which was 12:30 p.m., 1 p.m., Washington time, SAC Kunkel of the Washington field office, on instructions from Mr. Felt, FBI headquarters, called the Los Angeles field office and furnished them information concerning the Watergate incident for immediate relay to me.

Senator BYRD. Who in the field office contacted you?

Mr. GRAY. I was not contacted in the field office because I was in the automobile on the way to Santa Ana, Calif., to make—

Senator BYRD. Were you contacted by Mr. Kunkel?

Mr. GRAY. No, sir; I was not. The information was passed to me by the resident agent at Santa Ana, Calif., where I was to deliver the commencement address at the law school at Pepperdine University. He was instructed to contact me and to alert me as to the Watergate incident.

Senator BYRD. Did you know of Mr. Hunt's involvement at that time?

Mr. GRAY. No, I did not. All I knew at that time was that someone was involved and we did not know the names.

Senator BYRD. When did you know of Mr. McCord's involvement?

Mr. GRAY. 3:45 p.m., Pacific daylight time, I was advised that he had been identified as an ex-FBI agent and security officer of the Committee To Reelect the President.

Senator BYRD. Mr. Ehrlichman was reported to have been looking for Mr. Hunt on the 17th. Do you know why?

Mr. GRAY. No, sir; I do not.

Senator BYRD. In view of the fact that the FBI entered the case on the 17th, would it not be proper to assume that the FBI told Mr. Ehrlichman that Mr. Hunt was involved?

Mr. GRAY. No, it would not be proper to assume that, Senator, because I gave instruction very early when I first talked with Mr. Felt, and I must make sure when that was. The instructions I gave to Mr. Felt were to hold this very, very, very closely, and that I think was probably late in the afternoon on the 17th or early on the 18th. But I have no reason to believe that the FBI would have made any notification to anybody without notifying me first. They just do not operate that way.

Senator BYRD. Mr. Ehrlichman was reported to have said, "We get a routine notification." Does that mean they would get a routine notification from the FBI if a White House staffer was in trouble?

Mr. GRAY. No; I am going to have to look into that for you. I cannot answer that question under oath. I am going to have to look into that. I just do not know that information that specifically. But I will find out and I will furnish it for the record.

(Mr. Gray subsequently submitted the following document for the record:)

I find, Senator Byrd, upon checking the record, that when the FBI receives an allegation of a criminal nature against an employee in the Executive Branch, as a matter of routine, a senior official of that agency is advised. This includes the White House.

Senator BYRD. Can you inform the committee as to who first contacted the White House on the 17th?

Mr. GRAY. On the 17th, assuming—I will inform you, Senator Byrd, and the members of the committee, who first contacted the White House and when and what they told them.

Senator BYRD. And who was contacted at the White House.

Mr. GRAY. Right; I will inform the committee.

(Mr. Gray subsequently submitted the following document for the record:)

Senator Byrd, upon checking the record, I find that Supervisor John Ruhl of the Washington Field Office telephonically contacted Mr. Alexander P. Butterfield, Deputy Assistant to the President, between 6:00 and 7:00 pm, June 17, 1972, to determine Mr. Hunt's affiliation with the White House and to inform the White House that Mr. Hunt may be involved in this matter which was being investigated by the FBI. This was the first contact by the FBI with the White House concerning this matter.

Senator BYRD. Why did the FBI not look for Mr. Hunt until the 19th?

Mr. GRAY. I think we interviewed Mr. Hunt on the evening of the 17th, if my recollection is correct, and I will check that in the summary to make sure and if I am in error I will correct it. I think I am correct in stating that we interviewed him on the 17th.

(Mr. Gray subsequently submitted the following document for the record:)

Upon checking the record I find that at approximately 5:30 p.m., June 17, 1972, the Washington Field Office telephonically contacted Mr. Hunt to request an interview with him. He agreed and shortly thereafter was contacted at his home by two Special Agents.

Senator BYRD. You interviewed——

Mr. GRAY. That evening.

Senator BYRD. You interviewed Mr. Hunt on that evening?

Mr. GRAY. Yes; he was not doing very much talking.

Senator BYRD. Mr. Ehrlichman was having a little trouble finding him.

Mr. GRAY. I do not know that Senator. I do not know that Mr. Ehrlichman was looking for him.

Senator BYRD. According to the press reports, I believe. Who ordered the FBI into the case?

Mr. GRAY. I do not think anybody ordered the FBI into the case. When I was first advised of it my first question was, Do we have jurisdiction? Actually, our first reports were that it was a burglary. Then we thought a bombing incident was involved because one of the instruments picked up there, a smoke detector, did have a couple of, I think they were, batteries in it and it was thought that this was a bomb. In

fact, from the first reports our SAC in Washington field office designated a burglary specialist to be the case agent. Then as soon as we saw the devices we knew we were involved with an IOC, a violation of the intercepted communications statute so we went right into it. Otherwise we would have deferred to the metropolitan police department on either the burglary or the bomb, but it was later on, about mid-day, that the U.S. attorney and the Assistant Attorney General of the Criminal Division confirmed that we should have jurisdiction of this case.

Senator BYRD. Were you asked by the White House to get into the case?

Mr. GRAY. I had no instructions from the White House, sir.

Senator BYRD. And you got no request?

Mr. GRAY. No, sir.

Senator BYRD. To what extent were you aware of the details of the Watergate investigation as it was progressing?

Mr. GRAY. To what extent was I aware of what, sir?

Senator BYRD. To what extent were you aware of the details of the Watergate investigation as it progressed?

Mr. GRAY. Well, in my position as Acting Director, I certainly was aware of it because the teletypes would come across my desk. I had met early in the game with the top people who were involved in the investigation, gave them the instructions to press it aggressively, give it a full court press, in the language of the FBI, saw these teletypes as they would come across my desk, discuss the case with them, but as you know, in the FBI when you get hit with a major special like this, the case agent and the agents working the case with him agree and confer and determine the leads that are to be sent out. Those leads are reviewed by the field supervisors and by their SAC and at the same time they are in close touch with the Bureau supervisor. These leads are going out and the organization is really cranking up the speed rather rapidly through the teletype circuit. I will be happy to submit for the record the general instructions that went out indicating that this was to be an investigation aggressively conducted and pursued, taken under the wing of each special agent in charge, and as many special agents utilized as necessary in order to promptly and effectively investigate this case.

(Mr. Gray subsequently submitted the following document for the record:)

Senator Byrd, I find upon checking our records that on June 17, 1972, when this case broke, Special Agent in Charge Kunkel was telephonically advised by the extra-duty supervisor of the General Investigative Division, of Assistant Director Bates' instructions that Mr. Kunkel must personally insure this case receives top priority handling by as many Special Agents as are necessary. He was instructed as leads developed in other offices, similar telephonic instructions were to be given to the field and if coverage of the leads turned up additional leads in another office, these instructions of FBI Headquarters relative to the handling of this case were to be passed on. The telephonic instructions were subsequently confirmed in writing by FBI Headquarters and I am submitting the following document for the record (the document is a Personal Attention airtel dated June 20, 1972, to Special Agents in Charge Washington Field Office, Atlanta, Alexandria, Baltimore, Boston, Kansas City, Houston, Miami, New York and Philadelphia). The first paragraph of this airtel appears pertinent to your request, Senator Byrd, and I will quote it for the record as follows:

"This will confirm instructions to appropriate offices that all logical investigation is to receive immediate attention under the personal direction of SACs by as many SAs as are needed to insure absolute, thorough, immediate, imaginative investigation is conducted in this case. All leads are to be set out by telephone or teletype as appropriate. Bureau is to be aware of all leads."

I am also submitting for the record a copy of a memorandum C. Bolz to Mr. Bates dated 9/12/72, concerning instructions issued by FBIHQ to the various FBI field offices, relay of FBIHQ instructions to other field offices, scope of investigation and certain statistical data concerning Agents assigned and man-hours used in the investigation of this case, together with enclosures.

AIRTEL

PERSONAL ATTENTION

6/20/72.

To: SACs Washington Field; Atlanta, Alexandria, Baltimore, Boston, Kansas City, Houston, Miami, New York, and Philadelphia.

From: Acting Director, FBI (139-4089).

James Walter McCord, Jr.; Bernard L. Barker, et al., Burglary of Democratic Party National Headquarters, 6/17/72, Interception of Communications, and Co: WFO.

This will confirm instructions to appropriate offices that all logical investigation is to receive immediate attention under the personal direction of SACs by as many SAs as are needed to insure absolute thorough, immediate, imaginative investigation is conducted in this case. All leads are to be set out by telephone or teletype as appropriate. Bureau is to be aware of all leads.

Philadelphia and Miami are instructed to expend all efforts necessary to trace the \$100 bills recovered from the subjects.

Miami is to continue developing complete background on all subjects and individuals involved who appear to have been in the Washington, D.C., area for purposes related to captioned burglary.

WFO discuss with the USA the possibility of obtaining a search warrant for search of McCord's apartment in the Miami area.

Miami and WFO are to obtain all available information concerning the bank accounts, as well as toll telephone calls, of the subjects and other individuals who appear to be involved in this case including Everette Howard Hunt, Jr.

WFO is instructed to continue submission of a daily teletype summary of the highlights of investigation.

To: Mr. Bates
 From: C. Bolz
 James Walter McCord, Jr., Et Al.;
 Burglary of Democratic Party,
 National Headquarters,
 June 17, 1972,
 Interception of Communications.

The following is furnished in partial response to Mr. Felt's memorandum of September 11, 1972, wherein he requested certain statistical information showing the scope of this investigation.

Instructions Issued by FBIHQ

On Saturday, June 17, 1972, when this case broke, SAC, Washington Field, was telephonically advised by the extra-duty supervisor of the General Investigative Division, of Assistant Director Bates' instructions that SAC must personally insure this case receives top priority handling by as many Special Agents as are necessary. As leads developed in other offices, similar telephonic instructions were given to the field offices involved and further that if coverage of a lead turned up additional leads in another office, the Bureau's instructions relative to handling were to be passed on. The telephonic instructions were subsequently confirmed in writing as shown below.

By Personal Attention airtel dated June 20, 1972, to SACs, Washington Field Office, Atlanta, Alexandria, Baltimore, Boston, Kansas City, Houston, Miami, New York and Philadelphia, the following general instructions were set forth by FBIHQ:

"This will confirm instructions to appropriate offices that all logical investigation is to receive immediate attention under the personal direction of SACs by as many SAs as are needed to insure absolute, thorough, immediate, imaginative investigation is conducted in this case. All leads are to be set out by telephone or teletype as appropriate. Bureau is to be aware of all leads."

While the general instructions did not state that if necessary, manpower must be diverted from other areas, it is noted that Washington Field did, in fact, divert manpower to this case from other investigative areas to insure immediate handling of leads.

In addition to the above general instructions, the June 20, 1972, airtel specifically instructed Philadelphia and Miami to expend all efforts necessary to trace the \$100 bills recovered from the subjects. By teletype dated June 20, 1972, FBIHQ instructed Washington Field, Miami and Philadelphia that investigation to identify money recovered from the subjects at the time of arrests must be pressed vigorously. The observation was made that it is most important that every effort be made to identify the eventual recipient of those funds.

By teletype dated June 20, 1972, to Miami, New York, Newark, Tampa, San Juan and Washington Field, it was emphasized that Bureau is conducting vigorous investigation to develop an Interception of Communications violation and to determine the reasons for this activity as well as other individuals who may be involved. These offices, which handle practically all high-level informants relative to Cuban matters, were instructed to immediately contact sources knowledgeable concerning Cuban activities to develop whatever information was available concerning the subjects, their associates and possible motives for the burglary.

By airtel dated June 22, 1972, to SACs Washington Field Office, New Haven, Miami, Kansas City and New York, the importance of this case was again emphasized in the following paragraph:

"It is again reiterated that all leads in this matter must be given the highest priority with sufficient personnel assigned to insure maximum effort in covering all leads."

Particular instructions in that airtel to New Haven were for that office to intensify and expedite efforts to develop full background information concerning Baldwin.

By teletype dated June 23, 1972, SACs Washington Field, Albany, Albuquerque, Alexandria, Atlanta, Baltimore, Birmingham, Boston, Charlotte, Chicago, Cincinnati, Cleveland, Dallas, Denver, Houston, Jacksonville, Kansas City, Los Angeles, Miami, Minneapolis, Newark, New Haven, New York City, Norfolk, Philadelphia, Pittsburgh, Richmond, San Antonio, San Francisco, San Juan, Springfield and Tampa, were instructed, among other things, the following:

"This case is to receive highest priority investigative attention."

Relay of FBIHQ instructions to other field offices

As investigation in this matter was requested of auxiliary offices not previously in receipt of communications, the general FBIHQ instructions substantially identical to the above were set out as shown in the attached schedule of communications requesting the investigation. In those instances wherein only a portion of the language was used or the wording substantially differed from the original general instructions, the specific language is set out.

An analysis of the teletypes and airtels discloses 50 of the 51 field offices which conducted investigation were advised of the general instructions in writing. The Buffalo Office was orally advised of the general instructions by telephone on both June 23, 1972 and June 24, 1972, during its efforts to locate and interview Kenneth Dahlberg, which was the only investigation conducted by that office.

Field offices and legal attaches involved in the investigation

As of September 8, 1972, 51 of our field offices and four Legal Attaches conducted investigation in this case. The latter included Mexico City, Ottawa, Caracas and Bonn.

Agents assigned and man-hours used

For the period from inception of the investigation on June 17, 1972, through close of business September 8, 1972, 333 Agents have been assigned to work on this case. For the same period, 14,098 man-hours have been utilized in this investigation.

With respect to the scope of communications submitted in this case, as of September 8, 1972, there have been 130 investigative reports totaling approximately 3,500 pages submitted. These reports have been disseminated to Assistant Attorney General Henry Petersen, Criminal Division, and to the U.S. Attorney,

Washington, D.C. There have been approximately 750 teletypes and airtels received by FBIHQ concerning this case as of September 8, 1972.

ACTION: This is for information. The field has been instructed to submit by close of business September 12, 1972, information as to the number of leads which have been covered, the total number of persons who have been interviewed and the total number of persons who have been reinterviewed. That information will be submitted by separate memorandum as soon as it is received.

FIELD RELAY OF INSTRUCTIONS

Date and time	To	From	Instructions
June 23, 1972, 10:40 a.m.	Bureau and SAC's, Albany, Alexandria, Baltimore, Birmingham, Boston, Chicago, Cincinnati, Dallas, Denver, Houston, Los Angeles, Miami, Minneapolis, Newark, New Haven, New York, Norfolk, Philadelphia, Richmond, San Antonio, San Francisco, Springfield, and Tampa.	Washington Field.	General instructions.
June 23, 1972, 1 p.m.	Bureau and SAC's, Miami, and Norfolk.	do.	"All logical leads indicating subjects have or had contact in Washington, D.C. area, Maryland and Virginia being handled with teletypes to other offices."
June 23, 1972, 1:58 p.m.	Bureau and SAC's, Buffalo, and Washington Field.	Miami.	"All leads to be handled telephonically followed by teletype."
June 24, 1972, 3:50 a.m.	Bureau and SAC's, St. Louis, and Washington Field.	do.	General instructions.
June 24, 1972, 9:22 a.m.	Bureau and SAC's, San Juan, Chicago, Louisville, and Washington Field.	do.	General instructions.
June 24, 1972, 2:20 p.m.	Bureau and SAC's, Washington Field, Miami, and Kansas City.	St. Louis.	General instructions.
June 24, 1972, 8:46 p.m.	Bureau and Tampa.	Miami.	"Bureau has requested immediate coverage on all leads in captioned matter."
June 27, 1972, 1:10 p.m.	Bureau and SAC's Buffalo, Detroit, Las Vegas, Phoenix, and St. Louis.	Washington Field.	"... Bureau advised this case is to receive highest priority investigative attention."
June 27, 1972, 4:09 p.m.	Bureau and SAC, Boston.	do.	"Boston is requested to handle this lead as soon as possible."
June 28, 1972, 8:38 p.m.	Bureau and SAC's, Washington Field, Baltimore, Boston, Seattle.	Miami.	General instructions.
June 30, 1972, 6:32 p.m.	Bureau and SAC's, Chicago, Detroit, Los Angeles, Miami, Milwaukee, and New York.	Washington Field.	General instructions.
June 30, 1972, airtelgram	Bureau and SAC's, Albany, Albuquerque, Alexandria, Anchorage, Atlanta, Baltimore, Boston, Butte, Charlotte, Chicago, Cincinnati, Cleveland, Columbia, Denver, Detroit, Houston, Indianapolis, Jackson, Jacksonville, Las Vegas, Little Rock, Los Angeles, Miami, Milwaukee, Newark, New Haven, New York, Norfolk, Omaha, Philadelphia, Phoenix, Pittsburgh, Portland, Richmond, Seattle, Salt Lake City, Springfield, and Tampa.	do.	General instructions.
July 1, 1972, 4:45 p.m.	Bureau and SAC's, Washington Field, and Denver.	Detroit.	General instructions.
July 5, 1972, airtelgram	Bureau and SAC's Baltimore, Miami, Boston, Norfolk, New York, Washington Field.	do.	General instructions.
July 5, 1972, 6:25 p.m.	Bureau and SAC's San Diego, Washington Field.	do.	General instructions.
July 11, 1972, 6:05 p.m.	Bureau and SAC's, Baltimore, Houston, Louisville, Miami, and Oklahoma City.	Washington Field.	General instructions.
July 14, 1972, 3:35 p.m.	Bureau and SAC, Memphis.	do.	General instructions.
Aug. 2, 1972, cablegram	Legat, Mexico City.	Bureau.	"Daily summary cables need not be submitted in future. However, you should continue to press remaining investigation through sources presently being utilized and furnish results by cablegram as soon as received."

Senator BYRD. So you were kept completely informed as to details as the case progressed?

Mr. GRAY. No, I do not know that you can—that it is accurate to use the word completely, because I was not down in the nitty gritty and in the development of the leads.

Senator BYRD. But you were kept well informed?

Mr. GRAY. I was well informed, yes, sir.

Senator BYRD. Were you the decisionmaker as to the scope of the investigation?

Mr. GRAY. As to the scope?

Senator BYRD. Yes.

Mr. GRAY. Of the investigation that it would be limited to the IOC, to the violation of the criminal statutes involving intercepted communications?

Senator BYRD. As to the scope.

Mr. GRAY. That is all we had, yes, sir.

Senator BYRD. And you made the decision?

Mr. GRAY. Well, I made it in conjunction with the Assistant Attorney General of the Criminal Division, and U.S. attorney, because anything they wanted us to investigate, we would investigate. I would not say, no, I am not going to investigate, but what we had was a criminal violation of the intercepted communications statutes as the case developed. We did not know what we had initially, to be very honest with you, Senator.

Senator BYRD. But it was your decision as to whether any leads would be followed that might go higher up than the seven defendants?

Mr. GRAY. I did not make any decisions on leads, and this is where I do not write the leads. The case agents write the leads, they are reviewed by the field supervisors, the Special Agent in Charge reviews them, then they are reviewed over by the Bureau supervisors.

Senator BYRD. Who determines as to whether or not they would be pursued further?

Mr. GRAY. They are being pursued, you know, as soon as those leads are sent out—the teletype goes out, Senator, and it is not a question of where a decision is made. We added a lot of leads to those that were being sent out by the office of origin, and by we, I mean the office of the General Investigative Division, and the chief of the Accounting and Fraud Section who is in the General Investigative Division.

Senator BYRD. Were you required to clear the scope of the investigation through the Justice Department?

Mr. GRAY. Yes, sir; we work with them very closely on that.

Senator BYRD. But were you required to clear the scope of the investigation through the Justice Department, or was this a determination that you would make yourself?

Mr. GRAY. No, I do not think it was a determination at all. I could make a determination but I would have to investigate what the Department of Justice told me to investigate, and I investigated within our jurisdiction.

Senator BYRD. Who made the determination as to how far you would go in the investigation and as to whether or not leads would be followed which may have pointed to people in the White House?

Mr. GRAY. Oh, we followed up on people in the White House, and we interviewed them, and I would be happy to submit to the committee and for the record, a list of the people interviewed at the White House, at the Committee to Re-Elect the President, and the dates on which they were interviewed.

(Mr. Gray subsequently submitted the following documents for the record:)

INTERVIEWS OF WHITE HOUSE PEOPLE

Name	Position	Date of interview
White House personnel interviewed:		
Charles W. Colson	Special Counsel to the President	June 22, June 26, Aug. 29, Aug. 30, 1972.
Alex P. Butterfield	Deputy Assistant to the President	June 17, 1972.
Alfred Wong	Special Agent in Charge, Technical Security, U.S. Secret Service.	June 22, June 27, 1972.
Bruce Kehrl	Staff Secretary to the President	June 19, Aug. 14, 1972.
James George Baker	Protective Security Division U.S. Secret Service, Supervisory Security Specialist.	June 29, 1972.
John Wesley Dean III	Legal Counsel to the President	June 27, July 7, July 8, 1972.
Fred Fielding	Assistant to the Legal Counsel to the President	June 27, Aug. 30, 1972.
John James Caulfield	Consultant to the Director of Treasury Law Enforcement	June 26, 1972.
Kathleen Ann Chenow	Secretary to David Young	July 3, 1972.
David Reginald Young	Special Staff Assistant, National Security Council	July 3, July 7, Aug. 30, 1972.
John D. Ehrlichman	Assistant to the President for Domestic Affairs	July 21, 1972.
Dwight L. Chapin	Deputy Assistant to the President	Aug. 28, 1972.
Gordon Strachan	Staff Assistant at the White House	Do.
William E. Timmons	Assistant to the President for Congressional Relations	Sept. 8, 1972.
White House personnel contacted for the purpose indicated, though not interviewed:		
Wilbur Jenkins	Administrative Officer, White House (checked records for official travel of Hunt)	Aug. 7, 1972.
John Campbell	Staff Assistant, Office of Domestic Council (made available travel voucher and related documents concerning Liddy).	Do.
Margaret L. Beale	Personal Office, Office of Management and Budget Executive Office of the President (made available copies of personnel action concerning Liddy).	Do.
James Rogers	Personal Office, White House Office (made available forms from Hunt's personnel file).	Do.
Arthur Bauer	Fiscal Service Officer, Office of Management and Budget, Executive Office of the President (made available copy of official time and attendance records regarding Liddy).	Aug. 10, 1972.

INTERVIEWS OF COMMITTEE TO REELECT THE PRESIDENT'S PERSONNEL

John N. Mitchell	Campaign director	July 5, 1972.
Robert Mardian	Special assistant to the campaign manager	July 17, 1972.
Jeb Stuart Magruder	Deputy campaign director	July 20, 1972.
Robert C. Odle, Jr.	Director of administration	June 19, June 20, June 23, June 28, June 29, July 11, 1972.
Maurice Stans	Chairman of the finance committee, CRP	July 5, July 14 (twice), July 28, 1972.
Hugh Walter Sloan, Jr.	Former treasurer of the finance committee, CRP	July 17, 1972.
Robert L. Houston	Security coordinator	June 20, June 26, June 27, July 3, July 13, July 17, 1972.
Millicent (Penny) Macey Gleason	Security officer	June 30, July 1, July 2, 1972.
Martha Duncan	Officer manager	June 30, July 3, 1972.
Herbert Lloyd Porter	Director of scheduling	July 19, 1972.
Fred LaRue	Special consultant to the campaign manager	July 18, July 21, 1972.
Paul E. Barrick	Treasurer, finance committee, CRP	June 30, July 24, 1972.
DeVan L. Shumway	Director of public affairs	July 24, 1972.
Powell A. Moore	Director of press and information	Do.
Glen J. Sedam, Jr.	General counsel	June 23, June 26, July 13, July 26, 1972.
Judith Graham Hoback	Assistant to the treasurer, finance committee, CRP	June 23, July 18, 1972.
Lee Nunn	Finance chairman, finance committee, CRP	June 23, July 13, 1972.
Monico Bungato	Messenger, mail service	June 26, 1972.
Michael Terrence Masse	Security officer	June 30, 1972.
Stephen B. King	Bodyguard for Mrs. Mitchell	Do.
Tom Wince	Driver for Mrs. Mitchell	Do.
George Roger Houston	Security guard	Do.
George Ellis Shanks	do	Do.
James William Bennett	do	Do.
Timothy Michael Flynn	do	Do.
John W. Ernst	do	Do.
James Edward Cooper	Security supervisor	Do.
Robert Houston	do	Do.
Stephen Tingley Anderson	Security guard	Do.
Mrs. Sally Harmony	Secretary to G. Gordon Liddy	Do.
Kristin Forsberg	Personal secretary to Mrs. Mitchell	Do.
Maureen C. Devlin	Receptionist	Do.

INTERVIEWS OF COMMITTEE TO REELECT THE PRESIDENT'S PERSONNEL—Continued

Name	Position	Date of interview
Sylvia Panarites.....	Secretary.....	July 3, 1972.
Michael Miller.....	Man in charge of victory dinner.....	June 30, 1972.
Peter Holmes.....	Assistant to the treasurer.....	Do.
Louis James Russell.....	Investigator.....	July 3, 1972.
Peter Fokine.....	Assistant of finance.....	June 30, 1972.
Tyloe Washburn.....	Assistant to the assistant treasurer.....	Do.
Kenneth Talmage.....	Aide to Maurice Stans.....	Do.
Jane Dannenhauer.....	Secretary.....	June 30, July 17, 1972.
Florence Thompson.....	do.....	June 30, July 17, 1972.
Margaret Kerwan.....	do.....	Do.
Charles Pashayan, Jr.....	Vice chairman on the finance committee.....	Do.
V. Elaine Hall.....	Special projects.....	Do.
Cary Langhorne Washburn.....	do.....	Do.
Ann Pinkerton.....	do.....	Do.
Connie K. Cudd.....	Staff secretary.....	July 6, 1972.
Lewis Webster Creel.....	Security guard.....	July 12, July 13, 1972.
Ronald Charles Howard.....	do.....	July 12, 1972.
Ronald Bruce Buchanan.....	do.....	Do.
Yolanda Dorminy.....	Secretary.....	July 13, July 17, 1972.
Peter A. Holmes.....	Assistant to the treasurer.....	July 18, 1972.
Laura Alice Frederick.....	Personal secretary to Fred LaRue.....	Do.
Kenneth Wells Parkinson.....	Counsel.....	July 21, 1972.
Paul L. O'Brien.....	Cocounsel.....	July 21, August 11, 1972.
Truman Jacob Weaver.....	Security guard.....	July 18, 1972.
Joseph Earl Ray Mills.....	do.....	July 24, 1972.
James E. Caudill.....	Security man for Republican National committee.....	July 25, 1972.

Senator BYRD. But did the agents have full responsibility for making their own decisions as to how far to proceed with those leads?

Mr. GRAY. Well, they have full decision to suggest, but when it comes to a judgment question, you know, they are pretty responsive to power and they know when they begin getting close that they have got to ask, and they asked when it came down to interviewing John Ehrlichman, for example.

Senator BYRD. So, then, somebody had to make a decision as to the scope, is what I am trying to get at.

Mr. GRAY. That is right.

Senator BYRD. Who made that decision?

Mr. GRAY. I made this decision with Assistant Attorney General Henry Petersen to interview John Ehrlichman.

Senator BYRD. But you made the decision yourself?

Mr. GRAY. Yes; but I consulted Henry Petersen. I did not do it without his consultation.

Senator BYRD. Did the FBI consult at any time with the Justice Department as to how the FBI should proceed in the case?

Mr. GRAY. Yes, sir; because we are working hand in glove with the case agents working at the assistant U.S. attorney level and the Bureau supervisors working at the Criminal Division level and, yes, there were conferences.

Senator BYRD. Who were the contacts between Justice and the FBI?

Mr. GRAY. The Criminal Division and the Bureau supervisors in the General Investigative Division and me talking with the Assistant Attorney General of the Criminal Division and with the Attorney General and my No. 2 man doing the same thing, the acting associate director. You know, we work together and we telephone and we talk back and forth.

Senator BYRD. Did you consult with Mr. Kleindienst, the Attorney General himself?

Mr. GRAY. I did not consult with him in the sense that I asked him for directions or guidance or orders. I pushed the FBI button and said go, give it a full court press, and they know exactly what to do, Senator, and he put no restrictions, no limitations on me. I testified this morning a couple of times that if any of the senior officials of the FBI were called before this committee or the Ervin select committee, and asked whether any restrictions or limitations were placed upon them, they would say, no.

Senator BYRD. Did any FBI agent on the case feel there were leads which should be pursued and which were necessary in the case but which you or the Justice Department told them not to pursue?

Mr. GRAY. If they did I do not know about it. I do not mean to say that they did not feel that. Some of the people might have felt that, but they did not report them up to me and say, "Hey, why are we not doing this?"

Senator BYRD. So, the committee is to understand that no agent at any time wished to pursue any lead which was turned down by you or by the Justice Department?

Mr. GRAY. I can recollect none. But before I answer under oath so categorically, I would want to check because that is a pretty broad question. I testified earlier this morning that there were instances in which I stopped the investigation for a couple of days until I could get something clarified with regard to particular people, I think it was in response to questions from Senator Hart involving the Central Intelligence Agency, and then I said go. I turned on the green light.

Senator BYRD. FBI agents were not then really free to follow leads, were they?

Mr. GRAY. They certainly were free to follow any lead they wanted to follow that involved a criminal violation of the statutes of the United States in which we have jurisdiction.

Senator BYRD. But when it came to higher-ups in the White House were they to follow leads?

Mr. GRAY. I know of no restrictions that were placed upon them but the agents know, Senator, just as operating practice—and any President, I feel sure, would want to be accorded the same treatment by his subordinates—when you get that close, let us be real sure that we want to go there, you know, because this is going to become news right away that we are interviewing this fellow. This is just a fact of life and I think the real fact of life is that we interviewed, because we thought we had to.

Senator BYRD. So when clearance was sought the green light was given?

Mr. GRAY. That is right.

Senator BYRD. In every instance?

Mr. GRAY. I am not going to answer that question that categorically because there may be some instance, even in my intensive review of this case and my participation in it, where I could make an error and I would rather reserve the answer to that so I can check it and give a statement for the record, Senator Byrd.

(Mr. Gray subsequently submitted the following document for the record:)

After checking the matter, I have been informed there were no leads the Agents wanted to follow which they were not permitted to do.

Senator BYRD. Did Mr. Kunkel ever ask to interview any party and—

Mr. GRAY. Are you referring to Mr. Colson by any chance, Senator? I do not know. If you can tell me the name of the person you are talking about.

Senator BYRD. Mr. Kunkel, you referred to the name earlier.

Mr. GRAY. Yes, sir; he was the SAC in charge of the Washington field office.

Senator BYRD. Did he at any time suggest any party be interviewed, which suggestion was turned down?

Mr. GRAY. I do not recall any such but I will check the record again and furnish an answer to that question on the basis of the full record after careful examination.

(Mr. Gray subsequently submitted the following document for the record:)

After checking the record I find my recollection was correct and that no interviews suggested by SAC Kunkel were turned down.

Senator BYRD. Have any FBI officials associated with the investigation of the Watergate inquiry since been transferred out of Washington?

Mr. GRAY. Yes, sir; they have and I would like to give the reasons for the transfer. The assistant director in charge of the General Investigative Division, Mr. Charles W. Bates, came to me and asked if he could return to San Francisco as SAC when he found that position was being vacated. He came to me and made that personal request and I said, yes; he could. I certainly considered that many people would understand, would interpret this to be Gray transferring somebody out of Washington who had a role in the Watergate. In fact, Charlie Bates and I discussed it and I said, "Charlie, the heck with it. There is nothing involved in this, you want to go to San Francisco, I agree."

SAC Kunkel, who was special agent in charge of the Washington field office, was transferred to St. Louis for another reason and I would rather not disclose it.

Senator BYRD. Would you disclose it to the committee?

Mr. GRAY. Oh, I will disclose it to the committee, absolutely, and in copious detail, but it involves a personal and disciplinary matter and I do not want to air it.

Senator BYRD. Was anyone else transferred?

Mr. GRAY. Well, there are lots of people transferred, Senator, and I will supply to the committee a full record of all transfers since, of key officials, SAC's and above, since I have been Acting Director of the FBI.

Senator BYRD. No; I am talking about FBI officials associated with the direction of the Watergate incident.

Mr. GRAY. With the Watergate, oh, I see.

Senator BYRD. You mentioned Mr. Kunkel, and you have mentioned Mr. Bates.

Mr. GRAY. Right. Henry Shultz, who was the inspector's No. 1 man, who is now a SAC in New York, the special agent in charge of General Crime Division, but once again, that is a promotion for him. He was transferred first to the Inspection Division, which is a lateral promotion in the FBI, and then transferred to New York.

There was a resignation, you know, one of the men resigned because he thought that under my new policy of exchanging officials between the field and headquarters he was going to go next to the field, so I am told, and this is hearsay and I would not like to—I will reveal to the committee this man's name and give the committee the full details and circumstances but, with regard to his privacy, I would not like to spell it out here on the public record.

Senator BYRD. Was there anyone else associated with the direction of the Watergate inquiry who has since been transferred out of Washington?

Mr. GRAY. I do not know but I will furnish for the record the exact information that you want, Senator Byrd. I cannot recall any others.

Senator BYRD. Was Mr. Charles Bolz?

Mr. GRAY. No; he was not transferred.

Senator BYRD. I beg your pardon?

Mr. GRAY. He was not transferred. He was the man I was referring to, since you raised his name. He is the man I was referring to who, under my new policy of top people going from headquarters to field and field to headquarters, submitted his resignation and went over to HUD. I think if Mr. Bolz were called before this committee probably he would state under oath there was no problem at all with Watergate.

Senator BYRD. Was he associated directly with Watergate?

Mr. GRAY. Yes, sir; he was.

Senator BYRD. What agency is he now with?

Mr. GRAY. He is with HUD, I think, but I am not sure.

(Mr. GRAY subsequently submitted the following document for the record:)

I have stated in response to a question by Senator Byrd that I would furnish for the record the names of anyone associated with the direction of the Watergate inquiry who has since been transferred out of Washington. I have mentioned Charles W. Bates, Robert G. Kunkel, Henry A. Schutz, Jr., and Charles Bolz. On checking the record I find that Mr. Schutz had no connection with the case. However, there is one other individual who participated in the direction of the Watergate inquiry for a short period of time at FBI Headquarters and who is now assigned to our Boston Office, SA Charles T. Gillespie. Mr. Gillespie at the time was a Supervisory Special Agent in the General Investigative Division. He was Number 1 Man to Mr. Bolz. Prior to the Watergate matter, Mr. Gillespie expressed a desire to return to investigative work in the field. I approved his transfer to the Boston Office on June 20, 1972, however, he did not report there until July 18, 1972. The Watergate inquiry had no bearing on his transfer.

To summarize information previously set forth, Mr. Charles W. Bates, then Assistant Director, General Investigative Division, at his own request was transferred to our San Francisco Office as SAC arriving there November 17, 1972. The Watergate inquiry had no bearing on his transfer. Mr. Robert G. Kunkel, then SAC of the Washington Field Office, as a result of a matter entirely unrelated to the Watergate inquiry, was transferred as SAC of the St. Louis Office arriving there October 26, 1972. Mr. Charles Bolz, then Chief, Accounting and Fraud Section, General Investigative Division, by letter dated December 6, 1972, submitted his resignation to be effective close of business December 23, 1972, indicating he desired to remain in the Washington area which he realized presented a conflict with his obligation to be available for any and all assignments. For personal reasons he felt bound to accept another position which would permit him to remain in the Washington area. The Watergate inquiry had no bearing on his resignation.

There were no other individuals transferred from the Washington area who participated in the direction of the Watergate inquiry.

Senator BYRD. When were you first aware of the identity of the five defendants of the Watergate affair?

Mr. GRAY. I do not know. I will have to look in the teletype or in a summary and furnish that information for the record. That is so specific a question I just cannot answer it.

Senator BYRD. How were you made aware of their identity?

Mr. GRAY. I will have to furnish that for the record, too.

(Mr. Gray subsequently submitted the following document for the record:)

From a review of the records, I find that about 12:30 pm, Pacific Daylight Time, June 17, 1972, the Special Agent in Charge of the Los Angeles Office briefed me concerning the early facts which were then known. The names of the individuals involved at that time were later found to be aliases. The information which was furnished to me at that time dealt with the arrests of the subjects at the Watergate, very sketchy information about materials they were in possession of and the fact that the FBI was conducting investigation of this situation. At about 3:11 pm, Pacific Daylight Time, June 17, the Los Angeles Office briefed me in more detail. That briefing was to the effect that the Watergate security guard had found tape around two door locks, he believed a burglary was in progress, he called the police who apprehended five subjects in the Democratic Headquarters. The true identity of Barker, Gonzalez, Martinez and Fiorini was then known, but McCord had not yet been identified as the true name of the individual who when apprehended gave the name Edward Martin. That briefing gave information about the material which the subjects had in their possession such as lockpicking devices, surgical gloves, camera equipment, transceivers and a bugging device.

I was informed that search warrants were being issued for hotel rooms used by the subjects and for the vehicle they were known to be using. I was informed that attorney Michael Douglas Caddy gratuitously appeared at the Metropolitan Police Department, Second District Headquarters, and stated he was representing the subjects who were in custody although the subjects had not previously made a telephone call to contact him or anyone else after they were in custody. I was also informed that all of the subjects refused to be interviewed or to state where they came from, for whom they worked or their purposes for being in the building. I was advised they had a substantial quantity of brand new \$100 bills in their possession and that further investigation by the FBI was going forward. At about 3:45 pm, FBIHQ called the Los Angeles Office to advise the identity of McCord and this was relayed to me by the Los Angeles Office shortly thereafter.

Senator BYRD. Were you——

Mr. GRAY. I believe it was in one of those telephone calls when the names were given to me but I am going to have to check. I have the phone calls all listed here and I just do not have all of the details behind each phone call listed.

Senator BYRD. Were you aware that one of the defendants was a former FBI agent and CIA employee and was the salaried security coordinator to the Republican Committee, and the Committee to Re-Elect the President?

Mr. GRAY. The information I received is June 17, 3:45 Pacific Daylight Time, to the effect that McCord—this was about the fifth or sixth phone call—McCord having been identified as an ex-FBI agent and security officer for the Committee to Re-Elect the President.

Senator BYRD. Did you know Mr. McCord?

Mr. GRAY. No, sir; I did not.

Senator BYRD. Had you ever heard of him previous to that?

Mr. GRAY. No, sir; I had not.

Senator BYRD. During the Watergate trial it was reportedly alleged that Mr. James McCord, Jr., was "plugged" in to the FBI. Can you tell us how Mr. McCord was plugged in to the FBI?

Mr. GRAY. No, sir. Mr. James McCord, Jr.? Is that the same man?

Senator BYRD. Yes.

Mr. GRAY. No; I do not know how he was plugged in to the FBI and I do not know that he was.

Senator BYRD. This was reportedly alleged during the trial. Has anyone in the FBI been asked to check on this?

Mr. GRAY. No, sir; but we will sure check on it and submit an answer to the committee. It is the first I have heard of it.

Senator BYRD. I hear it through the press, as I say. I should think it would be important for the FBI to check this out.

Mr. GRAY. It is and we will submit the information we find to the Committee, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Upon checking, Senator, I find that Mr. McCord was an FBI Agent from October 25, 1948, until he voluntarily resigned to enter private business February 18, 1951. We did not uncover any information, prior to, during, or after the Watergate investigation to the effect that McCord received classified information from or was "plugged into" the FBI.

Senator BYRD. Mr. Robert Houston, one of McCord's assistants to the Nixon Committee, in describing his duties under McCord said "Part of my instructions were to receive and record instructions from outside police forces. The information I got came from the FBI." Can you tell me what information was turned over to Houston or McCord or anybody else?

Mr. GRAY. I do not believe any information was turned over to anybody. Are you talking prior to Watergate?

Senator BYRD. I am talking with reference to the Watergate.

Mr. GRAY. That he got information from the Federal Bureau of Investigation regarding the Watergate incident and the conduct of the investigation?

Senator BYRD. I am quoting him, "Part of my instructions were to receive instructions from McCord", I assume "were to receive and record information from outside police forces. The information I got came the FBI." This may not have been—

Mr. GRAY. I do not think he was, Senator. What I think they are talking about is some of their intelligence information with regard to demonstrations and harassment and the rest of the things that we are talking about, because I know of no information that we furnished to a Mr. Houston. I know who Houston is because of the investigation but once again, we will, if you will tell me from where you are citing that statement, we will check it out and run it down and give you a full report. I will give the committee a report.

Senator BYRD. Well, even so, even so, if Mr. Houston was receiving information from the FBI, I think the committee ought to know what information was turned over to him.

Mr. GRAY. I do not think Mr. Houston was. That is my testimony right now. What I am saying to you is if he was we will find out about it and we will give you a report to the committee.

(Mr. Gray subsequently submitted the following document for the record:)

After checking our records, Senator, I find that to our knowledge no information was given to Mr. Houston.

Senator BYRD. Did you personally know or have contact with anyone at the Committee for the Reelection of the President?

Mr. GRAY. No, sir. I know people there, but I had no contact with them.

Senator BYRD. Did you have contact with anyone employed by the Committee for the Reelection of the President?

Mr. GRAY. Contact when or where or for what purpose?

Senator BYRD. At any time.

Mr. GRAY. No; I had nothing to do with that committee.

Senator BYRD. You had no contact with any employee of that committee?

Mr. GRAY. No. Except during the conduct of this investigation, the FBI did; we interviewed those people. But I had no personal contact. I had no telephone calls. I had no letters. I had no visits.

Senator BYRD. Irrespective of the Watergate investigation, did you have any contacts?

Mr. GRAY. No.

Senator BYRD. Did you know anyone on the committee? Did you know anyone on the committee staff? Did you ever have any contact with them?

Mr. GRAY. Sure; I knew those people—sure. I knew Bob Mardian and John Mitchell and Fred LaRue; I came to know those people after I came to Washington and after 1969. I did not know them before that.

Senator BYRD. When did you first learn of Mr. Liddy's involvement in the Watergate break-in?

Mr. GRAY. I will have to give you the exact information because I did not provide myself with that kind of detailed information today and I will have to submit it. It probably came to me under an alias first and then probably came to me with his true name as we developed it. I know I have the names of the people who were arrested but those, as we know, were aliases as we later found out. But I will have to find the exact time that George Gordon Liddy's name was delivered to me, Senator.

Senator BYRD. And from whom.

Mr. GRAY. And from whom; yes.

(Mr. Gray subsequently submitted the following document for the record:)

I find, Senator Byrd, upon checking the records, that on June 18, 1972, we first learned that one George Leonard, later identified as George Gordon Liddy, was registered at the Watergate Hotel with the group which was arrested at the Democratic Committee Headquarters. Extensive efforts, of course, were made to endeavor to identify Leonard. On June 28, 1972, Assistant Director Bates directed a memorandum to Acting Associate Director Felt which stated that at 12:50 P.M. that date, SAC Kunkel had called to advise that in tracing telephone calls of Martinez and Barker, one of the numbers called at the Committee to Reelect the President was that of a Mr. Gordon Liddy. Our Agents attempted to interview Liddy that day and he refused to be interviewed. Subsequently, on 7/3/72, Liddy's photograph was positively identified as being the individual known as George Leonard.

Senator BYRD. Were you aware that Mr. Liddy was a former FBI agent and that he was finance counsel for the Committee to Re-Elect the President at the time of the Watergate break-in?

Mr. GRAY. No; I was not. I did not even know Mr. Liddy.

Senator BYRD. You did not know him personally?

Mr. GRAY. No, sir; I did not.

Senator BYRD. Even through the Committee to Re-elect the President?

Mr. GRAY. No, sir; I did not.

Senator BYRD. You indicated earlier today that the President had suggested to Mrs. Gray she not work for the Committee for the Re-Election of the President.

Mr. GRAY. Yes, sir. She was going to go down there as a volunteer, a lot of ladies were volunteering to do work for the Committee to Re-Elect the President, and she said to the President when we came back from Mr. Hoover's funeral, "Pat has told me I must never ask questions of the President but I want to know if it would be all right for me to volunteer to work for the Committee to Re-Elect the President." And he said, "No, you must not, you cannot do that," and she did not.

Senator BYRD. Had she previously worked for the committee?

Mr. GRAY. No sir.

Senator BYRD. When did you first become aware of Mr. Howard Hunt's role in the case?

Mr. GRAY. I think it may have been when I read the teletypes regarding his investigation, regarding the fact that we interviewed him that Saturday evening, the 17th, but I will have to once again go to the record and provide you with the exact information, Senator.

Senator BYRD. And indicate——

Mr. GRAY. From whom.

Senator BYRD (continuing). From whom the information came.

(Mr. Gray subsequently submitted the following document for the record:)

After checking the records, I find the FBI first became aware of Mr. Hunt's involvement in this case during the search conducted on the afternoon of June 17, 1972, of the two rooms at the Watergate which were rented by the arrested men. During that search an envelope containing a country club bill of Mr. Hunt's was found. Also located during this search was an address book which belonged to Bernard Barker and contained the letters "H.H. W. House," beside which letters was telephone number 202-456-2282.

A check of the field office indices showed we had previously conducted a Special Inquiry investigation on Hunt in 1971 at which time he was being considered for a job as Consultant to the White House. Subsequent contact was made with Mr. Butterfield at the White House between 6:00 and 7:00 pm, June 17, 1972, and he indicated Mr. Hunt had previously worked as a White House consultant, but Mr. Butterfield did not believe he was then employed by the White House.

Senator, it is my recollection that I personally was advised of Mr. Hunt's involvement in this case by my associate, W. Mark Felt, who telephoned me on June 18, 1972.

Senator BYRD. Were you aware that Mr. Hunt had been a consultant to the White House?

Mr. GRAY. Not until the investigative reports began coming across my desk. I did not know Howard Hunt.

Senator BYRD. Were you aware that he had worked for Mr. Charles Colson?

Mr. GRAY. No, sir; I was not.

Senator BYRD. Did you know Mr. Hunt personally?

Mr. GRAY. No, sir.

Senator BYRD. Did the FBI question Mr. Hunt?

Mr. GRAY. Yes, sir; we interviewed him that evening and he did not do very much talking. As I recall, the interview report said that he wanted to consult an attorney.

Senator BYRD. Were you aware that Mr. Colson sent Howard Hunt to Denver last March to interview the ITT lobbyist, Dita Beard?

Mr. GRAY. I was not, no, sir; I was not until the investigation, this Watergate investigation, developed and we found it out through that. I believe we found it out through that. I may be misspeaking myself and I had better check the record on that before I get on with that one.

(Mr. Gray subsequently submitted the following document for the record:)

After checking our records, Senator, I find that Mr. Colson was interviewed by Washington Field Office on June 22, June 26, August 29 and August 30, 1972. Concerning Howard Hunt's travel and reimbursement for travel expenses, he said on August 29, 1972, he was aware that Mr. Hunt traveled on a frequent basis, but that there were only two trips that Mr. Hunt made which were authorized by Mr. Colson. He assumed the other trips were on behalf of some other person. With respect to the trips that Mr. Colson authorized, one was to Denver, Colorado, in March, 1972, in connection with the "ITT case." Mr. Colson did not state what was learned by Mr. Hunt on this trip and the matter was not pursued by our Special Agents since there was no relationship between that trip and the Watergate matter and we were not investigating ITT.

Senator BYRD. Were you the decisionmaker with regard to the information that would be supplied to the Judiciary Committee during the hearings on the nomination of Mr. Kleindienst?

Mr. GRAY. No, sir; I was not the decisionmaker until there came an exchange here when it was thought that Mr. Kleindienst ought to take himself out of the position of making those decisions. I do not remember exactly when that was. I would have to go back to the record but there did come a time when I, as Deputy Attorney General Designate, made those decisions on the basis of the rules and regulations of the Department and on the advice that I received from the Antitrust Division.

Senator BYRD. You do not recall the date?

Mr. GRAY. I do not recall the date; no, sir.

Senator BYRD. Will you supply that for the record?

Mr. GRAY. Oh, yes, sir; we will do that. We will have to check the record of testimony of the ITT hearings.

(Mr. Gray subsequently submitted the following documents for the record:)

Mr. GRAY. Upon checking the record I find that I started making the decisions regarding the furnishing of information to the Judiciary Committee during the hearings on the nomination of Mr. Kleindienst on either March 9 or 10, 1972. That is as precise as I can be. My first letter to the Chairman of the Judiciary Committee in which certain information was furnished and other information was withheld is dated March 17, 1972. This letter and letters from me dated March 23 and 24, 1972 addressed to James F. Flug, April 4, 1972 to Mr. Flug, two letters of April 7, 1972 addressed to Senator James O. Eastland, letter of April 11, 1972 and letter of April 28, 1972, with enclosures addressed to Senator Eastland, are provided for insertion in the record.

MARCH 17, 1972.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On Monday evening, March 13, Mr. John Holloman, Committee Chief Counsel, delivered to the Department a document entitled "List of Documents Requested for Senate Judiciary Hearing as of March 13, 1972." I am forwarding some of the documents on that list. Other documents on the list do not exist or cannot be found. Some have already been supplied to the Committee. Finally, the Department of Justice declines to supply some of the documents requested for the reasons stated below.

Following is an item-by-item response to the list:

Item No. 1.—Copy of the Attorney General Memorandum in the Canteen case, dated April 7, 1969.

Attached.

We request that this document be available for inspection by Senators only, that no copies be made and that it be returned to the Department of Justice at the conclusion of these hearings.

Item No. 2.—Xerox of any notes, buck slips, and memoranda showing background behind filing of applications to delay submission of jurisdictional statement in *Grinnell* case in Supreme Court.

None.

Item No. 3.—Xerox of any notes, buck slips, and memoranda relating to selection and/or appointment of Richard Ramsden as consultant, especially the conflict of interest form required by Executive Order.

None.

Item No. 4.—Xerox of any memoranda reflecting receipt of Bruce McLauray oral opinion on ITT arguments.

None.

Item No. 5.—Copy of the original of a letter dated Sept. 21, 1971 from Mr. Reuben B. Robertson III to Deputy Attorney General Kleindienst.

Attached.

Item No. 6.—Xerox of the copy of the Robertson letter that Robertson sent to McLaren.

Attached.

Item No. 7.—Xerox of any notes, buck slips, and memoranda showing background behind Sept. 22, 1971 reply from McLaren to Robertson.

None in addition to the documents we have already produced.

Item No. 8.—Copy of the file copy of a letter dated Sept. 22, 1971 from Assistant Attorney General Richard W. McLaren to Mr. Reuben B. Robertson III in response to a Sept. 21, 1971 letter from Mr. Robertson to the Deputy Attorney General.

Attached.

Item No. 9.—Copy of the original of a memorandum dated April 9, 1969 from Assistant Attorney General Richard W. McLaren to the Deputy Attorney General, re "ITT-Canteen."

Attached.

Item No. 10.—Copy of the original of the memorandum dated October 13, 1970 from Assistant Attorney General Richard W. McLaren to the Deputy Attorney General.

We are unable to locate the original memorandum. A better copy of the file copy of this memorandum is attached.

Item No. 12.—Copy of the file copy of a letter dated Jan. 27, 1969 to Mr. Harold S. Geneen from Robert A. Hammond III, Acting Assistant Attorney General, Antitrust Division, by John W. Poole, Jr., Attorney, Antitrust Division.

Attached.

Item No. 13.—Xerox of complete "original" of letter from Frank DeMarco to Henry Peterson.

Previously supplied to Committee.

Item No. 14.—Xerox of "file copy" of letter from Henry Peterson, by John Keeney, to Frank DeMarco.

Previously supplied to Committee.

Item No. 15.—Any notes, buck slips, and memoranda showing background of Peterson letter to DeMarco.

None.

Item No. 16.—Xerox of any copies of Walsh letter to Kleindienst, other than "original."

None.

Item No. 17.—Chronology of ITT filings requested by Senator Burdick.

We are providing a copy of the docket entries maintained by the Department in the ITT cases.

Item No. 18.—All Ramsden filings with the Commerce Department.

In process of obtaining for review and determination.

Item No. 19.—Any written instructions to Ramsden, etc.

None.

Item No. 20.—Any memoranda or other material reflecting or relating to Ramsden report on LTV case.

None.

We are withholding the remaining items requested on the basis that they include confidential summaries, investigative reports and intradepartmental communications. If such materials are released, it would severely inhibit obtaining confidential

information and exchange of ideas and recommendations necessary to effectively carry out the law enforcement policy of the Department of Justice and the Federal government. This action is being taken pursuant to the long standing policy of the Department not to produce documents of this character unless it is shown to be in the compelling public interest. In this regard we wish to reiterate Mr. Kleindienst's prior statement. "There is nothing in the material that we have withheld from you that would tend to prove or have any relevant bearing upon the charge that there was any connection whatsoever between the settlement of the ITT antitrust cases and any payment by the ITT Corporation to the City of San Diego in connection with the Republican Convention. I will make that avowal under oath before you and this Committee and the public."

Sincerely,

L. PATRICK GRAY III,
*Assistant Attorney General, Civil Division,
and Deputy Attorney General Designate.*

MARCH 24, 1972.

JAMES F. FLUG, Esq.,

Chief Counsel, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR JIM: Yesterday at approximately 3:00 p.m., we received the latest request from the offices of Senators Hart, Kennedy, Bayh, Burdick, and Tunney for the production of documents.

This request was not contained in a letter from the Chairman of the Judiciary Committee of the United States Senate requesting that these documents be provided for the use of the Committee.

Upon receipt of such a letter, identifying the documents with specificity, we shall respond as quickly as may be practicable.

Sincerely,

L. PATRICK GRAY III,
*Assistant Attorney General,
and Deputy Attorney General-Designate.*

DEPARTMENT OF JUSTICE,
Washington, March 23, 1972.

JAMES F. FLUG, Esq.,

Chief Counsel, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR JIM: In accordance with our telephone conversation this morning, I am setting forth my understanding of our previous verbal agreement relative to inquiries to be made by staff members in behalf of Senators who are members of the Judiciary Committee of the United States Senate, in connection with the current hearing involving the settlement of the ITT antitrust case and the materiality of such settlement to the confirmation of Richard Gordon Kleindienst to be Attorney General of the United States.

(a) All such inquiries are to be directly related to and material to the charge that the ITT antitrust cases were settled in return for an agreement on the part of ITT to contribute a sum of money to the City of San Diego in support of its bid to host the Republican National Convention in the City of San Diego, California.

(b) Such inquiries requesting the production of documents in possession of the Department of Justice should be contained in a letter request from the Chairman of the Judiciary Committee addressed to me, stating with specificity the documents desired. The Department will respond as quickly as may be practicable under the circumstances, and will either produce the document requested, or state its reason for not producing such document.

(c) Such inquiries involving an interview with an attorney or an employee of the Department of Justice will be handled in the following manner:

1. I will not instruct an attorney or employee of the Department either to consent to the interview or refuse the interview. The granting of the interview is a choice that the attorney or employee is free to make unaided by any instructions from me.

2. I will be informed, prior to the interview, of the name of the attorney or employee to be interviewed.

3. The Assistant Attorney General of the division or office in which the attorney or employee is employed, or his designee, will be present at such interview.

You have requested my assurances that there will be no recriminations against an attorney or employee of the Department who consents to an interview in accordance with subparagraph (c) above. You have my assurance that there will be no disciplinary or dismissal action taken against any attorney or employee as the result of the granting of such an interview unless it shall become apparent therefrom, or from information acquired independently, that such attorney or employee has violated laws, orders, regulations, or ethics applicable to the conduct of employees of the Department of Justice.

The Department desires to cooperate fully and to the extent permissible under the applicable laws, orders and regulations, and constitutional principles governing the conduct of the business of the Executive Branch of the Government.

Sincerely,

L. PATRICK GRAY III,
*Assistant Attorney General
and Deputy Attorney General-Designate.*

APRIL 4, 1972.

JAMES F. FLUG, Esq.,
Chief Counsel, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR JIM: This is in response to your letters of April 3, 1972.

In a telephone conversation with you in the afternoon of March 23, 1972, following your receipt of my letter of March 23, 1972, neither you nor I agreed that the letter was "totally incorrect."

In that conversation, I stated to you that I intended to distribute my letter of March 23, 1972 to each Assistant Attorney General and the three Associate Deputy Attorneys General, and I also said that distribution may have already occurred. I assured you that I would recall the letter since you and I apparently did not have a clear understanding of one provision of that letter regarding the procedure to be followed in your conduct of interviews with certain Department employees. Immediately upon the conclusion of my conversation with you, I checked with my secretary regarding distribution. All copies were in my safe with the exception of one. No others had been distributed at that moment and no distribution has occurred since that time.

I told you I had sent one copy to Senator Eastland. I also told you that I would see the Senator the next day and tell him that you did not agree with each provision of my letter of March 23, 1972. I did see him and I did tell him.

If your informant will advise you of the copy of the letter alleged to be in circulation, I will recall that one unless it happens to be the one delivered to Senator Eastland. On March 24, 1972, Messrs. Wilson and Woodard were advised that you and I were not in agreement and regular Department policies were to be followed.

This misunderstanding reflected in our correspondence and conversations to date is evidence of the reason underlying my strong desire to conduct our business in accord with the well defined policies of the Department. My letter of March 24, 1972 merely reiterates Department policy.

Sincerely,

L. PATRICK GRAY III,
*Assistant Attorney General,
and Deputy Attorney General-Designate.*

APRIL 7, 1972.

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: On March 23, 1972, at approximately 3:00 p.m., I received a list setting forth documentary materials desired by the offices of Senators Hart, Kennedy, Bayh, Burdick and Tunney from the files of the Department. There was no indication thereon that the list constituted a Committee request.

On March 24, 1972, I addressed a letter to James Flug, Esq. of Senator Kennedy's staff stating that Department policy required that such requests be made in writing over the signature of the Chairman of the Committee. A copy of my letter is attached.

On April 6, 1972, at approximately 5:00 p.m., I was informed that the Committee desired to have the documentary materials delivered to the Committee not later than 10:30 a.m., April 7, 1972.

Included on the list which I received at approximately 3:00 p.m., March 23, 1972, are repeat requests for copies of documents previously furnished to the Committee in response to a direct request from you. These are described on the March 23, 1972 list in the following manner:

A. See Item No. 8 in Gray's March 17 letter to the Chairman. Notwithstanding Gray's assertion that the requested document was "attached", a xerox of the "file"⁷ copy was *not* attached. The only thing that was attached was a xerox of some other copy. We want a xerox of the "file" copy, also known as the "records" copy. It's the copy which is specifically earmarked for the Department's record or file and customarily contains the initials of all reviewers.

B. See Item No. 10 in Gray's March 17 letter to the Chairman. In view of the fact that the Department is "unable to locate the original memorandum" from McLaren to the Deputy Attorney General, we need xerox copies of all cards and/or mail slips and/or log records maintained by the office of Messrs. McLaren and Kleindienst, and/or any other Justice Department offices including mail rooms, which would reflect which offices received, transmitted, and/or were addressees or transmittees of the original memorandum.

C. See Item No. 12 in Gray's March 17 letter to the Chairman. Notwithstanding Gray's assertion that the requested document was "attached", a xerox of the "file" copy was *not* attached. The only thing that was attached was a xerox of Mahaffie's copy. We want a xerox of the "file" copy, also known as the "records" copy. It's the copy which is specifically earmarked for the Department's record or file and customarily contains the initials of all reviewers.

D. See Item No. 13 in Gray's March 17 letter to the Chairman. Notwithstanding Gray's assertion that the requested document was "previously supplied to Committee", the Committee staff says they have not seen it. We have received a xerox of the "original", but it appears to be incomplete in view of the excision marking which appears near the upper right-hand corner. We want a xerox of the *complete* "original."

E. See Item No. 14 in Gray's March 17 letter to the Chairman. Notwithstanding Gray's assertion that the requested document was "previously supplied to Committee," the Committee staff says they have not seen it. We have received a xerox of the "original", which presumably came from DeMarco's files, but we need a xerox of the "file" copy, also known as the "records" copy, from the Department's files. It's the copy which is specifically earmarked for the Department's records or file and customarily contains the initials of all reviewers.

H. See Item No. 18 in Gray's March 17 letter to the Chairman reflecting that the requested documents were in the process of being obtained.

I. See last paragraph of Gray's March 17 letter to the Chairman refusing to provide (1) the ITT settlement file and (2) the Department's file on "Coldwell, Banker". The request for these files is reasserted with respect to all documents, or portions thereof regarding which the President has not invoked or is not prepared to invoke Executive Privilege. Each document, or portion thereof, not provided should be itemized with a description of its nature, contents, author, addressee, and date.

In view of the fact that copies of some of these documents have previously been provided to the Committee in response to a direct request from you, I am pleased to make the following report:

A. No copy was made for or sent to Department "Files" or "Records."

B. The original has been located and is enclosed. It is requested that a copy be made and the original be returned to me.

C. We cannot locate a "File" or "Records" copy.

D. A xerox copy made from the original is enclosed. The original has been returned to the Department of Justice files, and we are currently searching the files to obtain the original. When we have the original in hand, it will be forwarded.

E. A xerox copy made from the original is enclosed. The original has been returned to the Department of Justice files, and we are currently searching the files to obtain the original. When we have the original in hand, it will be forwarded.

H. Delivered with Department of Commerce letter of March 23, 1972 to the Chairman.

I. We are withholding the documents requested on the basis that they include confidential summaries, investigative reports and intradepartmental communications. If such materials are released, it would severely inhibit obtaining confidential information and exchange of ideas and recommendations necessary to effectively carry out the law enforcement policy of the Department of Justice and the Federal Government. This action is being taken pursuant to the longstanding policy of the Department not to produce documents of this character unless it is shown to be in the compelling public interest.

Within seventy-two (72) hours after receipt of a request in writing over your signature for documentary materials from the files of the Department of Justice for the use of the Committee, a reply will be dispatched to you.

With my best wishes and warm respect.

Sincerely,

L. PATRICK GRAY III,
Assistant Attorney General,
and Deputy Attorney General-Designate.

Enclosures.

APRIL 7, 1972.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the statement made in my letter of April 7, 1972 to you, there are enclosed originals of documentary materials referred to in Items D and E on page 3 of my letter to you. It is requested that copies be made and the originals be returned to me.

With my best wishes and warm respect.

Sincerely,

L. PATRICK GRAY III,
Assistant Attorney General,
and Deputy Attorney General-Designate.

Enclosures.

APRIL 11, 1972.

Re request for documents involving U.S. Attorney Harry Steward of San Diego, Calif.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On Friday afternoon of last week, you caused to be delivered to me a list setting forth seven documents requested by Senator Tunney. You requested that these documents be made available to the Committee.

As you know, it is not the policy of the Department of Justice to release reports of investigations conducted by the Federal Bureau of Investigation. The first five items on the list of documents are constituent parts of the final report of an investigation conducted by the Federal Bureau of Investigation and may not be made available.

Items 6 and 7 on the list of documents relate to internal Justice Department memoranda involving the subject matter of the foregoing final report of investigation conducted by the Federal Bureau of Investigation and may not be made available.

It is my understanding that you have requested that Honorable Henry E. Petersen, Assistant Attorney General, Criminal Division, appear as a witness, and that Mr. Petersen will appear and testify before the Committee. I believe that the testimony of Mr. Petersen will constitute a summary of the final report of the investigation conducted by the Federal Bureau of Investigation.

With my best wishes and warm respect.

Sincerely,

L. PATRICK GRAY III,
Assistant Attorney General,
and Deputy Attorney General-Designate.

APRIL 28, 1972.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the proceedings before the Committee on April 27, statements were made concerning our failure to supply certain materials to the Committee. These materials are the items listed under "Additional Materials Requested" in the list originally supplied to me on March 23, 1972.

In my letter of April 7, 1972, the concluding paragraph was as follows:

"Within seventy-two (72) hours after receipt of a request in writing over your signature for documentary materials from the files of the Department of Justice for the use of the Committee, a reply will be dispatched to you."

We have not received such a request.

Nevertheless, in view of the request made during the hearings on the afternoon of April 27, 1972, I am pleased to respond to the request for each of those items listed under "Additional Materials Requested" in the list of March 23, 1972 as follows:

J. No such steps have been taken. It has been a policy of this Department to predicate the initiation of any investigation and prosecution of allegations of criminal misconduct made before a Congressional Committee upon a referral of such Committee to this Department with references to particular instances of the alleged misconduct and requests for prosecutive consideration of those instances. This policy has been found necessary in order for this Department to take full advantage for prosecutive purposes of the evidence and knowledge developed by the Committee establishing the particular facts or circumstances in issue. Moreover, we would not want to take such action without the full knowledge, approval, and official sanction of the Committee. No instance readily comes to mind in which the Department independently examined allegations of criminal misconduct without prior referral by the Congressional Committee before whom the testimony was taken.

K. None. See response to item J.

L. We respectfully decline to respond to the request for these items for the reason that it inquires into the basis and background of advice and opinions concerning Department and Administration policy. Disclosure of such materials would make it difficult in the future to obtain the necessary exchange of ideas and thoughts so essential to the proper development of policy.

M. See response to item L.

N. See response to item L.

O. See response to item L.

P. There are no such reports transmitted to the Attorney General and were no such reports transmitted relating to the ITT cases.

Q. There are no such reports transmitted to the Deputy Attorney General and were no such reports transmitted relating to the ITT cases.

R. There are none, as indicated in the responses to items P and Q.

S. A xerox copy made from the original is enclosed. It should be noted that these lists do not necessarily include all visitors to the Department. The lists are maintained by receptionists at two of the entrances. Persons having some form of identification as Federal Government employees and persons accompanying the Attorney General and Deputy Attorney General are not required to sign the list.

T. As indicated to you in my letters of March 17 and April 7, 1972, we are withholding the documents requested on the basis that they include confidential summaries, investigative reports and intra-departmental communications. If such materials are released, it would severely inhibit obtaining confidential information and exchange of ideas and recommendations necessary to effectively carry out the law enforcement policy of the Department of Justice and the Federal Government. This action is being taken pursuant to the long standing policy of the Department not to produce documents of this character unless it is shown to be in the compelling public interest.

U. This list was requested some time before the testimony of Honorable Henry E. Petersen, Assistant Attorney General, Criminal Division. As you know, Mr. Petersen's testimony covered this matter in great detail and constituted in effect a summary of the final report of the investigation conducted by the Federal Bureau of Investigation. As I previously indicated to you in my letter of April 11, it is not the policy of the Department of Justice to release reports of investigations conducted by the Federal Bureau of Investigation nor internal Justice Department memoranda involving the subject matter of such investigations.

V. See response to item U.

With my best wishes and warm respect.

Sincerely,

L. PATRICK GRAY III,
Assistant Attorney General,
and Deputy Attorney General-Designate.

Enclosure.

Senator BYRD. Were you aware of transmission by the chairman on March 10, 1972, of the Dita Beard memorandum to the FBI through the Justice Department?

Mr. GRAY. I do not know that I was aware that the chairman transmitted it. I was aware that it was there but I do not know how I was aware of that. I cannot recall.

Senator BYRD. Were you aware of the transmission—there were two transmissions, one on March 10 and one on March 16—through the Justice Department to the FBI? Were you aware of either of these?

Mr. GRAY. I am going to ask if I might provide that answer for the record because I am not at all certain. I will have to look at the correspondence and refresh my recollection and then answer you, Senator Byrd, for the record.

(Mr. Gray subsequently submitted the following document for the record:)

My personal recollection is that there were two transmittals of the Dita Beard memorandum to the FBI. The first one occurred on March 10, 1972 and the second was on March 15, 1972. Upon checking internally within the FBI, I am now aware of three transmittals of the Dita Beard memorandum to the FBI, the two mentioned above and a third one occurring on March 17, 1972.

Senator BYRD. Until it was returned to the Judiciary Committee was the Beard memorandum at any time in the hands of anyone other than the Justice Department courier or the FBI?

Mr. GRAY. Yes, sir. I believe it was because I believe that sometime during that period of time that memorandum was in the hands of the counsel to the President.

Senator BYRD. Referring again—

Mr. GRAY. But I do not know how it got there. I would have to check the record to be certain how it got there, but I believe this is a correct statement.

(Mr. Gray subsequently submitted the following document for the record:)

Upon checking the record I found that the Dita Beard memorandum was made available to Mr. Dean, the counsel to the President, by me.

Senator BYRD. Would you also indicate for the record, whether the memorandum of transmittal was directed to the FBI by the Justice Department?

Mr. GRAY. Would I indicate that for the record?

Senator BYRD. Yes.

Mr. GRAY. Yes, sir; I would.

(Mr. Gray subsequently submitted the following document for the record:)

Upon checking the record I found there was no memorandum of transmittal of the Dita Beard memorandum directed to the Federal Bureau of Investigation by the Justice Department.

Senator BYRD. Referring again to the interview between Mr. Hunt and Dita Beard, did the FBI question Mr. Colson as to the purpose of that interview?

Mr. GRAY. I do not believe that we did. I do not believe—you mean, at the time of the ITT or the Watergate investigation, Senator, which one are you referring to?

Senator BYRD. Well, if you were aware at the time of the—

Mr. GRAY. I have no present recollection of it and I am going to have to refresh my recollection but I want to know which time you are talking about, either the ITT—

Senator BYRD. Well, in either case.

Mr. GRAY. All right, in either case, we will furnish that information.
(Mr. Gray subsequently submitted the following document for the record:)

After checking the record, I find that we did not question Mr. Colson as to the purpose of Mr. Hunt's trip to Denver, Colorado, since there was no apparent connection between that trip and the Watergate investigation and we were not investigating the ITT matter.

Senator BYRD. Mr. Colson, according to the Washington Post, February 21, 1973, Special Counsel to President Nixon, said:

Watergate bugging figure sent Howard Hunt to Denver last March to interview ITT lobbyist Dita Beard, according to Colson's own sworn testimony. Sources close to the Watergate investigation said Colson's testimony was given in a secret deposition to Federal investigators during the Watergate probe last year.

Mr. GRAY. Was that a deposition for the grand jury?

Senator BYRD. I am reading from the paper:

* * * was given in a secret deposition to Federal investigators during the Watergate probe last year. The Federal investigators did not ask Colson the purpose of the interview.

I am asking you whether or not the FBI questioned Mr. Colson as to the purpose of that interview.

Mr. GRAY. I do not know I even knew about that interview because I think what you are referring to, Senator Byrd, is a deposition for the grand jury and we do not have access to that. Those proceedings are secret until Judge Sirica releases them. We do not have access to them but I will furnish to the committee the information that we are able to obtain.

(Mr. Gray subsequently submitted the following document for the record:)

As I indicated previously, Senator, when our Agents interviewed Mr. Colson on August 29, 1972, concerning Mr. Hunt's travel, Mr. Colson said one trip which he authorized Mr. Hunt to make was to Denver, Colorado, in connection with the ITT matter. Our Agents did not question Mr. Colson about that trip further since there was no involvement of the ITT case with the Watergate bugging. We do not know what questions were posed to Mr. Colson by the Assistant U.S. Attorneys who took a sworn deposition from him as that deposition was for grand jury purposes.

Senator BYRD. What you are saying is that Federal investigators may not have been FBI investigators, is that correct?

Mr. GRAY. That is correct, because I think that what is being referred to there is the actions of the assistant U.S. attorney in making his deposition for presentation to the Federal grand jury.

Senator BYRD. Would not the FBI think it important to know how and why Mr. Hunt was tied into both the ITT case and the Watergate case?

Mr. GRAY. I do not know that the thought ever crossed our minds.

Senator BYRD. Why would it not?

Mr. GRAY. Well, I just do not know that it did or it did not, I am going to have to—

Senator BYRD. It has crossed my mind.

Mr. GRAY. Well, I did not know, you know, I did not relate that way at all, because I did not know at the time that Howard Hunt—you are reading from a deposition from a grand jury apparently, that the Washington Post got hold of. I have not had access to that deposition.

Senator BYRD. What I am saying is this, you were in the role of decisionmaker at the time the Judiciary Committee was considering the nomination of Mr. Kleindienst.

Mr. GRAY. That is right, and I did not know it at that time.

Senator BYRD. At the time apparently Mr. Colson sent Mr. Hunt out to Denver to interview Dita Beard.

Mr. GRAY. I did not know that at the time.

Senator BYRD. This is why I am asking whether or not you knew of this.

Mr. GRAY. At that time when I was——

Senator BYRD. Back——

Mr. GRAY. No, no; I did not know that.

Senator BYRD. And would it not be important now to know whether or not Mr. Hunt was connected with both of these cases?

Mr. GRAY. I do not know. I am going to have to review on that because I cannot really see the tie-in of Dita Beard and Watergate. I am having trouble making that tie-in.

Senator BYRD. The tie-in is Mr. Hunt, No. 1, and Mr. Colson, No. 2, of the White House. Mr. Hunt was employed by Mr. Colson, on the recommendation of Mr. Colson, and worked for the White House.

Mr. GRAY. I am going to have to see it and furnish it for the record, because at the time of the ITT thing when I was making those decisions regarding documents I had no idea that Mr. Hunt went to Denver to interview Dita Beard.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After carefully reviewing this matter in my mind, Senator Byrd, I must again respectfully state to you that at the time of the ITT matter involving Mrs. Dita Beard, I had no knowledge of Mr. Hunt or that he had been sent to Colorado concerning the ITT matter. We learned of this trip on August 29, 1972, from Mr. Colson. The Special Agents handling the Watergate case could see no relationship between Mr. Hunt's trip and the Watergate case and I still can see no connection.

Senator BYRD. So, you did not know Mr. Hunt and you did not know about the trip?

Mr. GRAY. No, sir.

Senator BYRD. Did the FBI ever question Alfred C. Baldwin?

Mr. GRAY. Yes, sir; we did.

Senator BYRD. Mr. Baldwin was an ex-FBI agent and an alleged participant in the Watergate bugging case.

Did the FBI question Mr. William E. Timmons, Assistant to the President for Congressional Relations?

Mr. GRAY. I believe we did. I have already said, Senator Byrd, that we will make available, for the record, the list of the witnesses or list of the individuals that we interviewed at the White House and the Committee to Re-elect the President. Let me see if I cannot find that right here, who is it, Timmons?

Senator BYRD. Perhaps I should preface my question by saying that, quoting from the Congressional Quarterly,

The Washington Post reported that Baldwin told the FBI that memos describing wire taps and bugged conversations with in the Democratic headquarters were sent to William E. Timmons, Assistant to the President for Congressional Relations, Robert C. Odle, Jr., a former White House aide, who is now Director

of Administration for the Committee for the Re-Election of the President, and J. Glen Sedam, Jr., who is Counsel for the Re-Election Committee. The charges were denied.

Mr. GRAY. Yes; and I think that certainly is not in accord with what Baldwin has given us and I do not know what Baldwin has given the grand jury. Baldwin merely said to us that he observed memoranda being typed by McCord to Odle and to Timmons but he could not state that these related to his monitoring activities.

Senator BYRD. Did the FBI question Mr. Timmons or Mr. Odle or Mr. Sedam?

Mr. GRAY. Yes, sir; we did. We questioned Mr. Odle quite a bit. We questioned Mr. Timmons on September 8, 1972, and Mr. Odle—let me see if I can find it here—we questioned him on the 19th of June, the 20th of June, 23d of June, 28th of June, 29th of June, and the 11th of July.

Senator BYRD. Was Mr. Sedam questioned?

Mr. GRAY. Yes. Mr. Sedam was questioned on the 23d of June, the 26th of June, the 18th of July, the 26th of July.

Senator BYRD. The Washington Post reported that Mr. Segretti had named White House aide Dwight Chapin as his contact in spying and sabotaging of the Democrats. Did the FBI question Mr. Chapin?

Mr. GRAY. We did question Mr. Chapin, but that information from Mr. Segretti, I believe, comes from testimony that I should not be alluding to here, Senator.

Senator BYRD. Would it not be appropriate then, Mr. Gray, for you to supply the committee with the Watergate files before the committee proceeded any further?

Mr. GRAY. I made the offer, Senator Byrd, earlier, to the committee, that I would be, and I offer it. I made it in my statement, I was not asked.

Senator BYRD. Yes; I was here when you did that.

Mr. GRAY. Yes; you heard it.

Senator BYRD. And I think that is very commendable of you but what I am saying is it might be well for the committee to proceed no further until the files are supplied.

Mr. GRAY. Well, obviously, I do not believe that suggestion has merit, Senator, and I must respectfully differ with you.

Senator BYRD. So that the committee would not have to—

Mr. GRAY. I am here and I am prepared to answer whatever questions I can answer and if this committee has any doubt at the conclusion of its hearings regarding my qualifications they should fail to report me out. It is that clear to me.

Senator BYRD. I understand that.

Mr. GRAY. Sure.

Senator BYRD. There will be debate on that point. [Laughter.]

I understand the responsibility of the committee is as you have stated it, and you stated it precisely. But so many things need to be supplied, I am just wondering if the committee ought not wait until it is so supplied.

Mr. GRAY. I do not think that many things need to be supplied and I have a task force set up in the FBI which is ready to work in traditional FBI fashion and your answers will be provided, Senator, to the committee.

Senator BYRD. Does the offer of the Watergate files include the administrative files?

Mr. GRAY. What do you mean by the administrative files?

Senator BYRD. Buck slips, interdepartmental memoranda.

Mr. GRAY. My offer this morning in my testimony, and I think the record will show it, is our entire file, everything.

Senator BYRD. Lock, stock and barrel?

Mr. GRAY. Yes, sir. We are very proud of that investigation.

Senator BYRD. Does Mr. Ervin's argument with respect to selected staff seeing these files apply to the Judiciary Committee also?

Mr. GRAY. No, sir; I will not provide these files to selected staff members. I have stated that I will make these files available to the members of the committee and that I will put two experienced agents with each member to assist the member, to respond to any questions. We have a task force set up in the FBI to crank out answers and we will deliver the product to the Senators.

Senator BYRD. The Senator from North Carolina this morning indicated that he had many things to do, and in view of that fact he asked you whether or not it would be agreeable with you if selected staff on the Select Committee, which has been established here to investigate the Watergate incident—

Mr. GRAY. No, sir; I do not want this done and I will change it. I responded to a Senate resolution and the Senator from North Carolina was quoting it to me and I said I was glad to comply with the will of the Senate expressed in that kind of resolution. Senator, I am making an unprecedented offer to this committee.

Senator BYRD. I am merely asking you whether or not that same offer applies to the staff of the Judiciary Committee?

Mr. GRAY. No, sir; it does not.

Senator BYRD. Because we on the Judiciary Committee are just about as busy as Mr. Ervin is.

Mr. GRAY. I appreciate that and it is a very important consideration.

Senator BYRD. And I would find it extremely hard myself to take a look at all of the raw material that you have on the Watergate case.

Mr. GRAY. Yes; but, Senator Byrd, you have a lot of questions there and your staff has apparently helped in them and I am perfectly willing—I told you I have a task force set up there to crank this out—and we are willing to respond to your questions.

Senator BYRD. But your answer is "No," with respect to selected staff members of the Judiciary Committee seeing these files?

Mr. GRAY. That is correct.

Senator BYRD. While at the same time selected staff of the select committee—

Mr. GRAY. They are two different situations because of a resolution of the Senate. The Senate has expressed itself, and I feel that this is something I ought to take a position on. You know, I do not know what the position of the Attorney General is going to be, I just do not know. I am up here talking.

Senator BYRD. I am merely asking you whether or not you would offer to make the same offer to the Judiciary that you would make to the select committee?

Mr. GRAY. No, sir.

Senator BYRD. Did the FBI question Mr. Herbert W. Kalmbach, the President's personal attorney?

Mr. GRAY. Yes, sir.

Senator BYRD. The files which you have offered to have the Judiciary Committee study, would they include the field office files on the Watergate?

Mr. GRAY. Everything that the field office generated we have. It all came in the teletype, this was a major special and everything came here.

Senator BYRD. Did the FBI question Mr. Haldeman regarding the cash fund maintained by the Committee for the Re-Election of the President?

Mr. GRAY. The FBI did not question Mr. Haldeman and no lead was ever sent out to question Mr. Haldeman and no recommendation was ever made to me to question Mr. Haldeman.

Senator BYRD. According to Congressional Quarterly, "In a Washington television interview Mr. McGregor acknowledged the existence of a cash fund maintained by the President's Re-Election Committee. He said no part of the fund, no money from the fund, had been used for illegal purposes and he repeated a denial that H. R. Haldeman had authority to approve payments from the fund."

You do not think it would be worthwhile to question Mr. Haldeman?

Mr. GRAY. No, sir; because we in our interviews and our total investigation had no indication that Mr. Haldeman was involved.

Senator BYRD. Have you had indications that other individuals who were connected with the Committee for the Re-Election of the President were involved?

Mr. GRAY. I am sorry. We interviewed those for whom the leads were sent out.

Senator BYRD. Why would it not be appropriate to try to determine who authorized the payment from the fund?

Mr. GRAY. We think we did determine who authorized the payment from the fund.

Senator BYRD. Who was it?

Mr. GRAY. We feel that, from the interviews we got, that Jeb Magruder was the individual who allocated \$250,000.

Senator BYRD. Did you go beyond Mr. Magruder?

Mr. GRAY. We talked to other people, the assistant U.S. attorneys did, and the grand jury did, but I do not have access to the grand jury testimony.

Senator BYRD. Was information obtained from the national security wiretaps given to Mr. Hunt and/or to Mr. Liddy while they were working at the White House?

Mr. GRAY. I am sorry, Senator Byrd, I missed the first part of that question.

Senator BYRD. Was information obtained from national security wiretaps insofar as you know, in connection with the FBI wiretaps given to Mr. Hunt and/or Mr. Liddy while they were working at the White House?

Mr. GRAY. I do not know, sir.

Senator BYRD. When did the FBI question Mr. Liddy?

Mr. GRAY. We did not get to question Mr. Liddy because he is one of the defendants and he would not talk to us.

Senator BYRD. The FBI did not question Mr. Liddy?

Mr. GRAY. No, sir. We would have been happy to talk to any one of those men, sort of hinted we would, but we never were successful.

Senator BYRD. Did the FBI question Mr. Sloan?

Mr. GRAY. Hugh Sloan?

Senator BYRD. Hugh Sloan, Jr.

Mr. GRAY. Yes, sir.

Senator BYRD. When?

Mr. GRAY. Hugh Sloan, Jr., former treasurer of the Finance Committee, CRP, July 17, 1972.

Senator BYRD. Did the FBI question Tom Gregory, the college student engaged by Hunt to spy on Democratic presidential candidates?

Mr. GRAY. Yes, sir; we did.

Senator BYRD. When?

Mr. GRAY. I do not have that date but I can furnish it for the record. It was late in the year, though.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Our records show, Senator, that Mr. Gregory was interviewed on December 19 and 20, 1972.

Senator BYRD. Why do you suppose it would be late in the year?

Mr. GRAY. I know exactly why it was late in the year because of the fact that, of all the some 2,200 telephone calls that we had access to, his was one of those that was not run down early in the game. There was no other reason for it. I asked the same question of my agents and that is the answer they gave me.

Senator BYRD. Was the FBI aware, before the Watergate trial, of the \$199,000 payment to Mr. Liddy by the deputy director of the Committee to Re-Elect the President, Jeb Magruder?

Mr. GRAY. Were we aware of it before the Watergate trial?

Senator BYRD. Yes.

Mr. GRAY. Senator, I will have to check that. I do not know whether it is—you see. I have access to some grand jury testimony but not all of it. But I am very reluctant even to discuss grand jury testimony because of the Federal rules of criminal procedure and I will ascertain from our records whether we had it through our interviews or whether it was grand jury. If it was grand jury and we have it, I will so identify it to the committee.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the records, Senator Byrd, I note that the \$199,000 payment was not made by Mr. Jeb Magruder. Payment of money to Mr. Liddy was authorized by Mr. Magruder and Mr. Sloan made the actual disbursements. The information about sums of money furnished Mr. Liddy developed in grand jury testimony and, as I mentioned previously, I do not believe I should discuss grand jury proceedings.

Senator BYRD. When Judge Sirica interrogated Mr. Sloan, Mr. Sloan testified that the authority for the payment to Mr. Liddy by Magruder had been verified by Maurice Stans, the chief fundraiser for the Committee To Re-Elect the President, and checked out with Mr. Mitchell, the committee chairman. Did the FBI pursue this lead?

Mr. GRAY. Both of those men—I should not say both, it may not be a complete answer. But that point was covered, denials were given to us, I am sure, and I will actually check the interviews and get the exact information that we received.

(Mr. Gray subsequently submitted the following document for the record:)

After checking the record I find that Mr. Stans was interviewed by the FBI four times: Twice on July 14, 1972 and on July 5 and 28, 1972. On the last date he stated:

He had no hand in political policy making decisions and that he would receive information from Jeb Magruder that certain funds would have to be paid out for various expenses at which time he would notify Mr. Sloan to make these funds available so normal operating expenses could be paid for.

Stans became aware from general conversations that Liddy was assigned a "Security Gathering" job and that certain cash disbursements would have to be made available to Liddy. Liddy's "program" was already in effect prior to Stans' arrival on duty with the Committee to Reelect the President and Stans was not aware of any details concerning Liddy's "program." The only time Sloan ever mentioned cash disbursements to Stans was when Sloan told Stans that Liddy wanted to make a large cash withdrawal (date and amount not mentioned). Stans referred Sloan to Magruder.

Mr. Mitchell when interviewed by the FBI on July 5, 1972, advised he had nothing to do with the financial aspect of the Committee to Reelect the President which was handled completely by Maurice Stans.

Senator BYRD. Did you ever discuss any matter relating to the investigation of the Watergate affair with anyone on the Committee to Re-Elect the President?

Mr. GRAY. No, sir.

Senator BYRD. With Mr. John Mitchell?

Mr. GRAY. No, sir.

Senator BYRD. Or with anyone from the White House?

Mr. GRAY. Yes, sir.

Senator BYRD. Who?

Mr. GRAY. John Wesley Dean, Counsel to the President, and I think on maybe a half dozen occasions with John Ehrlichman.

Senator BYRD. Were any members of the Committee to Re-Elect the President questioned about Mr. McCord or Mr. Liddy?

Mr. GRAY. Yes, sir; they were questioned. They were asked.

Senator BYRD. I only have about three or four more questions, and I appreciate your patience and I certainly appreciate the indulgence of my committee colleagues.

When did you first learn of the FBI's entrance to the Les Whitten case?

Mr. GRAY. I would have to check the exact date but it could have come to me once again through the teletypes as they come across my desk and in discussions with the Acting Associate Director, Mr. Felt.

Senator BYRD. All right. If you will indicate that and also indicate from whom you first learned of it, would you, please?

Mr. GRAY. Yes, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Upon reviewing our records, I learned on 1/24/73, from information contained in a teletype from our Washington Field Office that a Metropolitan Police Department officer working in an undercover capacity had advised his superiors that he had heard that Anita Collins and Hank Adams had been conferring with Jack Anderson to buy documents stolen from the Bureau of Indian Affairs. This teletype made reference to Jack Anderson's column which appeared in the Washington Post on 12/11/72, wherein he reported that his associate, Les Whitten, had seen many thousands of the documents taken from the Bureau of Indian Affairs Building. On the morning of January 31, 1973, Associate Director W. Mark Felt informed me of the appearance of Les Whitten's automobile at the residence of Hank Adams and of his arrest shortly thereafter.

Senator BYRD. Do you think that the case was properly handled against Mr. Whitten by the FBI agent?

Mr. GRAY. Yes, sir; I do. On the basis of the information that we have and on the authorization to arrest that we have from the assistant U.S. attorney.

Senator BYRD. Did you specifically authorize the actions taken by the agent?

Mr. GRAY. No, sir; that is a detail that I would not get that far into.

Senator BYRD. When will you supply the information I have requested that you said you would supply, Mr. Gray?

Mr. GRAY. When would I supply it, sir?

Senator BYRD. Yes.

Mr. GRAY. Within 48 hours.

Senator BYRD. I have one final question. You indicated that the FBI did not follow up political leads.

Mr. GRAY. We did not even—there were none even set out that led into the, as the Supreme Court sometimes says, political thicket. We did not get into that at all, and we looked at those statutes—even when we got the first interview from Segretti, we looked at those statutes to see. We did not, you know, just ignore it. It was considered.

Senator BYRD. But you knew that Mr. McCord was involved in the Committee for the Re-Election of the President when he was arrested?

Mr. GRAY. I knew that at 3:45 p.m., Pacific Daylight Time, on the 17th.

Senator BYRD. If you did not follow political leads how could you attempt to find out if CREEP was involved?

Mr. GRAY. Well, once we knew who Mr. McCord was we found out where he was employed. He was caught in a very compromising situation. He was a strong suspect of having committed a criminal offense.

Senator BYRD. Mr. Chairman, I thank you.

I have no more questions at this time and I thank you, Mr. Gray.

Mr. GRAY. Thank you, Senator Byrd.

Senator HART. Thank you, Senator.

Mr. Gray, Senator Tunney, in view of the hour—

Senator TUNNEY. I will wait until tomorrow.

Senator HART. The Chairman indicated that we will adjourn until 10:30 tomorrow morning.

May I ask, before we leave, which reflects that I am bothered by your inability to respond yes or no to the question of whether Segretti was shown FBI reports at the Republican Convention, you just told Senator Byrd that Segretti had been interviewed. Now, did you ask, did the agent ask Segretti who showed him the FBI report?

Mr. GRAY. We interviewed him, Senator, on the 26th of June and he was before the grand jury in the latter part of August and I do not know what the assistant U.S. attorneys asked him before the grand jury.

Senator HART. Well, that was not my question. What did the Bureau ask him?

Mr. GRAY. No; we did not go ask Segretti—

Senator HART. Why I am bothered is that it was a leadpipe criminal action alleged in the news and it alerted you to call Dean in the White House but nothing beyond that.

Mr. GRAY. No, sir; I made the decision, and I did not go beyond it because I saw no reason to go beyond it.

Senator HART. I was sent a note here that I cannot read, I think it has to do with materials, with supplying materials.

When you supply materials, which I assume in the course of the day have been asked for, and you have indicated——

Mr. GRAY. Yes; I have answered several times.

Senator HART. When you supply the materials could you do so in copies so that each member would have them?

Mr. GRAY. You mean, in response to questions, is that correct, you mean, questions asked?

Senator HART. Yes.

Mr. GRAY. And to which I said I will respond and supply the material?

Senator HART. Yes.

Mr. GRAY. Yes, sir; we can do that.

Senator HART. And if the captions on the materials that you give us are not informative would you ask your staff to identify the page in our transcript where the request has been made which produces that document?

Mr. GRAY. Yes, sir. But to do that we are going to have to have the transcript and this may change my 48-hour promise, my 48-hour commitment to Senator Byrd. I have someone here making notes of the commitments that I am making so that we can begin to go to work on it, but if it is desired that they be related to a page in the transcript then I am going to have to request that I be permitted to have the transcript and then go 48 hours from the time of receipt of the transcript.

Senator HART. I would not want to trim back your commitment to Senator Byrd.

Senator BYRD. Mr. Chairman, I think that Mr. Gray should have the transcript and I think the committee ought to have the information that is being requested so as far as I am concerned, the 48 hours is off.

Mr. GRAY. All right, sir.

Senator HART. Thank you. Mr. Gray, you have had a long day, I know.

Mr. GRAY. Thank you. I have enjoyed every minute of it.

(Whereupon, at 6:30 p.m., the hearing was recessed, to reconvene at 10:30 a.m., Thursday, March 1, 1973.)

NOMINATION OF LOUIS PATRICK GRAY III

THURSDAY, MARCH 1, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 a.m., in room 1202, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Peter Stockett, and Thomas D. Hart, professional staff members.

The CHAIRMAN. Let us have order.

Senator Tunney.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Gray, I want to congratulate you, as others have, for having been nominated by the President to perform the awesome responsibility of being the Director of the FBI. I personally feel that there is no agency in Government that is more sensitive to a democracy, one that can protect our democratic institutions, and, at the same time, if it is in the wrong hands, could do more to undermine our democratic institutions. I think we have been very lucky in this country to have had a man of the stature of J. Edgar Hoover who completely depoliticized the FBI. I think if we all look back in history and see what the state of the Bureau of Investigation of the Justice Department was like, under a corrupt Attorney General, J. Edgar Hoover did represent a breath of fresh air. I would certainly hope that his successor will follow in that tradition.

Now, I would like to ask you a few questions that relate to your political activities, or lack thereof. I would then like to get into some structural questions with respect to the FBI itself, such things as the way you define organized crime, procedures that you followed, surveillance, keeping of records, et cetera.

With respect to the matters that were brought up yesterday by Senator Hart relating to Mr. Segretti, I couldn't help but feel that in answering Senator Hart's questions you were saying that there was a significant violation of security if, in fact, the newspaper articles, stating that Mr. Segretti had access to an FBI file prior to his being questioned by the grand jury, were true.

Is that correct, is my impression of your answer correct?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. No, I don't think that I categorized it in quite that language, Senator. I categorized it, I believe, as I recollect, as a

breach of trust or a breach of duty to the Chief Executive of the Nation, if this, in fact, occurred.

Senator TUNNEY. If that occurred?

Mr. GRAY. That is right. That is right, if this in fact occurred.

I think we also have to keep in mind, Senator, and once again I don't have the newspaper article in front of me and I am not exactly sure of the verbatim allegations and I always like to be sure of verbatim allegations so that one can respond accurately as well as adequately, but assume, let us assume for the moment that this person Segretti was briefed by someone on his interview with the FBI. He is being briefed on what he said to the FBI anyhow, so I don't know how we get a violation of law in there. No question about it in my mind, certainly there is a breach of trust here.

Senator TUNNEY. Would it be appropriate under any circumstances for anyone to take an FBI file which was given to them in confidence for their eyes only and turn it over to a third party, one who was a subject of the investigation? Under any circumstances would that be justified?

Mr. GRAY. Well, first, Senator, Segretti was not a subject of an investigation. He was one of the many people who were being interviewed in connection with the Watergate. But to answer you specifically, you know, I think you are as aware as I am that one of the most difficult tasks faced by the Federal Bureau of Investigation is to maintain the integrity of its files. I think that one coming lawfully into possession of an FBI document and then disseminating it, making it known to others not authorized to see those documents does, indeed, commit a serious breach of trust. That is the individual who comes into possession of it lawfully. On our documents we have all kinds of warning language, and I, since coming into the Federal Bureau of Investigation, have been looking into our dissemination procedures because I feel that it is indeed happening to us, either through deliberate attempt, through carelessness, or through neglect.

The very fiber of our being is to be found in our files, and those files are sacred so far as we are concerned. But we are plagued with this problem and we have been plagued with this problem for as long as the FBI has existed.

Senator TUNNEY. You see, that is the problem that I have with this particular case. Did you speak to the Attorney General about it?

Mr. GRAY. No; I did not.

Senator TUNNEY. Did you complain?

Mr. GRAY. No; I did not.

Senator TUNNEY. Did you complain to the President about it?

Mr. GRAY. No; I did not. It is not a thing that I would take to the Attorney General or to the President.

Senator TUNNEY. Well, I believe that you testified yesterday that as you perceived your responsibilities as Director of the FBI, you report to the Attorney General?

Mr. GRAY. That is right.

Senator TUNNEY. And you report to the President of the United States?

Mr. GRAY. That is correct.

Senator TUNNEY. And anything that you have available to you should be made available to them?

Mr. GRAY. That is correct. But I have a judgment, too, you know. They are not going to let me sit in that position, Senator, if I go running with every item over to them.

Senator TUNNEY. I understand that.

Now, insofar as presidential surrogates are concerned, do you have a responsibility, as you perceive it, to make available FBI investigative reports to White House assistants?

Mr. GRAY. I don't know about—you are using surrogates now and White House assistants. Who are we talking about? Are we talking about those people who went out on campaign trails?

Senator TUNNEY. No.

Mr. GRAY. Are we talking of men like Mr. Dean and Mr. Haldeman and Mr. Ehrlichman?

Senator TUNNEY. I am talking about men who work in the White House.

Mr. GRAY. I am not going to make those available to everybody who works in the White House but if you are talking about counsel to the President, if you are talking about Mr. Haldeman and Mr. Ehrlichman, the answer to your question is "Yes."

Senator TUNNEY. Do you make any file available to them that the FBI has?

Mr. GRAY. Upon specific request from one of those individuals acting as the agent of the United States, I would, and I engage in the presumption of regularity which I think all of us have to engage in. I can't be the head of a bureau in a department of the executive branch and say, no, I am not going to do this.

There are some things, some areas, about which I am very concerned, and one of them happened in this case, and I testified to it yesterday. The memorandum of June 19, 1972, that I refused to let go, the memorandum to the Attorney General and the letter to Mr. Haldeman—I stated those would be included in the record so that Senators who are members of this committee can take a look at them.

Senator TUNNEY. Let us say Mr. Haldeman made a request of you to see my dossier, would you feel that you were justified in sending it over to him?

Mr. GRAY. No; not without asking him some questions and I always do, because I have got a trust area and that is a battle of life everyday. People put pressure on me all the time to take a look at individuals' files and even where those people are concerned they have to have a reason. I am very, very nasty about that, I really am, because I feel very keenly and very strongly about that and I don't like to be pushed around.

Senator TUNNEY. Well, I am sure that you don't like to be, you impress me that way.

Mr. GRAY. Yes.

Senator TUNNEY. But I would like to know what you would consider to be a just reason for submitting personal dossiers to members of the White House staff.

Mr. GRAY. We don't do that in that frame of mind. Name checks come over on individuals who are invitees to the White House and this has been done from time immemorial. That is one way.

As applicants, that is another way that some Members of Congress have previously been investigated by the FBI, because at one time they were the subject of an applicant investigation. Still another way

is the rare occasion when a Member of Congress becomes involved with the laws of the United States, and an investigation is conducted. And let me just say for the record now—and I will not reveal the information, but I will testify under oath at this moment to try to persuade this committee—that during this campaign, information was brought to me regarding an individual, and I said, “Never bring that kind of information to me again, put it under the tightest lock and key that we have and do not permit it to get out of that custody, and don’t ever bring that information to me again.” I made that statement but I will not reveal the name of that individual to anyone. I would sacrifice this position, Senator, before I would do it.

Senator TUNNEY. Nor should you. I don’t think you should either. I think it would be very wrong for you to do that. But I am trying to get a better feel for what you feel to be the demarcations of policy when you are requested by White House staffers to make available information in personal dossiers. I assume that there must be such a policy?

Mr. GRAY. When you put the question that way, I have never had a request from anybody in the White House since I have been in this position to make available information from a personal dossier because I don’t know really what you are talking about. If you are talking about that summary memorandum that we prepared under the Congressional Services Unit program, no, that would not be made available at all. That is completely for internal use within the Federal Bureau of Investigation. If you are talking about an investigative file that we have, if there is some reason to make pertinent information in the file available where we have an individual under investigation, yes, I would do that. If there was some issue of truth or falsity involved in that type of a case where there are allegations that have been made, yes, I would provide the information in order that there be a mechanism available for the President to get information and try to make a judgment. But I would not send over purely personal information that comes to our files in the form of anonymous letters, informant information and that type of thing, and I just won’t do it.

Senator TUNNEY. And you won’t do it with respect to any person?

Senator KENNEDY. Have you done it at all with respect to any Member of Congress?

Mr. GRAY. No, sir; I won’t do it. I have set forth in the FBI pretty firmly my policy about that. I don’t think there is a member of the FBI who is in any doubt about that at all.

Senator TUNNEY. Is this a personal decision that you have made, or are there certain procedural guidelines in the FBI that were available to you when you came in as Acting Director that had been set up by your predecessor?

Mr. GRAY. They are not procedural guidelines as such. We have the rules and regulations of the Department of Justice. We have the manual of rules and regulations for the Federal Bureau of Investigation regarding each of our jurisdictional categories in which we investigate and the dissemination of reports that are to be made thereunder. There are quite a few, but what we are talking about now is the unethical, the hard, field type situation, somebody trying to cut somebody up with some inside information, and I am not going to be a party to that.

Senator TUNNEY. Could you tell the committee if there are any guidelines within the FBI with respect to the accumulation of information and the storing of information on individuals? For instance, I think that you necessarily have to separate people who were under an active criminal investigation—

Mr. GRAY. Yes, sir.

Senator TUNNEY (continuing). From those people who just happen to be citizens.

Mr. GRAY. That is correct.

Senator TUNNEY. Who happened to be participating, we will say, in outdoor rallies or peace marches or whatever it might be.

Mr. GRAY. That is correct, sir.

Senator TUNNEY. Could you describe to the committee what the guidelines are?

Mr. GRAY. They are not really guidelines, they are jurisdictional perimeters that are established by the statutes of the United States, and from the day that I came into the Federal Bureau of Investigation, one of the very first avenues of inquiry that I launched had to do with jurisdiction because I knew this was a problem, and we had a very, very fine paper developed on jurisdiction. We discussed it May 23 and May 24 at our Quantico meeting, and I have given explicit instructions throughout the Federal Bureau of Investigation that we investigate only in connection with our jurisdictional responsibilities.

Now that takes care of us going actively after someone. But we accept information of all kinds that comes in, and here it is the judgment of the Bureau supervisor and the officials trained in accordance with the Bureau's Manual of Rules and Regulations as to whether or not to put that in the file. That would be a general file. That is not the investigative file, and that is actually the way it works. We get an awful lot of anonymous letters addressed to us regarding our own people, and every one of those is followed through by the Inspection Division of the Federal Bureau of Investigation. We treat ourselves very roughly and, I think, rightly so because of our position in our society, than we do with all this other mass of material that comes in pertaining to persons outside the FBI, and we put it in the file.

Senator TUNNEY. Do you know how many names you have in the files that you have dossiers on?

Mr. GRAY. Senator, I don't use that word "dossier." You know, every time you use it I am going to respectfully reserve the right to say—

Senator TUNNEY. I will not use it.

Mr. GRAY. I don't use the term "dossier." I know what the dictionary definition is but we don't talk about it in terms of "dossier." We talk in terms of "files."

Senator TUNNEY. Fine. [Laughter.]

Can you tell me how many people in the country have files.

Mr. GRAY. I can tell you with regard to fingerprints. With regard to our identification records, there are roughly 60,000 individuals identified in our Identification Division and of those, roughly—I am sorry, 60 million.

Senator TUNNEY. Sixty million.

Mr. GRAY. Sixty million, and of those, roughly 20 million are criminal and the other 40 million are civil, and if I have got my figures reversed, I will correct them for the record.

(Mr. Gray subsequently submitted the following document for the record.)

Mr. Gray: Yes, these figures are correct. I have checked and as of February 1, 1973, 20,610,183 people were represented in our criminal fingerprint file and 40,143,023 people were represented in our civil fingerprint file.

Senator TUNNEY. Now, it is my understanding that—

Senator KENNEDY. Forty million files on citizens?

Mr. GRAY. No, sir; identification records.

Senator KENNEDY. Noncriminal?

Mr. GRAY. That is correct. Let me make sure, Senator Kennedy, now that you are raising it, that I have the right number. I have a card on that here somewhere. We will give you the correct figure.

Senator KENNEDY. If the Senator would yield, could you give us a breakdown on what the 40 million—

Mr. GRAY. I would be happy to do it because we have been meeting with Congressman Edwards' Judiciary Subcommittee No. 4 and giving them every bit of information that they want regarding the Identification Division, the National Crime Information Center, the computerized criminal history, and I will give you these numbers right now.

Senator KENNEDY. If the Senator would yield, just on the non-criminal. I would be interested and perhaps you would submit the total for the record. But could you give us the noncriminal 40 million Americans that you have files on?

Mr. GRAY. 40,143,023. Those are civil. Those come in all kind of applicant type cards.

Senator KENNEDY. Just break it down.

Mr. GRAY. That is it.

Senator KENNEDY. What is it?

Mr. GRAY. 40,143,023.

Senator KENNEDY. Tell us how many applications are for passports and how many are being surveilled.

Mr. GRAY. I will have to give you that information.

Senator KENNEDY. Can you give it to us?

Mr. GRAY. Oh, certainly.

Senator KENNEDY. Then give it.

Mr. GRAY. I will give it to you, I would be happy to.

Senator KENNEDY. Does your assistant have it?

Mr. GRAY. No, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. Gray: I am submitting the following document for the record. (Chart: "Types of Fingerprints on File" dated February 1, 1973.) With reference to the 60,764,535 fingerprint cards representing the category of Government services, I should like to point out that included in this figure are 42,321,146 Military prints submitted by the various branches of the services, 17,529,220 Civil Service applicant-type prints, and 914,169 Coast Guard prints. The category of Miscellaneous applicant cards consists primarily of applicant fingerprint cards submitted by independent U.S. Government agencies, such as Atomic Energy Commission, Central Intelligence Agency and the like in connection with employment applications and some applicant-type fingerprint cards submitted on individuals employed in defense industries. These files do not contain fingerprints of individuals seeking passports as we do not receive such fingerprints. Further, these civil fingerprint files are not utilized as a means of surveillance of the

individuals who are represented in this file. It is interesting to note that during the last fiscal year (July 1, 1971-June 30, 1972) 13,640 individuals submitted their fingerprints for inclusion in our files for personal identification purposes.

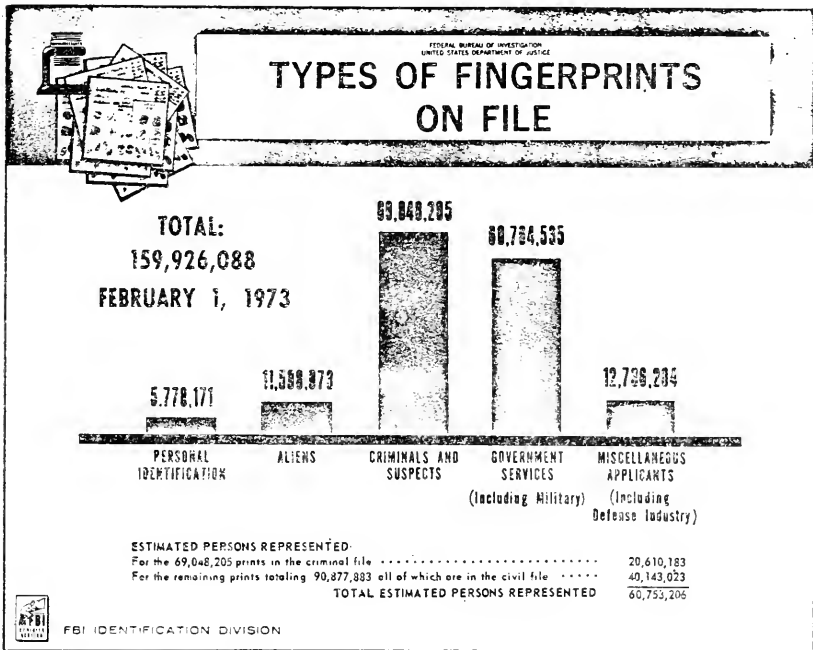


EXHIBIT NO

Senator KENNEDY. You gave it to the Edwards committee.

Mr. GRAY. Because they were right there in the Identification Division, but I don't have those figures with me today. They came to visit us, Senator Kennedy.

The CHAIRMAN. That includes applications for Federal jobs; is that correct?

Mr. GRAY. All kinds of civil matters other than criminal matters, Senator Eastland, and they could even be people who are being fingerprinted in States under State statutes, you know, for State employment or State licensing, that type of thing.

Senator KENNEDY. All I am asking is just for a breakdown.

Mr. GRAY. I will give you a breakdown.

Senator HRUSKA. If the Senator would yield just briefly, those totals include fingerprints voluntarily submitted by civilians who wanted their fingerprints on file?

Mr. GRAY. Yes; it does, Senator Hruska.

Senator HRUSKA. Could you give us a breakdown on that when you give us the figures?

Mr. GRAY. Yes, sir; I would. There are quite a few of those, Senator, voluntarily submitted. One need—may I say, Mr. Chairman—one need merely go through an aircraft disaster and see how extremely valuable that fingerprint file is; that is just one specific example.

Senator TUNNEY. Mr. Gray, it would be my assumption that these files would contain information that would be as scanty as just a

people—288,207; stolen license plates, 222,976; wanted persons, 123,358; stolen boats, 6,490; and the grand total is 3,943,468.

Senator TUNNEY. What is the statutory authority for the National Crime Information Center?

Mr. GRAY. That is the Federal statute which charges the Attorney General of the United States to maintain and keep such records, and it is, I think, section 534; but my memory may not be correct, I can't remember the title, but we can certainly submit that for the record.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. Gray. The authority for operation of the NCIC is derived from Title 28, Section 534, U.S. Code, which provides:

"(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime and other records; and

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20537

FBI SUBJECT <u> </u> YES <u> </u> NO <u> </u> IF AVAILABLE PASTE PHOTO OVER INSTRUCTIONS IN DOTTED AREA <u> </u> <small>DO NOT DESTROY</small> SINCE PHOTOGRAPHS MAY BECOME DETACHED AND DATE TAKEN, FBI NUMBER, COUNTY AND ARREST NUMBER OR RELEASE DATE, WHETHER ATTACHED TO FINGERPRINT CARD OR SEPARATE, MUST BE FURNISHED.		IDENTIFICATION UNLESS OTHERWISE PROVIDED BY APPLICABLE FEDERAL OR STATE LAWS, ALL IDENTIFICATION RECORDS ARE TO BE SUPPLIED DIRECTLY TO FBI IDENTIFICATION DIVISION. APPROVED AND AWARDED ARE FOR MOST EFFECTIVE SERVICE. 1. FINGERPRINTS SHOULD BE OBTAINED BY APPLICABLE AGENCIES ONLY. MUST FILE FROM TOP SAME CHARGE SHOULD NOT BE SUBMITTED BY OTHER AGENCIES SUCH AS FBI. RECEIPT AND DATE OF THE FINGERPRINT COPIES SHOULD IDENTIFICATION RECORD FOR ALL OTHER AGENCIES. FINGERPRINTS MUST BE BLOCK RELEASE COMPLETE WITH NO ADDRESS, INCLUSIVE OF ZIP CODE. 2. THREE OR MORE ALL IDENTIFICATION. 3. MORE APPLICATIONS IN PROGRESS FINGERBLOCK. 4. LIST FINAL DISPOSITION IN BLOCK ON FRONT SIDE. IF NOT NOW AVAILABLE, BUT WILL BE LATER ON FBI FORM OR A COPY OF REPORT OF RECORD. IF FINAL DISPOSITION NOT AVAILABLE, INDICATE TO ALL AGENCIES THIS AGENCY DISPOSITION IS BEING RELEASED AND FEDERAL CHARGE, IF APPLICABLE, TO BE IN THE ARREST DISPOSITION BLOCK PROVIDED ON THIS SIDE. 5. MAKE CERTAIN ALL INTERESTS ARE LEGALLY FULLY RELEASED AND CLEARABLE. 6. CAUTION—CHECK BOX ON FRONT OF CAUTION STATEMENT FOR ALL AND DANGEROUS, SUICIDAL, ETC. 7. WHERE APPLICABLE, NUMBER WHICH SHOULD INCLUDE SUCH NUMBERS AS MILITARY SERVICE, PASSPORT AND/OR VETERANS ADMINISTRATION, IDENTIFY TYPE OF NUMBER. 8. PROVIDE STATUTE CITATION IDENTIFYING SPECIFIC STATUTE, FEDERAL, STATE, LOCAL, FEDERAL, LAW AND CRIMINAL CODE CITATION INCLUDING ANY SUBSECTION. 9. ALL INFORMATION REQUESTED IS ESSENTIAL.
IF ARREST FINGERPRINTS SENT FBI PREVIOUSLY AND FBI NO. UNKNOWN, FURNISH ARREST NO. <u> </u> DATE <u> </u> STATUTE CITATION (SEE INSTRUCTIONS ON REVERSE) <u>CIT</u> 1. <u> </u> 2. <u> </u> 3. <u> </u>		
ARREST DISPOSITION (SEE INSTRUCTIONS ON REVERSE) <u>ADN</u> <u>3 yrs.</u>		SEND COPY TO REPLY DESIRED? YES <input type="checkbox"/> NO <input type="checkbox"/> REPLY WILL BE SENT IN ALL CASES. TELEPHONE REPLY TO BE HANDED. IF COLLECT: WHERE OR COLLECT TELEPHONE REPLY (REQUIRED INDICATE HERE) (IF REPLY ON ALL UNKNOWN DECREASED) WHERE ONLY TELEPHONE REPLY TELEPHONE NO. AND AREA CODE <input type="checkbox"/> <input type="checkbox"/>
EMPLOYER (FEDERAL GOVERNMENT AND ALL SPECIFIC AGENCY (FEDERAL, STATE, LOCAL) BRANCH OF SERVICE AND SERIAL NO.) <u> </u>		
OCCUPATION <u> </u>		LEAVE BLANK
RESIDENCE OF PERSON FINGERPRINTED <u> </u>		
SCARS, MARKS, TATTOOS AND AMPUTATIONS <u>SMT</u>		LEAVE BLANK
BASIS FOR CAUTION <u>CCO</u>		
DATE OF OFFENSE <u>CCO</u>	SKIN TONE <u>SKN</u>	LEAVE BLANK
MISC. NO. <u>MNU</u>		
ADDITIONAL INFORMATION <u> </u>		LEAVE BLANK

(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records authorized by subsection (a)(2) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section."

In addition, with respect to the dissemination of criminal history records, Title II of Public Law 92-544 states:

" * * * The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation * * * "

Senator TUNNEY. To what extent is the information verified before it goes into the bank and to what extent does it go in in raw form?

Mr. GRAY. As far as the computerized criminal history is concerned that is an entirely new concept that we are developing as a subsidiary

LEAVE BLANK		TYPE OR PRINT ALL INFORMATION IN BLACK				FBI		LEAVE BLANK	
STATE USAGE		LAST NAME <u>NAME</u>		FIRST NAME		MIDDLE NAME		FBI FILE NO.	
		<u>Jones, Frank Thomas</u>		<u>Thomas</u>				<u>305-9711-C</u>	
DATE OF BIRTH		DATE OF BIRTH		DATE OF BIRTH		DATE OF BIRTH		DATE OF BIRTH	
								<u>12-20-35</u>	
PLACE OF BIRTH		PLACE OF BIRTH		PLACE OF BIRTH		PLACE OF BIRTH		PLACE OF BIRTH	
								<u>Calif</u>	
DATE ARRESTED OR RECEIVED		DATE ARRESTED OR RECEIVED		DATE ARRESTED OR RECEIVED		DATE ARRESTED OR RECEIVED		DATE ARRESTED OR RECEIVED	
		<u>2-26-64</u>							
YOUR NUMBER		YOUR NUMBER		YOUR NUMBER		YOUR NUMBER		YOUR NUMBER	
		<u>231895</u>							
FEDERAL BUREAU OF INVESTIGATION		FEDERAL BUREAU OF INVESTIGATION		FEDERAL BUREAU OF INVESTIGATION		FEDERAL BUREAU OF INVESTIGATION		FEDERAL BUREAU OF INVESTIGATION	
		<u>Police Dept - Washington DC</u>							
KEEPING AND SELLING AND C.O.W. (Guns)		KEEPING AND SELLING AND C.O.W. (Guns)		KEEPING AND SELLING AND C.O.W. (Guns)		KEEPING AND SELLING AND C.O.W. (Guns)		KEEPING AND SELLING AND C.O.W. (Guns)	
SOCIAL SECURITY NUMBER		SOCIAL SECURITY NUMBER		SOCIAL SECURITY NUMBER		SOCIAL SECURITY NUMBER		SOCIAL SECURITY NUMBER	
CAUTION		CAUTION		CAUTION		CAUTION		CAUTION	
LEFT INDEX		RIGHT INDEX		LEFT MIDDLE		RIGHT MIDDLE		LEFT RING	
RIGHT RING		LEFT LITTLE		RIGHT LITTLE		LEFT THUMB		RIGHT THUMB	
LEFT THUMB		RIGHT THUMB		LEFT INDEX		RIGHT INDEX		LEFT MIDDLE	
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LEFT INDEX		RIGHT INDEX		LEFT MIDDLE		RIGHT MIDDLE		LEFT RING	
RIGHT RING		LEFT LITTLE		RIGHT LITTLE		LEFT THUMB		RIGHT THUMB	
LEFT THUMB		RIGHT THUMB		LEFT INDEX		RIGHT INDEX		LEFT MIDDLE	
RIGHT MIDDLE		LEFT RING		RIGHT RING		LEFT LITTLE		RIGHT LITTLE	

under the National Crime Information Center. We are developing that in conjunction with law-enforcement agencies throughout the Nation. We have an Advisory Policy Board made up of senior law-enforcement officials from the various regions who are elected by the members of the law-enforcement community in that particular region, and they come in and meet regularly and establish policy. And in the computerized criminal history, about which I will submit detailed documentation for the record to show you what this really is and explain it to you, we have some rather tight and stringent standards that do not exist today in the manually operated system. You have to think in terms of our Identification Division which I discussed a little earlier, which is all a manual system; you now have to think in terms of a computerized criminal history system which is computerized and is over in the Computer Systems Division and there are very, very tight standards for the insertion of information into a computerized criminal history. This is not the drop-in type of thing. John Doe writes us and says that somebody is doing something and we throw it in a file and forget it. This is not that type of system at all. This is a system designed and geared to accuracy.

Let me go to the specific question that you asked which is one that the Bureau has battled with for a long, long time. You really are talking about the record of dispositions in cases, the arrest record. You take a look at an arrest record of an individual. The far right-hand column is the disposition column. What you are interested in really

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PHOTO AVAILABLE? <input type="checkbox"/> YES <input type="checkbox"/> NO IF AVAILABLE PASTE PHOTO OVER INSTRUCTIONS IN NOTED AREA → DO NOT USE STAPLES! DATE PHOTO TAKEN: <input type="checkbox"/> BEFORE DETAINED <input type="checkbox"/> AFTER DATE TAKEN FBI NUMBER CONF. NUMBER AND STREET NUMBER ON REVERSE SIDE. PHOTO ATTACHED TO PREVIOUS CARD OR SUBMITTED LATER.	INSTRUCTIONS 1. UNLESS OTHERWISE PROVIDED BY REGULATION IN YOUR STATE, FINGERPRINTS ARE TO BE TAKEN BY SPECIAL AGENT IN IDENTIFICATION DIVISION. FORWARD IN MAIL TO GET MOST EFFECTIVE SERVICE. 2. FINGERPRINTS SHOULD BE TAKEN BY TRAINING AGENTS ONLY. MULTIPLE PRINTS ON EACH HAND SHOULD BE OBTAINED BY THESE AGENTS SUCH AS PALM, REEL, AND 10-10, ETC. REQUEST COPIES OF FBI IDENTIFICATION RECORD FOR ALL OTHER INTERESTED AGENCIES IN WHICH BIRTH DATE COMPLETE MAILING ADDRESS, INCLUDING ZIP CODE. 3. TYPE OF PRINT ALL INFORMATION. 4. NOTE AMPUTATIONS IN PROPER FINGER BLOCKS. 5. LIST RIVAL DISPOSITION IN BLOCK ON FORM 502 IF NOT NOW AVAILABLE. USE #17 LATER ON FBI FORM #11 FOR COMPLETION OF RECORD. IF FINAL DISPOSITION NOW AVAILABLE, WITH DATE, TIME OF ARRIVING AGENCY, DISPOSITION, FULL RELEASE, NO REARREST, OR #1, FURNISH OVER TO THE ARREST AGENCY FROM BLOCK PAID OVER ON THIS SIDE. 6. MAKE CERTAIN ALL IMPRISONMENT AND DETENTION FULLY POLICED AND CLEARABLE. 7. CAUTION: CHECK SIGN ON FRONT OF CAUTION STATEMENT INDICATED. BASIS FOR CAUTION: SEE NOTE ON REVERSE FOR CAUTION - A. ARMED AND DANGEROUS; JUDICIAL, ETC. 8. UNCLE SAMUEL'S NUMBER ONLY. SHOULD INCLUDE NICK NUMBERS AS MILITARY SERVICE, PASSPORT AND/OR VETERAN ADMINISTRATION IDENTIFY TYPE OF NUMBER. 9. PROVIDE STATE CITATION IDENTIFYING SPECIFIC STATUTE (NUMBER, PL, FEDERAL LAW, AND FEDERAL CODE CITATION INCLUDING APPROPRIATE SECTION). 10. ALL INFORMATION REQUESTED IS ESSENTIAL.	
IF ARREST FINGERPRINTS SENT FBI PREVIOUSLY AND FBI NO. UNKNOWN FURNISH ARREST NO. _____ DATE _____		
STATUTE CITATION (SEE INSTRUCTIONS ON REV. CIT) 1 _____ 2 _____ 3 _____		
ARREST DISPOSITION (SEE INSTRUCTIONS ON REV. DIS) <u>Released</u>		
EMPLOYER: IN U.S. GOVERNMENT? NO. ALL SPECIFIC AGENCY: _____ IN U.S. EMPLOY? LIST BRANCH OF SERVICE AND JOB: NO		
OCCUPATION _____		SEND COPY TO: _____
MEDICAL E. C. PERSON FINGERPRINTED _____		
SCARS, MARKS, TATTOOS, AND AMPUTATIONS <u>SMT</u>		REPLY DESIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO REPLY WILL BE SENT IN ALL CASES UNLESS AGENT TO BE WAITING. IF COLLECTOR WISHES TO COLLECT TELEPHONE REPLY, CHECKED INDICATE HERE. INFORMATION ON ALL UNKNOWN DEVICES. TELETYPE <input type="checkbox"/> TELEPHONE REPLY <input type="checkbox"/> TELEPHONE NO. AND AREA NO. _____
BASIS FOR CAUTION <u>ICD</u>		LEAVE BLANK
DATE OF OFFENSE <u>DD</u>		SKIN TONE <u>SKN</u>
MISC. NO. <u>NNLL</u>	LEAVE BLANK	
ADDITIONAL INFORMATION _____	LEAVE BLANK	

Center (NCIC) which operates a telecommunication network over dedicated lines to criminal justice agencies in each of the 50 states, 32 metropolitan areas and some Federal agencies.

The Computerized Criminal History (CCH) File is now one of the eight files in NCIC. The other seven files relate to wanted persons and stolen property. The purpose of CCH is to speed up the criminal justice process. A more rapid flow of criminal offender information can bring about more realistic decisions with respect to bail, sentencing, probation, and parole. For over 48 years the FBI has been exchanging criminal history information with police, courts, and correctional agencies in the form of the criminal identification record used the United States' mails. The NCIC system offers a more efficient and effective means of handling this essential service. Statistics have demonstrated that our crime problem is substantially the criminal repeater. Our police, prosecutors, courts, and correctional agencies need to know the complete, up-to-date criminal history of an offender if they are to arrive at intelligent decisions.

The CCH record is segmented to include identification information concerning the individual, as well as available and significant data concerning arrests, court dispositions and custody/supervision status changes following conviction.

The ultimate concept of NCIC is that there will be a national index to criminal history records of individuals arrested for serious or significant offenses. FBI studies have shown that about 70 percent of rearrests will be within the same state; therefore, an offender criminal history file, in scope and use, is essentially a state file and a state need. There is, however, substantial interstate criminal mobility which requires sharing of information from state to state. A national index is required to coordinate the exchange of criminal history data among state and

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PHOTO AVAILABLE? YES <input type="checkbox"/> NO <input type="checkbox"/> IF AVAILABLE, PASTE PHOTO OVER INSTRUCTIONS IN DOTTED AREA	INSTRUCTIONS 1. UNLESS OTHERWISE PROVIDED BY REGULATION IN YOUR STATE, FINGERPRINTS ARE TO BE SUBMITTED SEPARATELY TO AN IDENTIFICATION DIVISION. FORWARD IN SEPARATE ENVELOPE FOR BEST FINGERPRINT SERVICE. 2. FINGERPRINTS SHOULD BE SUBMITTED BY ADDRESSING TO THE FOLLOWING MULTIPLE FROM THE NAME OF THE DIVISION TO BE SUBMITTED BY STATE, COUNTY, OR CITY. DECISIONS WITH RESPECT TO FINGERPRINTS SHOULD BE MADE BY THE IDENTIFICATION DIVISION. FOR ALL STATES INTERESTED AGENCIES IN HOLDERS BELOW, GIVE COMPLETE MAILING ADDRESS INCLUDING ZIP CODE. 3. STATE NAME AND FULL INFORMATION. 4. PHOTO PLACEMENT IN PROPER FOLDER BLOCK. 5. LIST FULL OR PARTIAL NAME IN BLOCK ON FRONT SIDE. IF NOT PRINT AND AVAILABLE, USE A. L. I. E. I. N. I. E. R. FOR FULL COMPLETION OF RECORD. FINGERPRINT DISPOSITION SHOULD BE INDICATED IN BLOCK FOR ALL OF ABOVE AND A COMPLETE POSITION OF FINGERPRINT AND FINGERPRINT CHARACTERISTICS SHOULD BE INDICATED IN THE ADDRESS DISPOSITION BLOCK PROVIDED ON THIS SIDE. 6. MAKE CERTAIN ALL INFORMATION ARE LEGIBLE, FULLY AVAILABLE AND CLASSIFIABLE. 7. FINGERPRINTS SHOULD BE PLACED ON FRONT OF CARTRIDGE, TIGHTLY INDICATED. BASIS FOR CAUTION SHOULD BE INDICATED REASON FOR CAUTION: A. ARMED AND DANGEROUS (SEE 44, ETC.) 8. INTERVIEW YOUR NUMBER WHEN SHOULD INCLUDE WITH NUMBER AS MILITARY SERVICE, PAYMENT AND/OR, ETC. (SEE ADMINISTRATION, 20-117, THIS SECTION, 1-1-1) 9. FINGERPRINT STATUTE CITATION, IDENTIFYING SPECIFIC STATE, FEDERAL, OR LOCAL, PENAL CODE AND CRIMINAL CODE CITATION (INCLUDES AMT. AND SECTION). 10. ALL INFORMATION REQUESTED IS ESSENTIAL.
SINCE PHOTOGRAPH MAY BECOME DETACHED, INDICATE NAME, DATE TAKEN, FBI NUMBER, CONTRIBUTOR, AND ARTIST NUMBER ON REVERSE SIDE. (PASTE ATTACHED TO FINGERPRINT CARD OR SUBMITTED LATER)	
IF ARREST FINGERPRINTS SENT FBI PREVIOUSLY AND FBI NO UNKNOWN, FURNISH ARREST NO. _____ DATE _____	
STATUTE CITATION: (SEE INSTRUCTIONS) <u>CT</u> 1. 2. 3.	
ARREST DISPOSITION: (SEE INSTRUCTIONS) <u>DN</u>	
EMPLOYER: IF U. S. GOVERNMENT, INDICATE SPECIFIC AGENCY. IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.	
OCCUPATION	SEND COPY TO
RESIDENCE OF PERSON FINGERPRINTED	
SCARS, MAPS, TATTOOS, AND AMPUTATIONS <u>SMT</u>	REPLY DETACHED YES <input type="checkbox"/> NO <input type="checkbox"/> REPLY WANTED: (ENTIRE) ALL CALLERS SUBJECT SHOULD BE WANTED. FINGERPRINTS BY THE FBI FOR FINGERPRINT SERVICE. LEGALLY UNLAWFUL HERE. (THIS SENT ON ALL INFORMATION RECEIVED). TELETYPE TELEPHONE KEY TELEPHONE NO. AND AREA CODE
BASIS FOR CAUTION: <u>ICO</u>	
DATE OF OFFENSE: <u>DCU</u> SKIN TONE: <u>SKN</u>	LEAVE BLANK
MISC NO. <u>MNU</u>	
ADDITIONAL INFORMATION	LEAVE BLANK

Federal jurisdictions and to contend with interstate criminal mobility. These considerations give rise to the "multi-state, single-state" concept. NCIC/CCH will maintain an abbreviated or summary record (index) on single-state offenders and a complete detailed record on multi-state offenders.

Entries (except Federal offenders which the FBI will enter) into the CCH file will be made from the state level with each entry supported by a fingerprint card. Should the state agency not be able to identify a fingerprint card in its state identification bureau it would forward the card to the FBI which would conduct a technical fingerprint search in an effort to identify the individual with an existing CCH record from another state. If no identification is made, the submitting state would establish a CCH record. If an identification is made, the submitting state would update the existing CCH record with this arrest. Should this latter action have the effect of creating a multi-state record the abbreviated national record would be replaced by a complete detailed record.

Currently the national file contains the complete record and will continue to do so until such time as all states develop essential services such as identification, information flow and computer systems capabilities. The CCH Program will be continually evaluated, looking toward implementation of the single-state/multi-state concept.

The CCH Program was initiated on-line through the NCIC system in November, 1971. Currently the states of Arizona, Florida, Illinois, New York, and Pennsylvania have supplied to the FBI computerized records for the national file. In

R-84 (Rev. 6-24-71)

FINAL DISPOSITION REPORT

Note: This vital report must be prepared on each individual whose arrest fingerprint* have been forwarded to the FBI Identification Division without final disposition noted thereon. If no final disposition is available to arresting agency, also obtain subject's right four finger impressions on this form, complete left side and forward the form when case referred to prosecutor and/or courts. Agency on notice as to final disposition should complete this form and submit to: Director, FBI, Washington, D. C. 20537, Attention: Identification Division.

(See instructions on reverse side)

FBI No.		Final Disposition & Date (If convicted or subject pleaded guilty to lesser charge, include this modification with disposition.)
IF KNOWN Name on Fingerprint Card Submitted to FBI Last First Middle MUST CORRESPOND WITH NAME ON ARREST FINGERPRINT CARD.		1. INCLUDE FINAL DISPOSITION & DATE FOR EACH OFFENSE CHARGED AT ARREST. 2. INDICATE TYPE OF SENTENCE IMPOSED: E.G., CONSECUTIVE, CONCURRENT, PROBATION, ETC., IF APPLICABLE.
IF FBI No. Unknown, Furnish: Date of Birth: MONTH-DAY-YEAR Sex _____ Fingerprint Classification: IF KNOWN-AS QUOTED BY FBI		
State Bureau No.		This Form Submitted By: (Name, Title, Agency, City & State) OFFICER OF AGENCY SUBMITTING FINAL REPORT. LIST IN ORDER SHOWN ABOVE.
Contributor of Fingerprint:		Signature _____ Date _____ Title _____
<h1>SPECIMEN FINAL DISPOSITION REPORT</h1>		
AGENCY SUBMITTING ARREST FINGERPRINT CARD (GIVE COMPLETE ADDRESS INCLUDING ZIP CODE)		
Arrest No.	Date Arrested or Received	<input type="checkbox"/> COURT ORDERED EXPUNGEMENT: Return Arrest Fingerprint Card to Contributing Agency; Certified or Authenticated Copy of Court Order Attached.
AS APPEARS ON ARREST FINGERPRINT CARD	MONTH-DAY-YEAR	
Offenses Charged at Arrest:	OFFENSES MUST BE SAME AS THOSE APPEARING ON ARREST FINGERPRINT CARD.	Right Four Fingers Taken Simultaneously <input checked="" type="checkbox"/> IF BLOCK IS CHECKED, MAKE CERTAIN THAT CERTIFIED OR AUTHENTICATED COPY OF COURT ORDER IS SECURELY ATTACHED TO THIS FORM.
ARRESTING AGENCY MUST OBTAIN RIGHT FOUR FINGER IMPRESSIONS OF SUBJECT ON THIS FORM. ALL INFORMATION REQUESTED IS ESSENTIAL.		
THIS FORM NOT TO BE USED IN LIEU OF ARREST FINGERPRINT CARD.		

addition, the FBI has been making entries on Federal offenders who have been arrested since January, 1970, including entries for the District of Columbia. As of February 23, 1973, there were 288,207 CCH records.

I am submitting the following document for the record which will furnish detailed information concerning the NCIC/CCH Program. (A paper entitled "National Crime Information Center (NCIC) Computerized Criminal History Program, Background, Concept, and Policy As Approved by NCIC Advisory Policy Board, September 20, 1972.")

0-200 (Rev. 5-20-71)
MASTER
1-4 (Rev. 5-20-71)

MASTER

3-1-73 900 02

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20537

The following FBI record, NUMBER 305 974 C, is furnished FOR OFFICIAL USE ONLY. Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DENIED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
DC Crt of Gen Sessions Wash DC	Frank Jones	2-10-66	intoxication	prob 6 mos
DC Jail Wash DC	Frank Jones #105015	7-19-68	burg II & riot	
PD Wash DC	Frank Thomas Jones #231895	2-26-69	keep & selling & CDW (gun)	released
PD Balt Md	John Coleman #04507	8-4-69	armed robbery	3 years
SO Fairfield Fairfield Cal	John Edward Doe #105872	3-14-72	burglary	
<u>SIMULATED RECORD</u>				

IDENTIFICATION DIVISION

305 974 C

Simulated Record

PROPERTY OF
 FEDERAL BUREAU OF INVESTIGATION
 Washington, D. C. 20537
 FINGERPRINT IDENTIFICATION FILE

The Background, Concept, and Policy paper, beginning on page 10, contains provisions relating to the security and confidentiality of information in the NCIC interstate criminal history exchange system. In addition to these provisions, system operating procedures identify each record with the agency entering the record which is protected by computer programming from change by any other agency. The computer is programed to make certain sufficient data is included in record entries to prevent erroneous identification. Communications lines are dedicated to NCIC use.

Former Director Hoover has kept the Congress advised of the development of NCIC in testimony before the House Subcommittee on Appropriations since 1966. On March 17, 1971, he presented detailed information concerning the CCH File before the Subcommittee. Also on March 17, 1971, Assistant Director Dwight J. Dalbey presented Mr. Hoover's statement concerning the NCIC and the CCH Program before the Subcommittee on Constitutional Rights of this Committee.

SEPTEMBER 20, 1972.

NATIONAL CRIME INFORMATION CENTER (NCIC) COMPUTERIZED CRIMINAL HISTORY PROGRAM BACKGROUND, CONCEPT AND POLICY AS APPROVED BY NCIC ADVISORY POLICY BOARD

BACKGROUND AND CONCEPT

The development in 1971, of the computerized criminal history file as part of the operating NCIC system is a major step forward in making this system of optimum value to all agencies involved in the administration of criminal justice. It is felt pertinent at this time to restate established NCIC concepts and operating policies, as well as new steps necessary to place this new application in its proper perspective. Offender criminal history has always been regarded by NCIC as the basic file in a criminal justice information system. From the beginning of NCIC

sensitivity of a criminal history file with its security and confidentiality considerations has always been recognized (Science and Technology Task Force Report, The President's Commission on Law Enforcement and Administration of Justice, 1967).

It is important to keep in mind the need to develop an offender criminal history exchange with the states that will rapidly gain the confidence of all users in terms of system integrity, accuracy, and completeness of file content. This type of discipline is necessary if a nationwide system employing the necessary standards is to succeed. This is an essential consideration during the record conversion stage even though available data is limited, and becomes an essential goal in an operating on-line system.

From its inception, the concept of NCIC has been to serve as a national index and network for 50 state law enforcement information systems. Thus, the NCIC does not, nor is it intended to, eliminate the needs for such systems at appropriate state and metropolitan levels, but complements these systems. The concept was built on varying levels and types of information in metropolitan area, state and national files. In such an overall system many thousands of duplicate indices in local, state and Federal agencies could be eliminated and all agencies share in centralized operational information from a minimum number of computer files. The purpose of centralization beyond economics is to contend with increasing criminal mobility and recidivism (criminal repeating). Computer and communications technology makes this possible and, in fact, demands this system concept.

Our way of life demands that local and state government retain their traditional responsibility over law enforcement. Computer and communications technology such as NCIC enhances local and state capability to preserve this tradition. The NCIC system places complete responsibility for all record entries on each agency—local, state or Federal. Likewise, clearance, modification and cancellation of these records are also the responsibility of the entering agency. Each record, for all practical purposes, remains the possession of the entering agency. However, each local and state agency in one state can immediately share information contributed by another agency in another state. This continuity of information greatly increases the capability of local and state agencies in working across state lines which have in the past been barriers to mutual state and local law enforcement efforts.

The NCIC system, which is the first use of computer/communications technology to link together local, state and Federal governments, established the control terminal concept. In a national system, although the individual users are responsible for the accuracy, validity, and completeness of their record entries and their action decisions on positive responses to inquiries, more stringent controls with respect to system discipline are required. A control terminal on the NCIC system is a state agency or a large core city servicing statewide or metropolitan area users. These control terminals, rapidly becoming computer based, share the responsibility in the national network in monitoring system use, enforcing discipline and assuring system procedures and policies are met by all users. The NCIC system through its related control terminals and the advent of criminal history, has a potential of over 45,000 local, state and Federal criminal justice user terminals. Tradition, computer/communications technology, and the potential size of the NCIC network and its related state systems demand that its management responsibility be shared with the states. To accomplish this objective an NCIC Working Committee and an Advisory Policy Board were established.

From the beginning, the NCIC system concept has been to encourage and develop strong central state information and communications services. Through mandatory reporting laws at the state level, essential centralized files can be established for both operational and administrative use. The administrative or statistical use of computer based files is a vital consideration. A state cannot make intelligent decisions about crime problems or criminal justice effectiveness unless it can statistically document the extent and nature of crime and the success or failure of the criminal justice system in its treatment of offenders. Thus, the planning of these systems must incorporate means of obtaining the necessary statistical data as a by-product of the operational information being processed on a day-to-day basis. This is particularly true with respect to the criminal history application.

Of further significance are the centralized police statistics programs (Uniform Crime Reports) now operating in 10 states whereby comparative crime statistics are furnished to the national level through a central state agency. This statistical data furnished to the FBI for national use is merely a by-product of a more de-

tailed state program which is an integral part of state law enforcement information services.

Offender criminal history, i.e., the physical and numerical descriptors of an arrested person and the basic recorded actions of the criminal justice agencies with respect to the offender and the charge, is vital information in day-to-day criminal justice operations. FBI studies as published in Uniform Crime Reports have documented the extent of criminal repeating by the serious offender, i.e., an average criminal career of 10 years and 6 arrests. With respect to criminal mobility, about 70 percent of the rearrests (criminal repeating) will be within the same state. Therefore, an offender criminal history file in scope and use is essentially a state file and a state need.

There is, however, substantial interstate criminal mobility (25-30 percent) which requires sharing of information from state to state. There is no way to positively identify a first offender who will later commit a crime in another state. The approach then to a national index must be an empirical judgment that all state offenders committing serious and other significant violations must be included in the national index. As in other aspects of the system, the determination of which criminal acts constitute serious or significant violations resides with each individual state. A national index is required to efficiently and effectively coordinate the exchange of criminal history among state and Federal jurisdictions and to contend with interstate criminal mobility.

The development of offender criminal history for interstate exchange required the establishment of standardized offense classifications, definitions, and data elements. Felony and misdemeanor definitions cannot be used in this approach because of the wide variation in state statutes. In fact, the definitions of a specific crime by state penal codes also vary widely. For full utility and intelligent decision-making, offender criminal history requires a common understanding of the terminology used to describe the criminal act and the criminal justice action.

Computerized offender criminal history must have the criminal fingerprint card taken at the time of arrest as the basic source document for all record entries and updates. This is necessary in order to preserve the personal identification integrity of the system. While the criminal history file in the NCIC system will be open to all law enforcement terminals for inquiry, only the state agency can enter and update a record. This provides for better control over the national file and its content. It relies on a central state identification function to eliminate duplications of records and provides the best statistical opportunity to link together multi-jurisdictional criminal history at local and county level.

Using the NCIC concept of centralized state information systems, another requirement is to change the flow of criminal fingerprint cards. Local and county contributors within a state must in an ultimate operational system forward criminal fingerprint cards to the FBI through the central state identification function. Where the state can make the identification with a prior print in file, it can take the necessary action in a computerized file without submission to the FBI. Where the state cannot make the identification, the fingerprint card must be submitted to the national identification file. Again, the system's concept is that a fingerprint card must be the source document for a record entry and update, but now it will be retained at the state or national level. This approach eliminates considerable duplication of effort in identifying fingerprint submissions, particularly criminal repeaters at state and national level. It will be the responsibility of each state to determine its own capability in regard to servicing intrastate criminal fingerprint cards. Whenever a state has determined that it is ready to assume processing all intrastate criminal fingerprint cards, the state agency will inform contributors within the state to forward all criminal fingerprint submissions to the state identification bureau, including those which were previously directed to the FBI, and will also so inform the FBI. Since the success of the system concept depends on this procedure all possible measures will be taken to assure compliance.

As pointed out earlier, the justification for a national index is to efficiently and effectively coordinate 50 state systems for offender criminal history exchange. The need is to identify the interstate mobile offender. FBI statistics indicate that about 70 percent of the offenders confine their activity to a single state. These may be described as single state offenders. Another 25 to 30 percent of the offenders commit crimes supported by fingerprint cards in two or more states. FBI statistics with respect to more serious violators indicate that on an average, one-third accumulate arrests in three or more states over a 6 to 9-year period. Offenders with arrests in two or more states may be described as *multiple state* offenders.

In either event sufficient data must be stored in the national index to provide

all users, particularly those users who do not have the capability to fully participate in the beginning system, the information necessary to meet basic criminal justice needs.

In order for the system to truly become a national system, each state must create a fully operational computerized state criminal history capability within the state before July 1, 1975.

Although the present need for the criminal history file and the unequal development of state criminal justice systems dictate a simple initial index structure, the ultimate system should differentiate between "multiple state" and "single state" offenders with respect to the level of residency of detailed criminal history. "Single state" offenders would be those whose criminal justice interactions have been non-Federal and confined to a single state having a computerized criminal history system.

The interstate exchange of computerized criminal history records requires a standard set of data elements and standard definitions. The system design must be built upon user needs for all criminal justice agencies and end with user input. It should be designed on what it is possible to achieve in the future and initially operate on the information and hardware available at all levels at the present time. While the proposed formats and standardized offense classifications and definitions seem ambitious, to approach a system of this potential scope and size without a plan to substantially improve the identification/criminal history flow would be a serious error.

System concept

As pointed out earlier the concept of NCIC since initial planning in 1966 has been to complement state and metropolitan area systems. Although computer/communications technology is a powerful tool, a single national file of detailed law enforcement data was viewed as being unmanageable and ineffective in serving the broad and specialized needs of local, state and Federal agencies. The potential size and scope of a national system of computerized criminal history involving 45,000 criminal justice agencies demands joint management by the states and the FBI/NCIC.

Necessity for State files

(1) Seventy percent of the criminal history records will be single state in nature, i.e., all criminal activity limited to one state and, therefore, the responsibility of and of primary interest to that state,

(2) State centralization can tie together the frequent intrastate, multijurisdictional arrests of the same offender and thus eliminate unnecessary duplication of files at municipal and county level. This will obviously result in economies.

(3) A state system with a detailed data base, because of its manageable size, can best satisfy most local and state criminal justice agency information needs both on and off line. The national file then complements rather than duplicates the state file.

(4) A state with a central data base of criminal history has the necessary statistical information for overall planning and evaluation including specialized needs unrelated to the national file,

(5) State control of record entry and updating to national file more clearly fixes responsibility, offers greater accuracy, and more rapid development of the necessary standards,

(6) A central state system provides for shared management responsibility with FBI/NCIC in monitoring intrastate use of the NCIC, including security and confidentiality,

(7) By channeling the criminal identification flow through the state to the national level eliminates substantial duplication of effort at national and state levels.

Compatibility of State and national files

(1) To contend with criminal repeating and mobility, a national index of state and Federal offender criminal history is necessary, i.e., a check of one central index rather than 51 other jurisdictions,

(2) The duplication does provide a backup to recreate either a national or state file in the event of a disaster, a crosscheck for accuracy, validity, and completeness as well as a more efficient use of the network,

(3) The NCIC record format and data elements for computerized criminal history afford a standard for interstate exchange,

(4) In the developed system single state records (70 percent) will become an abbreviated criminal history record in the national index with switching capability for the states to obtain the detailed record. Such an abbreviated record should contain sufficient data to satisfy most inquiry needs, i.e., identification segment, originating agency, charge, date disposition of each criterion offense and current status. This will substantially reduce storage costs and eliminate additional duplication.

Program development

The proper development of the Computerized Criminal History Program, in terms of its impact on criminal justice efficiency and effectiveness and dollar costs, is vital. At the present time there is a wide range of underdevelopment among the states in essential services such as identification, information flow, i.e., court disposition reporting programs, computer systems and computer skills.

(1) NCIC implemented computerized criminal history in November, 1971, requiring the full interstate format for both single and multi-state records because:

(a) This enables all states to obtain the benefits of the Computerized Criminal History Program.

(b) This provides all states time to develop and implement the necessary related programs to fully participate.

(c) Familiarity with and adherence to all system standards will speed program development.

(2) It is understood that the NCIC Computerized Criminal History Program will be continually evaluated, looking toward the implementation of single state, multi-state concept.

Levels of participation

(1) State maintains central computerized criminal justice information system interfaced with NCIC. The state control terminal has converted an initial load of criminal history and these records are stored at state and national levels. The state control terminal has the on-line capability of entering new records into state and NCIC storage, as well as the ability to update the computer stored records. Through the state system local agencies can inquire on-line for criminal history at state and national levels. This is a fully participating NCIC state control terminal.

(2) State maintains an electronic switch linking local agencies for the purpose of administrative message traffic and on-line access to NCIC through a high-speed interface. No data storage at state level; however, criminal history records are stored in NCIC and new records entered and updated by the state control terminal from a manual interface to the electronic switch. The switch provides local agencies direct access to NCIC for criminal history summary information and other files.

(3) The state maintains manual terminal on low-speed line to NCIC. State control terminal services local agencies off-line, i.e., radio, teletype and telephone. Since volume of computerized criminal history is relatively small the state control terminal may convert criminal history records, enter and update these records in NCIC. No computer storage at state level.

Level- 2 and 3 are interim measures until such time as the state agency secures the necessary hardware to fully participate. At that time the state records stored in NCIC will be copied in machine form and returned to the originating state to implement the state system.

SECURITY AND CONFIDENTIALITY

I. Information in FBI/NCIC Interstate Criminal History Exchange System

A. Entries of criminal history data into the NCIC computer and updating of the computerized record will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other criminal justice agencies will be limited to inquiries and responses thereto. An authorized state control terminal is defined as a state criminal justice agency on the NCIC system servicing statewide criminal justice users with respect to criminal history data. Control terminals in Federal agencies will be limited to those involved in the administration of criminal justice and/or having law enforcement responsibilities.

B. Data stored in the NCIC computer will include personal identification data, as well as public record data concerning each of the individual's major steps through the criminal justice process. A record concerning an individual will be initiated upon the first arrest of that individual for an offense meeting the criteria established for the national file. Each arrest will initiate a cycle in the record,

which cycle will be complete upon the offender's discharge from the criminal justice process in disposition of that arrest.

C. Each cycle in an individual's record will be based upon fingerprint identification. Ultimately the criminal fingerprint card documenting this identification will be stored at the state level or in the case of a Federal offense, at the national level. At least one criminal fingerprint card must be in the files of the FBI Identification Division to support the computerized criminal history record in the national index.

D. The data with respect to current arrests entered in the national index will be restricted to serious and/or significant violations. Excluded from the national index will be juvenile offenders as defined by state law (unless the juvenile is tried in court as an adult); charges of drunkenness and/or vagrancy; certain public order offenses, i.e., disturbing the peace, curfew violations, loitering, false fire alarm; traffic violations (except data will be stored on arrests for manslaughter, driving under the influence of drugs or liquor, and "hit and run"); and non-specific charges of suspicion or investigation.

E. Data included in the system must be limited to that with the characteristics of public record, i.e.;

1. Recorded by officers of public agencies or divisions thereof directly and principally concerned with crime prevention, apprehension, adjudication or rehabilitation of offenders.

2. Recording must have been made in satisfaction of public duty.

3. The public duty must have been directly relevant to criminal justice responsibilities of the agency.

F. Social history data should not be contained in the interstate criminal history system, e.g., narcotic civil commitment or mental hygiene commitment. If, however, such commitments are part of the criminal justice process, then they should be part of the system.

Criminal history records and other law enforcement operational files should not be centrally stored or controlled in "data bank" systems containing non-criminal justice related information, e.g., welfare, hospital, education, revenue, voter registration, and other such non-criminal files necessary for an orderly process in a democratic society.

G. Each control terminal agency shall follow the law or practice of the state or, in the case of a Federal control terminal, the applicable Federal statute, with respect to purging/expunging data entered by that agency in the nationally stored data. Data may be purged or expunged only by the agency originally entering that data. If the offender's entire record stored at the national level originates with one control terminal and all cycles are purged/expunged by that agency, all information, including personal identification data will be removed from the computerized NCIC file.

II. Steps to Assure Accuracy of Stored Information

A. The FBI/NCIC and state control terminal agencies will make continuous checks on records being entered in the system to assure system standards and criteria are being met.

B. Control terminal agencies shall adopt a careful and permanent program of data verification including:

1. Systematic audits conducted to insure that files have been regularly and accurately updated.

2. Where errors or points of incompleteness are detected the control terminal shall take immediate action to correct or complete the NCIC record as well as its own state record.

III. Who May Access Criminal History Data

A. Direct access, meaning the ability to access the NCIC computerized file by means of a terminal device, will be permitted only for criminal justice agencies in the discharge of their official, mandated responsibilities. Agencies that will be permitted direct access to NCIC criminal history data include:

1. Police forces and departments at all governmental levels that are responsible for enforcement of general criminal laws. This should be understood to include highway patrols and similar agencies.

2. Prosecutive agencies and departments at all governmental levels.

3. Courts at all governmental levels with a criminal or equivalent jurisdiction.

4. Correction departments at all government levels, including corrective institutions and probation departments.

5. Parole commissions and agencies at all governmental levels.
6. Agencies at all governmental levels which have as a principal function the collection and provision of fingerprint identification information.
7. State control terminal agencies which have as a sole function by statute the development and operation of a criminal justice information system.

IV. Control of Criminal Justice Systems

All computers, electronic switches and manual terminals interfaced directly with the NCIC computer for the interstate exchange of criminal history information must be under the management control of criminal justice agencies authorized as control terminal agencies. Similarly, satellite computers and manual terminals accessing NCIC through a control terminal agency computer must be under the management control of a criminal justice agency. Management control is defined as that applied by a criminal justice agency with the authority to employ and discharge personnel, as well as to set and enforce policy concerning computer operations. Management control includes, but is not limited to, the direct supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of the computerized criminal history program. Management control must remain fully independent of noncriminal justice data systems and criminal justice systems shall be primarily dedicated to the service of the criminal justice community.

In those instances where criminal justice agencies are utilizing equipment and personnel of a noncriminal justice agency for NCIC/CCH purposes, the following criteria will apply in meeting the above management control provisions:

1. The hardware, including processor, communications control, and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

2. The criminal justice agency must exercise management control with regard to the operating of the aforementioned equipment by:
 - (a) having a written agreement with the noncriminal justice agency operating the data center providing the criminal justice agency authority to select and supervise personnel,
 - (b) having the authority to set and enforce policy concerning computer operations, and
 - (c) having budgetary control with regard to personnel and equipment, in the criminal justice agency.

The Board endorses the following statement by the Director of the FBI before the Subcommittee on Constitutional Rights on March 17, 1971. "If law enforcement or other criminal justice agencies are to be responsible for the confidentiality of the information in computerized systems, then they must have complete management control of the hardware and the people who use and operate the system. These information systems should be limited to the function of serving the criminal justice community at all levels of government—local, state and Federal."

The following are considerations:

1. Success of law enforcement/criminal justice depends first on its manpower, adequacy and quality, and secondly, information properly processed, retrievable when needed and used for decision making. Law enforcement can no more give up control of its information than it can its manpower.

2. Computerized information systems are made up of a number of integral parts; namely, the users, the operating staff, computers and related hardware, communications and terminal devices. For effectiveness, management control of the entire system cannot be divided between functional and nonfunctional agencies. Likewise, the long-standing law enforcement fingerprint identification process is an essential element in the criminal justice system.

3. Historically, law enforcement/criminal justice has been responsible for the confidentiality of its information. This responsibility cannot be assumed if its data base is in a computer system out of law enforcement/criminal justice control.

4. The function of public safety and criminal justice demands the highest order of priority, 24 hours a day. Experience has shown that this priority is best achieved and maintained through dedicated systems.

5. A national/statewide public safety and criminal justice computer/communications system, because of priority, scope including system discipline, and information needs, on and off line, will require full service of hardware and operating personnel.

6. Historically, police and criminal justice information have not been intermingled or centrally stored with noncriminal social files, such as revenue, welfare,

and medical, etc. This concept is even more valid with respect to computerized information systems at both national and state levels.

7. These systems, particularly public safety and criminal justice information systems, must be functional and user oriented if they are to develop effectively. Computer skills are a part of the system. Ineffective systems result not only in the greatest dollar loss but also costs in lives.

V. Use of System-Derived Criminal History Data

A. Criminal history data on an individual from the national computerized file will be made available outside the Federal government to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such data for use in connection with licensing or local or state employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to state and Federal statutes. There are no exceptions.

B. The use of data for research should acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects divorced as fully as possible from the data. Proposed programs must be reviewed by the NCIC or control terminal agency to assure their propriety and to determine that proper security is being provided. All noncriminal justice agency requests involving the identities of individuals in conjunction with their national criminal history records must be approved by the Advisory Policy Board.

The NCIC or control terminal agency must retain rights to monitor any research project approved and to terminate same if a violation of the above principles is detected. Research data shall be provided off line only.

C. Should any information be verified that any agency has received criminal history information and has disclosed that information to an unauthorized source, immediate action will be taken by NCIC to discontinue criminal history service to that agency, through the control terminal if appropriate, until the situation is corrected.

D. Agencies should be instructed that their rights to direct access encompass only requests reasonably connected with their criminal justice responsibilities.

E. The FBI/NCIC and control terminals will make checks, as necessary, concerning inquiries made of the system to detect possible misuse.

F. The establishing of adequate state and Federal criminal penalties for misuse of criminal history data is endorsed.

G. Detailed computerized criminal history printouts shall contain caveats to the effect, "This response based on numeric identifier only" and "Official use only—arrest data based on fingerprint identification by submitting agency or FBI." These caveats will be generated by the FBI, NCIC or state control terminal's computer or may be preprinted on paper stock.

VI. Right to Challenge Record

The person's right to see and challenge the contents of his record shall form an integral part of the system with reasonable administrative procedures.

VII. Physical, Technical, and Personnel Security Measures

The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

A. Computer Centers:

1. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.

2. Since personnel at these computer centers can access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel.

3. All visitors to these computer centers must be accompanied by staff personnel at all times.

4. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals.

5. Computers having access to the NCIC must maintain a record of all transactions against the criminal history file in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data.

6. Each state control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

B. Communications:

1. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice use, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels.

2. Physical security of the lines/channels must be protected to guard against clandestine devices being utilized to intercept or inject system traffic.

C. Terminal Devices Having Access to NCIC:

1. All agencies having terminals on the system must be required to physically place these terminals in secure locations within the authorized agency.

2. The agencies having terminals with access to criminal history must have terminal operators screened and restrict access to the terminal to a minimum number of authorized employees.

3. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of that data.

4. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notation of individual making request for record (90 days).

VIII. Permanent Committee on Security and Confidentiality

A permanent committee has been established, composed of NCIC participants, which group will address the problems of security and privacy on a continuing basis and provide guidance to the NCIC Advisory Policy Board. Some areas recommended for study are:

A. The consideration of criteria for the purging of records, i.e., deletion of records after a designated period of criminal inactivity or attainment of a specified age, etc.

B. The consideration of criteria for qualification of non-criminal justice agencies for secondary access to criminal history data.

C. A model state statute for protecting and controlling data in any future system should be drafted and its adoption encouraged.

IX. Organization and Administration

A. Each control terminal agency shall sign a written agreement with the NCIC to conform with system policy before participation in the criminal history program is permitted. This would allow for control over the data and give assurance of system security.

B. In each state the control terminal agency shall prepare and execute a written agreement containing similar provisions to the agreement by the states and NCIC with each criminal justice agency having a terminal device capable of accessing criminal history data within that state.

C. Each state criminal justice control terminal agency is responsible for the security throughout the system being serviced by that agency, including all places where terminal devices are located.

D. A system security officer shall be designated in each control terminal agency to assure all necessary physical, personnel, computer and communications safeguards prescribed by the Advisory Policy Board are functioning properly in systems operations.

E. The rules and procedures governing direct terminal access to criminal history data shall apply equally to all participants in the system, including the Federal and state control terminal agencies, and criminal justice agencies having access to the data stored in the system.

F. All control terminal agencies and other criminal justice agencies having direct access to computerized criminal history data from the system shall permit an inspection team appointed by the Security and Confidentiality Committee to conduct appropriate inquiries with regard to any allegations received by the

Committee of security violations. The inspection team shall include at least one representative of the FBI/NCIC. All results of the investigation conducted shall be reported to the Advisory Policy Board with appropriate recommendations.

G. Any non-compliance with these measures shall be brought to the immediate attention of the Committee which shall make appropriate recommendations to the Advisory Policy Board. This Board has the responsibility for recommending action, including the discontinuing of service to enforce compliance with system security regulations.

Senator TUNNEY. To what extent do you expurgate records from files that are kept?

Mr. GRAY. That is done on any occasion when an originating agency, what we call a contributor, requests it. As a practicing attorney in Connecticut, many times I used to do it, my law firm used to do it—get those expunged—and the FBI will send that fingerprint card back immediately.

Senator TUNNEY. But what I am thinking of is in reference to the files that you keep on individuals and which are made available to various agencies. To what extent are those files expurgated, assuming now that nobody makes a specific request for expunging anything in the record?

Mr. GRAY. Those files we don't expunge, and once again I have got to give you an explanation so you have a feel for it. I would like to show it to you, and I make the same offer that I made to the House Judiciary Committee, that any member who wants to come and take a visit there, Mr. Chairman, to see—any member of this committee who wants to take the opportunity to come and visit and see how we work—this is the committee of Congress in the Senate that we should be working with. But we make no effort to expunge because of the fact that a lot of that is raw material and it does not represent files on individuals. There may be in a file 350 or 400 insertions and they could be on any number of individuals, but we really don't monkey around with that unless a request comes in, for example, for a name check. We will go to the indexes and we will find out, John Q. Doe, and we will find out what files, what numbered files, does John Doe appear in. We will have to go down through all those general files and find out what is in them. Then he may be the subject of an investigation and we have an investigative file and that will show up when we review our indexes. In the investigative file we do our level best to corroborate and to verify, but in submitting any report we characterize our sources as being reliable or otherwise.

We actually lean over backward to make certain that we are being as fair and as objective as we can when we submit these, and we put that language on those documents.

Senator TUNNEY. To which agencies do you make these investigative files available?

Mr. GRAY. Are you talking about the investigations?

Senator TUNNEY. Well, the reports, let's just say, to which agencies do you make individual personnel files available?

Mr. GRAY. As a general rule we don't. We don't do that at all, because name check requests come in, applicant requests come in to us, or there could be an ongoing investigation involving individuals in an agency, and then we would certainly advise—if we look in our jurisdictional handbooks and under our manual of rules and regulations we see that for this particular type of investigation, these

people are authorized to receive reports. It could be the Secretary of the Department concerned. It could also be the Attorney General. More than likely, also the Deputy Attorney General and, if it is a criminal offense, more than likely also the Assistant Attorney General in charge of the Criminal Division.

Senator TUNNEY. How about local police departments?

Mr. GRAY. Local police departments?

Senator TUNNEY. Yes.

Mr. GRAY. We just don't throw those files around.

Senator TUNNEY. If they requested a file?

Mr. GRAY. No, sir. In fact, I just raised Cain with regard to a situation out in, I believe it was, our Los Angeles area, when a local policeman, and this was a criminal investigation, was allowed to even look at one of our interview reports in a case.

Senator TUNNEY. Will you send your arrest record portion of the file to banks or other private—

Mr. GRAY. No, sir.

Senator TUNNEY. (continuing). Institutions—

Mr. GRAY. No, sir.

Senator TUNNEY (continuing). When they are conducting checks?

Mr. GRAY. No, the way that happens is if there is a State statute—banks are a little bit different because they come under some of the Federal statutes.

Senator TUNNEY. Well, any private corporation, do you ever—

Mr. GRAY. No, absolutely not; no, sir. You know this has been much discussed in the Congress, and resolutions have been passed and points of order have been made and it has been rather thoroughly discussed and aired, and where we stand right now is if a State has a statute that provides for the receipt of this information for employment and licensing purposes and the Attorney General of the United States approves, we will furnish it for that purpose. But when we go to computerized criminal histories and get into the NCIC area, then it only goes to a law enforcement agency.

Senator TUNNEY. So what you are saying is, no private group has access to any of the information that is contained in your personnel files?

Mr. GRAY. Our policies are against that. We have a record of all kinds of safeguards to prevent that, but that is a pretty broad question because you and I both know information from our files has ended up in some strange places for varying reasons, and I don't know all of the reasons for this. You can think of the media, for example, as one area. But no private group has access insofar as we can prevent them from having access.

Senator TUNNEY. And local police departments have access only if the Attorney General approves it?

Mr. GRAY. This is for State employment or licensing purposes. But on the identification record, we will give a report back to a local police department regarding the card, the fingerprint card, they have sent in, but we won't send them back all kinds of information out of our files as distinguished from our identification records.

Senator TUNNEY. What kind of security does the NCIC data bank have?

Mr. GRAY. Very, very tight security. I have been over and watched it when the reject button goes on, and the reject is recorded. Now,

there is no question about it, sophisticated people can penetrate, and have penetrated, computer systems. We are aware of this, we are well aware of this, and we watch for it all the time. There have been many technical articles written on penetration of computer systems. In fact, some people, some of the experts, go so far as to say that you can't design a computer system that they can't penetrate.

Senator TUNNEY. How many people have access to the NCIC data bank?

Mr. GRAY. What part of it are you talking about, sir? You remember I read off a list of items.

Senator TUNNEY. Yes. Well, say on personal files?

Mr. GRAY. Only those who have terminals, and those are all law enforcement agencies, those terminals are right there under the control of criminal justice agencies. This is one of the requirements.

Senator TUNNEY. Do you know, offhand, how many there are?

Mr. GRAY. I would say roughly right now, the rough figure of the law enforcement agencies having access through terminals in their State—I am thinking now in terms of the State system, usually there is a State agency of some kind that has a terminal in that State—roughly 6,000 police departments in the United States.

Senator TUNNEY. Is there any way of monitoring the requests for information to make sure that people who are appropriately charged with enforcement of the law are the ones who are requesting it?

Mr. GRAY. Yes, sir; there are all kinds of codes, and, as I mentioned earlier, Senator, you can stand right there in front of the computer and see a reject; it will just stop.

I don't want to mislead you, and I don't want you to think that we claim our computer system is penetrationproof; we don't. All we claim is that we have erected all the safeguards within the state of the art at the present time.

Senator TUNNEY. There are many more structural questions that I have, but there are others who haven't asked questions, and I would like temporarily to suspend until they have a chance to ask questions.

I do have a question relating to your involvement or noninvolvement with the security of documents that were made available to this committee.

Did you personally give or authorize the giving of the Dita Beard memorandum to the ITT Corp.?

Mr. GRAY. No, I did not.

Senator TUNNEY. Do you have any idea how the Dita Beard memorandum ended up in the hands of the ITT Corp.?

Mr. GRAY. I don't know that it ended up in the hands of the ITT Corp., but I can tell you what I did at that time. I have got to, as I promised Senator Byrd I would do yesterday. I will be more specific and more precise because I am testifying under oath here. My recollection is, after looking at some of my earlier notes, while I was acting as the Assistant Attorney General of the Civil Division and Deputy Attorney General-Designate, I received a call from Mr. Dean, counsel to the President, asking that this memorandum be made available. I discussed with him the fact that this was a public document, it had been printed and published widely in all newspapers in the United States, that we were as interested in truth or falsity as they were at the White House because of the fact that serious allegations were

made against the Attorney General, as I recall it, the Deputy Attorney General, as I recall it, and that, yes, I would make that document available to him.

Senator TUNNEY. And it was made available?

Mr. GRAY. It was made available to him by me.

Senator TUNNEY. Do you know whether Mr. Colson got his hands on it?

Mr. GRAY. No, sir. No, sir; I do not. All I know is that that document was returned to me in exactly the same form as I had delivered it. I know that the Federal Bureau of Investigation report submitted to this committee, reported that document to be possibly authentic.

Senator TUNNEY. Well, when the press reports indicated that ITT did have the Dita Beard memorandum, did you make any effort to find out how it was that they had gotten access to it?

Mr. GRAY. No; I didn't make any effort at all because I felt what we were interested in with regard to that document was the issue of truth, and if ITT, if that allegation was true and if ITT could come up with some information with regard to a serious case of this nature, I felt that this committee would be entitled to have it. But I don't know what ITT came up with. I don't know if ITT had that document.

Senator TUNNEY. Well, except for the fact that the committee gave it to the Justice Department to be transmitted to the FBI, and I don't believe, and I sat through all those hearings. I don't believe that there ever was an authorization to see that document made available to the ITT Corp.—

Mr. GRAY. I don't know whether there was any authorization or not, Senator, but in the position that I held as Deputy Attorney General-Designate at that time, I was making the decision for the Department of Justice, and when I am called by counsel to the President in a matter of this serious nature for a document of this type, I made it available and I would do it again.

Senator TUNNEY. Let me ask you this. When you make information available to a counsel for the President, and it appears that the information that you have made available is leaked or made available to third parties who have no right to it, do you feel, as Director of the FBI, that you have any responsibility to see that an investigation is done of that White House counselor?

Mr. GRAY. That is right. But you always get yourself, you know, in the problem of who you are going to investigate. You have to be very, very careful about that because here is where you run into first amendment considerations and get yourself into a real hassle.

Senator TUNNEY. The only person who can discipline the White House counselor is probably the President himself; isn't it?

Mr. GRAY. I would suspect so; yes, sir.

Senator TUNNEY. In a noncriminal way.

Mr. GRAY. That is right; yes, sir—in the absence of laws of the United States.

Senator KENNEDY. I didn't understand, if the Senator will yield, in response to the Senator's question, the first amendment.

Mr. GRAY. You are liable to run into the same kind of a situation, Senator Kennedy. We do all the time. We go so far in trying to check out leaks, and we come up with these documents that are in the hands of the press and you have got to stop, look, and listen, you have got to give some consideration to where you go from there.

Senator KENNEDY. Well, I mean if you were convinced that there was a leak by the President's counselor would you be any less reluctant to blow that case out of the water?

Mr. GRAY. No, and I said yesterday that I proceed on the presumption of regularity, that I do not proceed on the presumption that either the President, his counselor, or the members of his staff are going to—

Senator KENNEDY. How much evidence do you need to rebut it?

Mr. GRAY. How much evidence do I need for what, sir?

Senator KENNEDY. Do you need to rebut it. How much evidence, you proceed on a presumption and I am wondering how much evidence do you need to rebut the presumption.

Mr. GRAY. That is a kind of presumption. I don't know how much evidence. I am not going to take it on the basis of newspaper accounts and that kind of thing, you know, and that occurred sometime after, as I recall, I don't know when it was reported in the press.

Senator TUNNEY. Have you developed any standards, guidelines, in this particular area?

The thing that concerns me here is that there was a press report of a leak by a White House counselor of confidential information to Mr. Segretti.

Mr. GRAY. I have not seen that, sir; I don't know. I would have to see that report right in front of me, you know, to answer that question.

Senator KENNEDY. Well, there were, it was common knowledge, you said you blew your top.

Mr. GRAY. That was on Segretti?

Senator KENNEDY. Yes, on Segretti.

Mr. GRAY. I am sorry, that is true.

Senator KENNEDY. Then there were also some reports at the time of the ITT hearing that the Dita Beard memorandum had ended up in the hands of ITT for purposes of analysis, which certainly was going out of channels and certainly was something that this committee, I know, I sat on it, didn't authorize. Now I am curious to know if you are developing any kind of procedures whereby you are going to protect the FBI and the security of FBI files from disclosures by White House counselors if, in fact, and we don't know whether they did or not, they are only allegations, if in fact they do leak this information to third parties.

Mr. GRAY. Yes, but I don't think there was a violation of law here. It is not something that is within our jurisdiction to go just willy-nilly investigating. We can't have it both ways, we have got to have a violation of law.

Senator KENNEDY. Would it be a violation of law if in fact a White House counselor gave your investigative report to Mr. Segretti to advise him before a grand jury hearing?

Mr. GRAY. No; I know of no violation of law in that, Senator.

Senator KENNEDY. Are you planning any procedures, any guidelines with respect to the making of investigative reports available to White House counselors?

Mr. GRAY. None other than what I have already exercised in the administration of the office to date—to be very, very careful, to be as circumspect as I can be about it, to ask questions about it, to discuss

it, that kind of thing, and to stay within our own jurisdictional guidelines. But it shouldn't be presumed by anyone that every day I am called by someone in the White House to send over a file or that kind of thing. I am not. It just does not happen.

Senator KENNEDY. And they are not sent over as a matter of course?

Mr. GRAY. No, sir. I can state that to you under oath categorically; no, sir; they are not.

Senator KENNEDY. I would like to reserve the balance of my time, Mr. Chairman, and give others an opportunity.

The CHAIRMAN. Senator Fong.

Senator FONG. Mr. Gray, I am so sorry I was not able to be here yesterday afternoon. Therefore, I may ask you some questions that may be repetitive, but I ask you to go along with me.

You have been charged with not having any enforcement experience, but reviewing your experience as a lawyer, your experience in the Attorney General's office, and your other experience, I am satisfied that you are capable of filling this position.

Another charge leveled against you is that you have too many dossiers on too many people in the United States. Could you give us an idea as to when you prepare a file on an individual. Do you prepare a file on an individual whenever you get any kind of complaint against him, or any criticism, or any communication about him?

Mr. GRAY. Not if we get any communication about him. That is just informant-type information or an anonymous letter situation or a newspaper clipping sent in. Those usually go into the files, and there could be 200 or 300 people represented in one of them as distinguished from when we begin an investigation and actually conduct an investigation of an individual. Then information that is received concerning that individual is checked and verified, using all of our resources to get to the facts.

Senator FONG. If a man is considered to be a criminal, you would have a criminal file on him; is that correct?

Mr. GRAY. If he has committed a criminal offense, sir, within the jurisdiction of the Federal Bureau of Investigation, violated the laws of the United States for which we have the responsibility to investigate, yes; we would.

Senator FONG. Now, if I were a civil service employee, you would have a file on me?

Mr. GRAY. We would probably have an applicant-type situation where we would have a fingerprint card for you and then if we did a background investigation on you, we would; yes.

Senator FONG. Yes. If, for example, during the war I had a fingerprint of myself taken and filed with the FBI to identify myself in case of any casualty, you would have that kind of information?

Mr. GRAY. Yes, and that would be included in our civil file that Senator Kennedy mentioned earlier. That obviously is not in our criminal file, and all the military prints make up a pretty large segment of that civil file according to my understanding of them.

Senator FONG. Then, every military man would have a file in the FBI?

Mr. GRAY. He would have from the standpoint of his fingerprint identification card and then, if a background investigation were made of him with regard to any classification security clearances that he

would receive, he would have that kind of a background investigation file.

Senator FONG. With regard to the general public, you only have things that are sent in by various individuals or agencies to the FBI? Am I then to understand that you just throw this information into a general file?

Mr. GRAY. That is right. It comes in and a decision is made as to whether to retain it or not. It goes into these big serials, you know, 200 or 300 of them would be together and, if we have an investigative file set up, instead of going over here it would go into the investigative file.

Senator FONG. Say someone writes in that a John Doe stole an automobile—you would just take that and throw it into the general file?

Mr. GRAY. If this is somebody just writing in and saying John Doe stole an automobile we are liable to do some checking with the local PD to see if, in fact, an automobile has been stolen and the Dyer Act is involved.

Senator FONG. You would consider that as a file on John Doe?

Mr. GRAY. If we began to open a file on him we probably would, with the appropriate field office being the office of origin.

Senator FONG. When you say you have about 50 or 60 million files—

Mr. GRAY. These are identification records over in the Identification Division, Senator, as distinguished from the files over in the Files and Communications Division. We are dealing with two different divisions.

Senator FONG. When you talk about files, how many files would you say you had?

Mr. GRAY. I don't know. I will have to provide that number for the record.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. As of March 1, 1973, there are 6,426,813 files.

The CHAIRMAN. Well, the 40 million, how far back does that reach?

Mr. GRAY. How far back do those files reach, sir? From the inception. But we do have a record management program.

(Mr. Gray subsequently submitted the following document for the record:)

RECORDS MANAGEMENT FILES AND COMMUNICATIONS DIVISION THROUGH CLOSE OF BUSINESS 1-31-73

The Files and Communications Division has in operation an extensive and comprehensive Records Management Program designed to insure that all records are maintained in the most compact, informative and useable manner possible. There are many facets to this program and the major ones are summarized below together with a listing of accomplishments to date:

1. Correlation Summaries.—A correlation summary is a memorandum containing concise abstracts of information from various Bureau files on a particular subject or individual. The purpose of the summary is to pull together all information on a designated subject in one document. This results in elimination of excess index references and the consolidation of information in a source document (the summary) to locate detailed documents on a particular subject.

Accomplishments:

Summaries Prepared, 4,461.

Index Cards Destroyed, 1,377,968—Equal to 25 $\frac{1}{2}$ index cabinets.

2. *Index Purge*.—The purpose of the index purge is to remove obsolete index cards from the general index in order to make that index more valid in terms of its information response and more workable in terms of its overall size. The purge of index cards includes all areas of records management except those index cards removed through the preparation of correlation summaries.

Accomplishments:

Index Cards Destroyed, 10,942,136—Equal to 202 $\frac{3}{4}$ index cabinets.

3. *Copy Destruction*.—The goal of the copy destruction program is to destroy duplicate and excessive copies of record material in order to save file space.

Accomplishments:

Copies destroyed equal to 1,028.8 file cabinets.

4. *Destruction of Files*.—This program includes the destruction of record material on the basis of authority under the General Records Schedule of disposal and under specific authority secured by the Bureau through the National Archives where General Records Schedule does not apply. Records so designated for destruction have been found to possess no significant historical, intelligence, informative or research value and, therefore, do not merit retention.

Accomplishments:

Records destroyed equal to 1,301 file cabinets.

5. *Destruction of Bulky Exhibits*.—The purpose of this program is to destroy those file enclosures which because of their size cannot be maintained in a normal size file cabinet and which do not merit continued retention.

Accomplishments:

Exhibits destroyed equal the approximate size of 75.6 file cabinets.

6. *Microfilming*.—The purpose of this program is to reduce to micro form that record material which cannot be destroyed because of continued usefulness but where the use is limited. The goal is to reduce space occupied by those records based on the limited amount of use given them.

Accomplishments:

Record material destroyed equals 2,009 cabinets.

7. *Main Card Rehabilitation*.—The purpose of this continuing program is to make the index most responsive to the needs of all users. Since 1957, this program has included a system to automatically capture for the index record identifying data which was not available at the time the initial index record was prepared. For those index records prepared prior to 1957, research has been conducted to go back to the source document and capture identifying data not previously recorded in the index.

8. *Records Disposal Committee*.—The Records Disposal Committee has the responsibility to identify, through research and analysis, record material which no longer serves any useful purpose on the basis of intelligence, informative, historical or research value. Appropriate authority is then secured to dispose of this material.

The CHAIRMAN. From the inception of the FBI?

Mr. GRAY. That is right. We do have a records management section in the FBI. I earlier answered the question and said we don't expunge. But, in accordance with that records management program, which I have made an insert in the record, Mr. Chairman, and be permitted to explain—

The CHAIRMAN. That would be everybody in the military service since the FBI—

Mr. GRAY. That is right.

The CHAIRMAN. When was the inception of the FBI?

Mr. GRAY. 1908 was the beginning.

Senator FONG. Then, as to the general public, you actually don't have any files?

Mr. GRAY. Not unless they fall in one of these categories we have been discussing this morning or unless a letter, anonymous letter comes in about some individual or informant type information comes in about some individual.

Senator FONG. Many citizens volunteer to have their fingerprints—

Mr. GRAY. That is correct, Senator.

Senator FONG (continuing). Filed with the FBI?

Mr. GRAY. That is correct.

Senator FONG. How many million would you say?

Mr. GRAY. I don't know, I would have to furnish that for the record. I believe we could acquire that information, I am not sure we even have it now.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. As of February 1, 1973, our civil fingerprint file contained fingerprints of 5,778,171 individuals who have submitted their fingerprints to us for personal identification purposes. During the past fiscal year (July 1, 1971 to June 30, 1972) 13,640 individuals submitted their fingerprints to us for personal identification purposes.

Senator FONG. That would be for their own safety and own identification?

Mr. GRAY. That is correct, sir.

Senator FONG. How much does the FBI do in regard to missing persons and trying to locate missing persons? As to persons who have died, how much work does the FBI do in trying to find out who they are?

Mr. GRAY. I would have to get a measurement on that for you, Senator. I know we do considerable. We do considerable disaster work. We are always sending disaster teams out whenever major disasters occur to assist in the identification of persons.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Through our fingerprint files we are able to provide many humanitarian services. For example, during the past fiscal year (July 1, 1971 to June 30, 1972) our Identification Division received the fingerprints of 21,266 deceased individuals, many of whom were unknown deceased. Of this number, the fingerprints of 18,737 were of good enough quality to permit a search through our files and 11,654 or 62% were positively identified by fingerprints. Included in this number were many individuals who had no arrest records and they were identified with fingerprints maintained in our civil file. A number of the deceased fingerprints were from the military services in connection with Vietnam casualties.

The FBI Disaster Squad, which renders on-the-scene assistance in identifying victims of disasters, was formed in 1940. Since January 1, 1959, the Disaster Squad has assisted with identification problems in 86 disasters involving airplane crashes, ship accidents, fires, explosions, hurricanes, floods and bus accidents. Fingerprints or palm prints were secured from an estimated 2,277 victims, exact number unknown because of dismemberment, and 1,604 or 70.44% were positively identified by fingerprints or palm prints. Many of these identifications were made with fingerprints maintained in our civil file.

Other humanitarian uses made of our fingerprint files involve identification of amnesia victims, assisting in establishing an individual's veteran's status so that he or she may qualify for veteran's benefits, establishing positive identity of individuals seeking to qualify for benefits under Civil Service regulations and social security. Although we are not authorized to conduct active investigation to locate missing persons, we do place stops in our fingerprint files, on request, so that relatives may be advised should information as to the location of the missing persons come to our attention through our fingerprint files. At present we have approximately 6,000 missing persons stop notices in our fingerprint files and during the past fiscal year (July 1, 1971 to June 30, 1972) 1,202 such notices were added to the file while 1,452 notices were cancelled. We have received many heart-warming letters from individuals who have located missing relatives through this service.

Senator FONG. As FBI Director, would you say that the average American citizen does not have anything to fear from the FBI?

Mr. GRAY. This is my belief. I don't believe it is shared by everyone but it is shared by the majority of the people of the United States.

Senator FONG. And the average American who feels the FBI is an overpowering institution and it is scary, they have no reason to believe that?

Mr. GRAY. Quite to the contrary. From everything that I have learned in the 10 months that I have been there, and in talking with FBI headquarters people and in the field, and from hearing from citizens throughout the United States, I feel that the reputation of the FBI is extremely high and its services are valued by the American people.

Senator FONG. They feel that the FBI is a friendly agency rather than a hostile one?

Mr. GRAY. That is my belief, Senator, and I think it is shared by the majority of the American people.

Senator FONG. Mr. Gray, you have been accused of not doing your level best in the Watergate case. You have stated to this committee that all the raw files are available to us; is that correct?

Mr. GRAY. I made the statement that they were available to the members, and I would provide two thoroughly experienced agents to sit down with the members and respond to any questions that the members might have and assist the members in going over those files. Once again, I am exercising what caution I deem to be prudent here to restrict the need to know because of the information. It involves people, a lot of the information has not been subject to trial, a lot of those people have not been indicted, and I just feel this is the prudent way to do it.

Senator FONG. You feel you have investigated this case without bias, with all of the usual procedures that you ordinarily follow in any other investigation?

Mr. GRAY. The truth of the matter, Senator, is if I had not done so, morale in the FBI would not be what it is today nor would I be in this seat. People would have blown me right out of the water long before now. That is the practical truth of the matter. The men and women of the FBI would not tolerate my coming in there and trying to steer or guide that investigation, and I say that any one of the top executives of the Federal Bureau of Investigation would come here before this committee and would testify to that under oath.

Senator FONG. Your bosses are the Attorney General and the President of the United States, are they not?

Mr. GRAY. That is correct, Senator. I am a Bureau Chief in the Justice Department under the executive branch of the Government.

Senator FONG. If the Attorney General wishes to have a file, an FBI file, on an individual because of an investigation of that individual, you would make that available to the Justice Department; is that correct?

Mr. GRAY. I would make the information available to the Attorney General as we do in the regular course of business with all of the Assistant Attorneys General, the Criminal Division, the Civil Division and the Civil Rights Division. We actually do the investigating for them. We work for them.

Senator FONG. If the Attorney General asked for it, you will make it available to him?

Mr. GRAY. Yes, sir.

Senator FONG. That has been a standard practice of the FBI all these years?

Mr. GRAY. From the inception; yes, sir.

Senator FONG. And, if the President of the United States wishes to have an FBI file delivered to him, would it be delivered to him?

Mr. GRAY. That would be delivered to him.

Senator FONG. Is that standard practice?

Mr. GRAY. It is not. That is not the way it occurs, that is not the way it is usually done. It is usually done by submitting the memoranda that we do submit and on occasion permitting review of the actual interview sheets themselves, depending upon the nature of the situation.

Senator FONG. The White House has from time to time asked for certain files, has it not?

Mr. GRAY. Oh, that is correct. They don't get files as such. You know, like I wouldn't take all these Watergate files as such and shunt them all over there. In this particular case we gave a letterhead memorandum to the Attorney General which, I have every reason to believe, was sent to Mr. Dean. Then later on I gave Mr. Dean the interview reports in the Watergate, but I didn't give him all the other memoranda and all the other documents that we have in connection with the files.

Senator FONG. So, when a communication comes from the White House to give certain persons in high authority a certain file or a memorandum of a file, you would do that?

Mr. GRAY. Rarely would we give them the file, but we would give them the memorandum on the case when it is requested, yes.

Senator GURNEY. Would the Senator yield?

Senator FONG. Yes, I would.

Senator GURNEY. Mr. Gray, this word "interview" has been used, interview reports; what does that mean?

Mr. GRAY. That is an FD-302. When an agent interviews an individual he writes out the report of the interview, what the individual told him.

Senator GURNEY. This is not a question and answer thing. It is a synopsis of what testimony the agent took?

Mr. GRAY. That is right. He writes it out, "Joe Blow advised us," and it goes on and on about what he advised us.

Senator FONG. I see. You don't know whether what is said is true or not?

Mr. GRAY. Sir?

Senator FONG. You don't know whether what is said is true or not?

Mr. GRAY. Oh, no, we only take what the individual tells us, because we have no way—this is a report of an agent interviewing an individual.

Senator FONG. In the case of Mr. Dean, who was representing the President of the United States, his receiving this memorandum from you was a usual procedure?

Mr. GRAY. That was the usual procedure, that it went to the Attorney General and then to him.

Senator FONG. I see.

Mr. GRAY. Because he didn't ask—that letterhead memorandum was not really requested by him. He wanted information regarding

the case later on. We discussed the letterhead memorandum and I said, "I will prepare it for the Attorney General and you discuss that with the Attorney General."

Senator FONG. He got that letter from the Attorney General?

Mr. GRAY. I believe he did. I cannot testify under oath as to a fact because I do not know whether or not that LHM as we call it was sent over to him.

Senator FONG. What happened after that you do not know?

Mr. GRAY. No, I do not know.

Senator FONG. You did what you were told to do?

Mr. GRAY. That is correct.

Senator FONG. You followed procedure in doing that?

Mr. GRAY. That is correct.

Senator FONG. When you submitted that letter to the Attorney General, it was the proper thing for you to do?

Mr. GRAY. Yes, sir, that is the LHM of July 21, 1972.

Senator FONG. This charge that Mr. Segretti got hold of that interview memo; you had nothing to do with that?

Mr. GRAY. Well, he didn't—you know, the charge varies as to what the newspapers say about it, and I don't know what occurred with Mr. Segretti.

Senator FONG. So, you don't know?

Mr. GRAY. No; I do not.

Senator FONG. Now, you have also been charged with making quite a few partisan speeches, and especially two speeches. One was given before the Rotary Club in Montana—Butte, Mont., on September 7, 1972, and the other on August 11, 1972, before the City Club of Cleveland. Your title in the September 7, 1972, address was "A Nation That Cares," and your title of the August 11, 1972, City Club of Cleveland speech was "Freedom Under Law."

I noted that your speeches were quite short. They ran to 12 to 15 minutes; is that correct?

Mr. GRAY. Well, the way I talk, Senator, they go 15 to 20 minutes. They usually run 20 pages triple space all caps, and that is about 20 minutes.

Senator FONG. I see.

Now, the speech that you made to the Rotary Club in Butte, Mont., "A Nation That Cares," I have read it very, very carefully. I would like to pick out some of the things in it which are outstanding. You said:

This evening I want to talk about A Nation That Cares, a Nation which is concerned about its citizens, their welfare, their happiness, their dignity as human beings.

In our 20th century world these are among the salient questions facing mankind:

What kind of society do we want?

What kind of country is America going to become?

Does our government care about our people? Does it listen?

Is it a sensitive society, wanting to make life more significant and meaningful for every man, woman and child?

Then you went on to say:

We realize that unless people care—about *themselves*, about *others*, about their *values and traditions*—our country will die.

This is why America is today a great and respected Nation.

Then you said:

Unfortunately, there are today a small minority of Americans—not many but a few—who *bitterly and falsely* denounce our country as cruel, sick, callous, and repressive.

They want to create the impression that our government is an ogre, a monster which simply doesn't care.

Another prominent educator has publicly denounced our national leaders—and I ask, did he mean just the President? But to continue, you said:

Our national leaders as not giving—in his words—“any clear sign of compassion or concern for the poor, the weak, the sick, the unemployed, the helpless. . . .”

When you referred to “national leaders,” it was to the whole general scheme of things: was it not?

Mr. GRAY. Right; the three branches of Government, and I was addressing myself to the general attack on our institutions.

Senator FONG. You were citing what others had said, what a prominent educator said, and you continued:

Another speaks of a “selfish and oblivious ruling Establishment.”

And you said:

This is extremist rhetoric.

It is not based on facts.

It deals in overkill, emotion, and flamboyance.

It seeks to set group against group, citizen against citizen.

You said:

These detractors aim not at reform of our institutions, but at their destruction.

Then you go on to say:

In my opinion the vast majority of Americans are becoming tired of this quacking chorus of pessimism, cynicism, and lack of faith.

Is there anything there to boost the Republican Party?

Mr. GRAY. Well, I certainly didn't believe so. I believe that I was talking about our Government. I certainly went at it in that manner, and that was the feeling in my heart and the intent in my mind. I will admit though, Senator Fong, that others can read that differently.

Senator FONG. Yes, sir.

Mr. GRAY. But I would say under oath; no.

Senator FONG. There was nothing to boost the Republican Party?

Mr. GRAY. No; absolutely not.

Senator FONG. And to boost the President?

Mr. GRAY. Absolutely not.

Senator FONG. Then you go on to say:

Since World War II the taxpayers of this country have provided approximately \$130 billion in loans and outright grants to other nations. This has gone not just to our strongest and closest allies, but most especially to weaker nations most in need of it.

Then you go on and say:

Again, what other country has found a means to send people of ability and dedication to help emerging nations around the world in their efforts to elevate their way of life, without asking anything whatsoever in return?

* * * * *

What other people supports anywhere near the variety of charitable causes and contributes anywhere near the proportion of its resources for such causes? I refer to approximately \$20 billion per year in private contributions to health, welfare, educational, and religious institutions.

And you go on to say:

America is NOT a selfish, unconcerned society that does not care.

Then you say:

I like the quotation attributed to Lowell Thomas: "He who allows a day to pass without practicing generosity . . .," he said, "is like a blacksmith's bellows—*he breathes but does not live.*"

This is the spirit of A NATION THAT CARES.

In our democratic society, however, the concept of service takes on a dimension beyond material assistance.

Its greater gift is to provide a climate of freedom in which every individual may pursue his own hopes, dreams and aspirations, and may work out his own destiny as a human being.

* * * * *

What other country has made such a determined effort to combat discrimination and assure equal opportunity for all persons regardless of race, color, or religion?

Then you say:

Finally, the gift of individual freedom and equal opportunity that we enjoy derives primarily from the free government that we have maintained for two centuries. By that I mean a government in which the individual is protected in his freedoms and his personal goals by laws that he or his representative helped to make. Contrary to the opinion of some, law is not the enemy of freedom. Law guarantees freedom against invasion by others.

Then you go on to say what the country is doing. I don't find anything here boosting the Republican Party, do you?

Mr. GRAY. No, sir. I didn't think there was at the time I put the speech together, and I still don't think it was. I would repeat again for this committee that I was admonished by the Attorney General, who said to me that "Some people in the White House said they think you were making too many speeches," and I said I am going to stand up, and I am going to talk for America, and that was exactly my response.

Senator FONG. Yes.

Now in the other speech, before the City Club of Cleveland, you spoke on "Freedom Under Law" and—

The CHAIRMAN. The chairman will be gone for a few minutes. When you conclude, Senator Kennedy will be recognized.

Senator FONG. Thank you.

You said:

Today the attack continues—for the concept of free men and women governing themselves for the common good is virtually as radical in the 20 Century as it was in the twilight of the 18th. And make no mistake—it is radical doctrine!

Our concept of freedom under law is banned, barred, forbidden *and feared* in vast areas of the world where might makes right—where suppression wears the uniform of the police and the robes of justice.

Then you go on and say:

We are on the threshold of the greatest growth pattern in our history—growth in the quality of life for all our citizens—growth in our total effort to eradicate the imperfections in human society (beginning, always, with our own).

Then you say:

We occupy 7 percent of the land surface of the earth. We are 6 percent of the world's population. We account for almost one-third of the goods and services produced on earth.

Then you go on to talk about forces of American technology and you say all have the promise for individuals, and you say:

Every citizen of the United States is guaranteed legal rights and protections of a magnitude not found anywhere else in the world.

All have the *promise* of individual rights and liberties.

All have an *awareness* of those rights and liberties.

All have a *guarantee of opportunity* to full realization of their rights and liberties

And you say:

No, pessimism does not yet reign supreme in these United States.

But there are those who insist that our priceless liberties are being eroded—that freedom is increasingly in jeopardy across the United States.

Is there any pro-Republican Party doctrine in that?

Mr. GRAY. I didn't believe so, Senator.

Senator BAYH. Would the Senator yield for just a moment?

Senator FONG. Surely.

Senator BAYH. I don't want to impose on the Senator, but——

Senator FONG. I am very happy to yield.

Senator BAYH. But inasmuch as the distinguished Acting Director and I got involved in a little discussion on this yesterday, I think perhaps it should be pointed out to my friend from Hawaii that one of those who was concerned about certain activities that were taking place involving Government moving in on the rights of individuals happened to be the Presidential candidate for the opposition party. Now perhaps that might put the remarks of the Acting Director in a little different context when those remarks were made a month or so before the election, and in a forum in which that presidential candidate himself had appeared, and in a forum where the following week the vice-presidential candidate of the opposition party appeared. That was the concern expressed by the Senator from Indiana.

I appreciate the courtesy of my friend from Hawaii.

Mr. GRAY. If I may say so, I accepted this speech long before there was any thought of a political campaign in my mind and I went out and made that speech not knowing that either of those two individuals was going to be there. I had no knowledge of that and certainly I had no knowledge that I was making any attack in any way. I was speaking as an American citizen telling what I feel within me, Senator Bayh.

Senator BAYH. Well, Mr. Gray, we discussed that yesterday.

Mr. GRAY. Yes, I know we did.

Senator BAYH. I don't want to impose on the Senator from Hawaii, but you were concerned enough with it to check that it was nonpolitical.

Mr. GRAY. That is right, so I won't get into a thicket.

Senator BAYH. Whoever did that job for you didn't do enough of a job to show you that the opposition candidates were going to be there, and you did have a request in the administration memorandum which we requested yesterday saying that in the minds of this administration this was a very important political forum, and pointed out that two previous administration surrogates had been there. I suggest, with all respect, if I didn't yesterday, that perhaps at least in the future if the White House, whoever is sitting there, suggests that a forum would be an important political forum maybe a nonpartisan Federal Bureau of Investigation Director ought to say, "That is good enough for me, we

have had these invitations since 1968, I will wait and not accept this until 1973."

Mr. GRAY. That is asking too much for humanity. I did have the thought it would be a political thicket and I did check, the memorandum is in the record, and there is no indication in that memorandum there were any political opportunities or overtures, or anything of the rest of it, Senator Bayh. I am just respectfully differing with you, and you know that.

Senator BAYH. Well, I will not impose on Senator Fong's time but when my time comes I will read the memorandum once again. It is in the record, but I want everyone to have a chance to hear it and then make his own assessment as to why the administration was sending that memorandum out.

Mr. GRAY. Senator Bayh, may I ask as a courtesy when you read that from Mr. O'Donnell, would you read mine from the Crime Research Division too, so we have both sides of it. Or I will read it if I may, Mr. Chairman, at the appropriate time.

Senator FONG. Mr. Gray, to continue with my line of questions, I don't see any pro-Republicanism here in your speech and I don't think you did intend any.

Mr. GRAY. I did not.

Senator FONG. Mr. Gray, I want to commend you for the very long, detailed, and excellent statement which you gave to this committee yesterday. Your statement yesterday has given this committee a very good insight into what changes you have made in the FBI and what you have done during the 10 months you have served as the Director.

Some people object to change but we live in a world of change and there is no reason why there shouldn't be changes even in the great institution that Mr. Hoover left to you. Your statement of what the objectives and the function of the FBI are and should be in our free society meets with my very hearty approval.

You have given me a very deep insight into your thinking as an American, and with this thinking I concur heartily.

I want to commend you for being willing to talk to the public by making so many speeches on your taking over the Office of Director. I believe you have opened the windows and doors and let the public know more about the FBI and you as a person than would have otherwise been possible.

I have not found your speeches to be partisan for the Republican Party. I have read them, scanned some, studied some, and I think I would say that they were pro-American speeches and not pro-Republican Party speeches. I know it is very difficult to be pro-American without being accused of being pro-administration or pro-Republican. I know to be pro-American you must emphasize the positive in America and not disparage it. This you have done admirably in your speeches and I congratulate you for them.

I do hope you will continue to make public speeches after your confirmation. As you know, the FBI in the eyes of our people is a scary and a very overwhelming and overpowering institution, and your position as Director of the FBI carries with it awesome and fearful powers. That is why you must as a Director always let the American

people know you are human, that you are communicative, and that you are not aloof and despotic.

From your candid responses to the hard questions which have been put to you and the answers that you have given to them, I do not see any reason why I should not vote for your confirmation.

However, I will keep my mind open until the end of our hearings to see whether this opinion will need to be changed by testimony the nature of which I may not be aware of at this time.

Thank you, Mr. Gray.

Mr. GRAY. Thank you, Senator Fong.

Senator KENNEDY. I have some questions, Mr. Gray, which I did not have a chance to ask you yesterday, but Senator Burdick has to leave shortly and has one or two. With the indulgence of my colleagues, he will ask his and then I will ask mine.

Senator BURDICK. Mr. Gray, earlier this morning you testified about arrest records. As you probably know, my subcommittee has been dealing with this subject. The citizens of this Nation are all told of a presumption of innocence so actually an arrest record itself, standing alone, does not mean anything. I think you also testified that in these matters of the arrest records were not made public. What instances are there when they are made available to anybody?

Mr. GRAY. Well, there are just not instances where they are made available to anybody. But a contributor may come in with a fingerprint card and ask us for a report on this particular individual and on the card there will be a charge, he has been arrested, and a criminal charge has been placed against him. There will be some reason for arresting him and this arrest reason would show on the card. What we would do, Senator Burdick, is to see whether we had a record on this individual, we would check it through our fingerprint section, and if we had one we would look to see what the arrest record was. In some of them, you know, he may have six, seven, eight, nine, ten, all kinds of felonies, and you may have over in the disposition column three or four dispositions and maybe the balance not showing dispositions. Or you may have a situation in which when you check you find we have no prior arrest record, this is the first arrest and we will report that, or in the other case—

Senator BURDICK. To whom do you report it?

Mr. GRAY. Back to the police department, the contributor who contributed the fingerprint card.

Senator BURDICK. Then the police in Fargo, N. Dak., would have a record of any one of the citizens who merely had been arrested?

Mr. GRAY. They have to be arrested for a reason, there has to be a charge placed against them. That is standard procedure under the laws of the State of North Dakota. I assume when an individual is arrested for criminal charges he is probably fingerprinted and photographed. I don't know what the law is in North Dakota but that police agency in North Dakota would undoubtedly proceed in accordance with the laws or ordinances of the State or city in North Dakota.

Senator BURDICK. Suppose that individual is later acquitted or the case is dropped for lack of evidence, is that shown anywhere?

Mr. GRAY. Well, it is shown provided that the contributor follows through, and we exhort in all of our letters—which I will put into the record as I promised earlier, I think in response to questions from

Senator Tunney—we will show the exhortations we have made. We will show that in our police training instructors' lectures out there in the field we stress this. We will show that our Special Agents in Charge in their speeches stress this. But we have no sanctions available to us, that is correct.

(Mr. Gray subsequently submitted the following documents for the record:)

MR. GRAY: I am submitting the following documents for the record. (Letters to All Fingerprint Contributors dated April 2, 1962; September 23, 1966; November 21, 1968; June 2, 1971; July 22, 1971; and October 2, 1972, which pertain to reporting arrest disposition data.) As I have pointed out, there are no procedures in existence to assure Nation-wide reporting of dispositions. We have long exhorted all contributors to follow up with final dispositions on all arrests. Material relating to this subject is made available to our field and headquarters personnel for their use in connection with police training programs, speaking engagements before groups associated with the criminal justice system and in their day-to-day contact with law enforcement officials. The FBI has actively advocated legislation at the Federal and state levels making it mandatory for the contributors to provide disposition data on every arrest. The International Association of Chiefs of Police and the International Association for Identification adopted resolutions presented by the FBI that their members encourage their respective communities to support enactment of legislation to mandate the reporting of final arrest disposition data applicable to each arrest and that such data be sent by the arresting agency, the prosecutor or the court at whatever step it occurs to the central file at the state or national level to which an arrest fingerprint record was submitted. The resolutions also encouraged all criminal justice agencies to make every effort to submit disposition data in each instance until such mandatory legislation is enacted. Some twenty-three states plus the District of Columbia now have varying laws or regulations to require contributors to report dispositions, but all are not complying because of staffing or budgetary problems and there are no sanctions for noncompliance.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., October 2, 1972.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE IDENTIFICATION SERVICES

MULTIPLE SUBMISSIONS OF FINGERPRINT CARDS

Dear Sir: The FBI Identification Division has been striving to have each arrest reported on the identification record supported by submission of fingerprints and to have each arrest entry on the identification record followed by the final disposition of that arrest. When fingerprint cards are submitted by the arresting agency and also by custodial agencies such as the county jail or other institutions, the identification records (rap sheets) may contain one or more additional arrest entries which duplicate the original arrest card submitted by the arresting agency and for which a final disposition will not be forthcoming. There are also some departments which submit separate arrest fingerprint cards on different charges resulting from a single arrest of an individual. The arrest fingerprint card (FD-249) is designed to accommodate additional charges resulting from a single arrest and should be used to list such charges.

All multiple fingerprint card submissions, in addition to causing entries to be placed in the identification record for which dispositions will not be forthcoming, require costly expenditure of clerical manpower to locate fingerprint jackets which are out of file for processing of the arrest fingerprint card submitted first by the arresting agency and delay the production schedules and procedures devised to handle the large daily volume of fingerprint cards received by the Identification Division.

Although the multiple submissions of fingerprint cards may provide a record of incarceration prior to or following court adjudications, it is believed such entries into an identification record serve little useful purpose in the overall maintenance of a national criminal records system. Your close and continuing cooperation in eliminating this problem of multiple submissions is solicited. If the jailer requires a copy of the identification record, this can easily be accommodated by appropriate notation on the reverse side of the arrest fingerprint card.

TELEPHONE REPLIES

When the appropriate block on the FD-249 indicates collect telephone reply is desired, it is requested that the name of the officer desiring this information and his telephone extension also be indicated. This additional data will enable us to comply with your request without encountering unnecessary delays in having collect telephone calls accepted.

AUTOMATION PROCEDURES REQUIRE STANDARDIZATION OF FINGERPRINT CARDS

Your attention is directed to our letter to all fingerprint contributors dated November 9, 1971, captioned "Redesign of Arrest Fingerprint Card." All contributors have been furnished a supply of the redesigned arrest fingerprint card, FD-249, (printed in red ink) which was revised to accommodate the implementation of automated procedures in the Identification Division as well as to better adapt the card to use within the Computerized Criminal History system. The old FD-249 (printed in black ink) does not provide space to record certain identification elements required by these automated systems. Similar objections apply to use by some departments of fingerprint cards not prepared to specifications of the revised FD-249 and not preprinted with the code number representing the address of the contributor (ORI). Accordingly, you are requested to destroy any remaining supply of the old FD-249 arrest card and immediately institute use of the redesigned arrest fingerprint card (FD-249) which is printed in red ink. Adequate supplies of the redesigned card are available and will be furnished to you with your preprinted address upon request.

The applicant fingerprint card, FD-258, is in the process of being revised and will be printed in blue ink. You should continue to use the old FD-258 (printed in black ink) until you receive a supply of the revised FD-258.

The changes in the colors of the inks used to print the revised arrest (FD-249) and applicant (FD-258) fingerprint cards were made to accommodate optical scanning equipment which will read certain printed codes and, in the future, the fingerprint impressions. This equipment has been designed to detect only black printer's ink and printed instructions and lines of the revised cards, in their respective colors; thus will not interfere with its capabilities. Some contributors have submitted fingerprint impressions which have been made with other than black printer's ink. In order for the optical scanning equipment to function as designed, it is absolutely necessary that all fingerprint impressions which are submitted to the FBI Identification Division be made only with black printer's ink.

REPORTING ARREST DISPOSITION DATA

During the recent annual meeting of the International Association for Identification (IAI) held in Milwaukee, Wisconsin, July 31 through August 3, 1972, the following resolution was approved:

RESOLUTION

Whereas incomplete criminal identification records are of grave concern to the general public, the courts, and all agencies which comprise the criminal justice system, be it resolved:

(1) That IAI members encourage their respective communities to support the enactment of legislation to mandate the reporting of final arrest disposition data applicable to each arrest and that such data be sent by the arresting agency, the prosecutor, or the court at whatever stage it occurs to the central file at the state or National level to which an arrest fingerprint record was submitted.

(2) That until such mandatory legislation becomes law appropriate criminal justice agencies make every effort to submit arrest disposition data in each instance.

As the central repository of identification data in this country, the FBI Identification Division urges each contributor to follow and report the final disposition of each arrest made by your department. Dismissals and "not guilty" adjudications are as necessary as conviction data in completing an identification record of an individual so his record may reflect accurately the final result of charges filed alleging violation of the law. It is the *incomplete record* that invites criticism of our entire criminal justice records system.

The Identification Division has noted a marked increase in submissions of disposition data since distribution of the revised Final Disposition Report, R-84, was made in July, 1971. This form was designed to accompany the arrestee's record on the pending charge(s) until final adjudication resulted and thus permits the court, the prosecutor or the police to complete the form at whatever level the final disposition of the charge(s) was made. Although an increased number of Final Disposition Reports have been received, many departments continue to afford this vital link in our criminal records system low priority. You are requested to bring this matter to the attention of all personnel having responsibility for reporting disposition data. Also, this form should be used to show any change in the nature of the charge for which conviction was obtained from the original charge appearing on the arrest fingerprint card.

Very truly yours,

L. PATRICK GRAY III, *Acting Director.*

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., July 22, 1971.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE FBI IDENTIFICATION SERVICES

DEAR SIR: The following items are of immediate concern to all of us in law enforcement. We solicit your cooperation in implementing those changes requested.

FBI NUMBER

Effective immediately all criminal fingerprint cards requiring an answer will be given an FBI number if one has not been assigned previously. As you know, the practice in the past has been to assign such a number upon receipt of the second set of prints. A number now will be assigned upon receipt of the first set. This change is deemed desirable in view of the Computerized Criminal History Program scheduled for implementation this November, wherein the FBI number is a necessary element for entry into the system. The new procedure also should materially aid in curtailing multiple fingerprint submissions applicable to the same arrest or incarceration. Such submissions lead to the costly and time-consuming task of locating fingerprint jackets which are out of file as a result of the original fingerprint submission. The key to alleviating this problem of multiple submissions is close cooperation and effort by all.

DISCLOSURE OF FBI IDENTIFICATION RECORDS TO SUBJECTS

There has been some misunderstanding on the part of certain fingerprint contributors concerning disclosure of the contents of FBI identification records to the subjects of those records. Some law enforcement agencies have been under the impression that they would be denied future access to FBI identification records if they were to comply with a court order directing that a subject be permitted to examine the contents of his own record. Whereas the records themselves, or copies thereof, should not be furnished and the caution to treat such records for official use only should be strictly adhered to, certainly compliance with a court order constitutes an official use. Please insure there is no misunderstanding within your own agency or on the part of other criminal justice agencies that the FBI does not object to disclosure of the contents of an FBI identification record to the subject of that record where disclosure is made pursuant to court order in any pending criminal or civil case.

NON-FEDERAL APPLICANT FINGERPRINTS

Acting on remand in *Menard v. Mitchell*, 430 F 2d 486 (1970), United States District Judge Gerhard A. Gesell, District of Columbia, on June 15, 1971, handed down a Memorandum Opinion in this case (Civil Action No. 39-68) which prohibits the FBI from disseminating identification records in response to finger-

prints submitted by state and local law enforcement and other government agencies in connection with non-law enforcement purposes. This prohibition also extends to Federally insured banks and savings and loan institutions as well as railroad police. This means that effective immediately the FBI can no longer accept for processing fingerprints taken in connection with licensing or local or state employment which were formerly submitted directly to the FBI from the regulatory agency or institution or through a local law enforcement agency. We will continue to process applicant prints where the position sought is directly with a state or local law enforcement or correctional agency, as such processing directly serves a law enforcement purpose. There are no other exceptions.

In examining the issue of historic statutory authority for the Government to engage in such practice, the court observed "it is abundantly clear that Congress never intended to or in fact did authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks." He further noted "the Bureau (FBI) needs legislative guidance and there must be a national policy developed in this area which will have built into it adequate sanctions and administrative safeguards. It is not the function of the courts to make these judgments, but the courts must call a halt until the legislature acts. Thus the court finds that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes."

In its study and review of the court's action, the FBI has sought and obtained guidance and interpretation from the Department of Justice. There appears to be no choice but to cease processing all types of non-Federal applicant fingerprints. You will be promptly advised of any Congressional clarification of the Bureau's authority in this area. In the meanwhile all such fingerprint submissions will be returned to the contributing agency.

ARREST DISPOSITION DATA

The response to our letter of June 2, 1971, urging the submission of final arrest disposition data has been most gratifying. We have received numerous favorable replies pledging full cooperation, offering suggestions and asking questions. One question frequently raised is whether arrest fingerprint cards should be held by the contributor until final disposition is known, which in some instances may take months and even years. The answer, of course, is to submit arrest fingerprint cards promptly and follow with disposition information when it is available. In this way you can receive any identification record the individual may have in response to your fingerprint submission, and fugitives against whose fingerprints stops have been placed in our files will be promptly identified. Another point not universally understood is that disposition information should only be sent to the FBI when arrest fingerprints for the same offense were forwarded previously. Otherwise, we have nothing in our files to support the final disposition supplied. A third point I want to stress is that disposition submissions should be individual separate communications and not in list form. The reason for this is that the forms are filed in individual jackets relating to each subject of an FBI number.

In our continuing effort to obtain complete reporting of final dispositions, we have redesigned the final disposition report (form R-81), a sample of which is set forth in reduced size as an attachment to this communication. The most radical change is that as now designed, the form is to accompany the case file (or the arresting officer's report) so that the final disposition can be reported in each case at whatever level it occurs—police, prosecutor, or court. We recognize that the adoption of such procedure will require an educational program with criminal justice agencies. The disposition form will follow the arrestee's record on the current charge(s) until final action is taken as a result of his arrest. If the case goes to the prosecutor, his office should complete the form and submit it to the FBI Identification Division when the matter is resolved at his level. If court action is required, the prosecutor's office or clerk of the court should complete the form and forward it. Note particularly the provision for four-finger fingerprint impressions and instruction number two on the reverse side of the form. This provision was included in anticipation of a possible future requirement that records of convictions in the National repository be supported by fingerprints. Also, of course, more positive controls are thereby provided for the entire system. The actual size of the form will be the same as a fingerprint card, namely, 8 inches by 8 inches.

For the sake of uniformity and standardization, particularly in light of the tremendous volumes of forms handled by the FBI Identification Division, it is essential that the new form be utilized by all contributors in reporting final dispositions. The new R-84 form is being printed on green stock and as soon as copies are available an initial supply will be sent to each fingerprint contributor. Thereafter, you should order the form as you need additional copies.

Very truly yours,

JOHN EDGAR HOOVER, *Director.*

Enclosure.

R-84 (Rev. 6-29-71)		FINAL DISPOSITION REPORT		Leave Blank
Note: This vital report must be prepared on each individual whose arrest fingerprints have been forwarded to the FBI Identification Division without final disposition noted thereon. If no final disposition is available to arresting agency, also obtain subject's right four finger impressions on this form, complete left side and forward the form when case referred to prosecutor and/or courts. Agency on notice as to final disposition should complete this form and submit to: Director, FBI, Washington, D. C. 20537, Attention: Identification Division. (See instructions on reverse side).				
FBI No.		Final Disposition & Date (If convicted or subject pleaded guilty to lesser charge, include this modification with disposition.)		
Name on Fingerprint Card Submitted to FBI Last First Middle		This Form Submitted By: (Name, Title, Agency, City & State) Signature _____ Date _____ Title _____		
If FBI No. Unknown, Furnish:				
Date of Birth _____ Sex _____				
Fingerprint Classification _____				
State Bureau No.		<input type="checkbox"/> COURT ORDERED EXPUNGEMENT: Return Arrest Fingerprint Card to Contributing Agency; Certified or Authenticated Copy of Court Order Attached.		
Contributor of Fingerprints				
Arrest No.	Date Arrested or Received	Right Four Fingers Taken Simultaneously		
Offenses Charged at Arrest				

INSTRUCTIONS

1. The purpose of this report is to record the initial data of an individual's arrest and thereafter secure the final disposition of the arrest at the earliest possible time from either the arresting agency, the prosecutor or the court having jurisdiction. (INTERIM DISPOSITION INFORMATION, e.g., RELEASED ON BOND, SHOULD NOT BE SUBMITTED.) The SUBJECT'S NAME, CONTRIBUTOR AND ARREST NUMBER should be exactly the same as they appear on the fingerprint card IN THE FILES OF THE FBI. The FBI number should be indicated, if known. Agency ultimately making final disposition will complete and mail form to: FBI Identification Division, Washington, D.C. 20537.

2. The arresting agency should fill in all arrest data on left side of form and obtain the finger impressions of the right four fingers simultaneously. This should be done at the same time as the full set of fingerprints are taken on the arrest fingerprint card. If the arrest is disposed of by the arresting agency, as where the arrestee is released without charge, then the arresting agency should fill in this final disposition and mail form to FBI Identification Division. Of course, if final disposition is known when arrest fingerprint card is submitted it should be noted thereon and this form is then unnecessary. In the event the case goes to the prosecutor, this form should be forwarded to the prosecutor with arrestee's case file.

3. The prosecutor should complete the form to show final disposition at the prosecution level if the matter is not being referred for court action and thereafter submit form directly to FBI Identification Division. If court action required, the prosecutor should forward form with case file to court having jurisdiction.

4. The court should complete this form as to final court disposition such as when arrested person is acquitted, case is dismissed, on conviction and when sentence imposed or sentence suspended and person placed on probation.

5. When arrested person convicted or enters guilty plea to lesser or different offense than that charged when originally arrested, this information should be clearly indicated.

6. If subsequent action taken to seal or expunge record, attach certified or authenticated copy of court order to this form so that FBI can return arrestee's fingerprints to original contributor.

7. It is vitally important for completion of subject's record in FBI Identification Division files that Final Disposition Report be submitted in every instance where fingerprints previously forwarded without final disposition noted thereon.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., June 2, 1971.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE REPORTING FINAL DISPOSITIONS

DEAR SIR: We ask your special attention at this time to the urgent need to report a final disposition for each charge submitted to the FBI Identification Division by fingerprint card. We have made this request previously, but never under conditions of such urgency as those which now prevail.

The national criminal identification system is now the object of the most serious attacks that have been launched against it since the system was inaugurated in 1924. These attacks vary somewhat in form and purpose, but they direct their fire mainly toward the identification record that is incomplete for lack of dispositions shown. Such records are alleged to be at best inaccurate, misleading, and of no value, and at worst, a violation of the rights of the person on whom the record was compiled.

The attacks are stated in several different ways. A number of civil suits have been filed, all undecided as yet, demanding that the FBI cease dissemination of any part of any record that is incomplete for lack of disposition shown, and/or totally expunge from the record any notation of arrest or charge unsupported by a disposition that is somewhere available but not shown on the record. These attacks have come from such diverse sources as persons who allege loss of employment because of an incomplete identification record, prejudicial effect on an attempt to obtain parole, or prejudice and harm for some other reason.

The courts now are beginning to express some concern over these incomplete criminal identification records, and related problems. In one case an applicant for private employment listed fourteen arrests, none of which led to convictions, with the result that he was not hired. He alleged that the use of such information to deny employment violated the Civil Rights Act of 1964. The Federal court held for the plaintiff, and enjoined the employer from using such information as a basis for denying employment. The court said, in pertinent part, that "information concerning a prospective employee's record of arrests *without convictions* is irrelevant to his suitability or qualifications for employment." (Emphasis added). The court said further that nothing in its order, however, would prohibit the employer from complying with any requirement of national security clearance regulations, nor prohibit the employer "from seeking, ascertaining, considering, or using information concerning *criminal convictions* of applicants or existing employees." (Emphasis added). *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401 (1970). The significance of this decision to our immediate problem is obvious.

It is worth noting, also, that Mr. Justice Douglas, dissenting in *Tarver v. Smith*, a case not directly related to our problem, in which the Supreme Court denied certiorari on May 24, 1971, said, in part, that "A file may show that an individual was arrested. But will it show that the arrest was unconstitutional because it was solely for purposes of investigation? Or that the charges were dropped? Or that a jury acquitted him?" These remarks obviously foreshadow future questions on the use of a criminal identification record that is incomplete for want of final dispositions shown.

Questions similar to those raised in *Gregory* and *Tarver*, above, were also brought out in *Menard v. Mitchell*, 430 F 2d 486 (1970), a Federal appellate decision which remanded the plaintiff's demand for total expungement of an allegedly inaccurate identification record back to the trial court for full development of the facts.

No further argument is necessary to prove that law enforcement is now faced with a new problem of serious dimensions. It extends to all lawful uses of the criminal identification record, not to employment situations only. If the FBI, as the custodian of these records, should be required to expunge all arrest notations for which dispositions are available but not reported, every element of the criminal justice system will be handicapped, deprived of information pertinent to the protection of society. The absence of pertinent arrest data which could have been shown, had only the final disposition been reported, will handicap the investigating officer, the prosecutor and, where conviction is had, the sentencing judge and the prison and parole authorities.

There is an answer to this problem, one answer and one only. Report the final disposition in each case at whatever level it occurs—police, prosecutor, or court. Each and every contributing agency should gear its operations as necessary to this end. The public interest in safety from criminal attack demands it, as well as our own interest, and the interests of other elements in the criminal justice system, in performing professionally and efficiently toward that same objective.

I ask your complete and continuing cooperation in this mutual effort for the public good. Specifically, I ask that you expend extra effort to obtain disposition data and that, where necessary, you devise new ways of insuring that this essential information is collected and made available to complete the identification records at both state and national levels.

Very truly yours,

JOHN EDGAR HOOVER, *Director*.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., November 21, 1968.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE FBI IDENTIFICATION SERVICES

DEAR SIR: Upon receipt of the final disposition of an arrest previously reported to the Identification Division by means of a fingerprint card, it is necessary to associate the disposition with the correct arrest record. In instances where the local arrest number or FBI number is not furnished, every effort has been made in the past to correctly identify the incoming disposition by conducting searches in our name files using available data on the disposition form such as name of subject, fingerprint classification, date and description of charge and name of contributor. Because of the tremendous work load in the Division, it is no longer feasible to conduct extensive searches in our name files in an effort to identify dispositions without identifying numbers. Accordingly, effective January 1, 1969, dispositions received *without a local arrest number and fingerprint classification or an FBI number*, will not be processed and will be returned to the contributing agency.

One of the streamlining procedures employed in the Division is the preparation of certain index cards for our name files by copying a portion of the fingerprint card with appropriate reproduction equipment. It is, therefore, imperative that the name of the subject be typed or plainly printed and not written in longhand on the fingerprint card.

Your full cooperation in the above matters would be very much appreciated.

Very truly yours,

JOHN EDGAR HOOVER, *Director*.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., September 23, 1966.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE IDENTIFICATION
RECORDS

DEAR SIR: The value of reporting to our Identification Division the disposition of an arrest has been discussed in prior letters to all fingerprint contributors. By letter dated April 2, 1962, the cooperation of all contributors was solicited in reporting only *final* and not interim dispositions such as "held for grand jury," "pending," etc.

Since the final disposition of an arrest is a most important part of an identification record and serves to complete the history of the offense in the minds of all who later review the record, your cooperation in furnishing final dispositions is again being requested. Report such dispositions, if known, on each fingerprint card submitted. If unknown when fingerprint card mailed, withhold submission of disposition until case resolved and reply to fingerprint card has been received and then use our disposition form R-84 whenever possible.

If our reply bears an FBI number, this number should be included on the disposition sheet. In the absence of an FBI number, as in the case where no prior record was located and you received our form 1-A, make certain to include on disposition sheet the name exactly as it appeared on the fingerprint card, fingerprint classification, and your arrest number. In instances of this type a number of contributors are returning form 1-A instead of submitting the fingerprint classification and arrest number. This greatly facilitates identifying the record in our files and I would like to encourage all contributors to follow this practice whenever possible.

Very truly yours,

JOHN EDGAR HOOVER, *Director.*

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., April 2, 1962.

LETTER TO ALL FINGERPRINT CONTRIBUTORS RE DUPLICATE FINGERPRINT SUB-
MISSIONS ARREST DISPOSITION DATA

DEAR SIR: Our Identification Division has experienced a ten per cent rise in fingerprint receipts thus far this fiscal year. Adoption of streamlining measures by the FBI plus strict adherence to uniform procedures by all participating agencies are the only two practical ways of combatting this increased work load.

We certainly wish to express our appreciation to the many agencies which cooperated so willingly in curtailing duplicate fingerprint submissions in response to our letter of March 28, 1961. Substantial advances have been made in this field which are most gratifying.

For the benefit of all, I would like to again briefly state our views as regards multiple fingerprinting. Many jurisdictions require fingerprinting as a mandatory procedure incidental to an arrest or incarceration. The FBI's program to eliminate duplicate fingerprint submissions is not intended to conflict with these requirements. We are merely asking that law enforcement agencies in the same area work together to insure that only one set of fingerprints for each arrest or incarceration is forwarded for search by our Identification Division.

Multiple fingerprint submissions are unnecessarily expensive since usually the fingerprint jacket relating to a particular individual is out of file when the second and possibly the third fingerprint card arrives. To locate the jacket, it then becomes a costly and time-consuming task. In some localities the arresting agency, and in others, the city or county jail have helped by stamping the reverse side of each fingerprint submission with a notation to send a copy of our reply to one or more interested agencies, thus eliminating fingerprint submissions by those agencies. The duplication problem has also been solved by having the first agency submitting prints request multiple copies of our reply which, in turn, are then disseminated locally as required. We appreciate that procedures will vary in different areas and while we are always willing to be consulted on unique situations, the final decision as to what is done rests with the agencies primarily concerned. I firmly believe that the key to eliminating multiple fingerprint submissions for the same arrest or incarceration lies in close cooperation and a concerted effort by all.

Another sphere in which you can help is to use the standard forms which we provide free of charge to all agencies utilizing the facilities of our Identification Division. These forms are listed on the cover page of each Law Enforcement Bulletin Insert. The use of other than FBI standard forms serves to retard our processing of identification data.

One form in particular which we feel deserves your special consideration is the Disposition Sheet, Form R-84. We have observed that many arrest dispositions have been submitted which are not final, such as "held for grand jury," "released on bond" and "pending." Other dispositions, such as "District Court appeal" and "issuance of a bench warrant," while technically final as far as the contributor of prints is concerned, add nothing of value to the FBI record. We consider these to be interim prosecutive steps and do not post them. Some further action obviously must be taken in these instances before the case may be considered finally closed. By continuing to submit such interim reports, man-hours are consumed by your staff and ours which could be more productively spent on other work.

Additional problems encountered in connection with some arrest dispositions are: (1) illegibility, (2) use of colloquial terms not understood in other sections of the country, (3) use of numerical code citations and incomplete data. If our identification records are to be meaningful to the thousands of law enforcement and governmental officials who will be reviewing them for many years to come, we should insure that disposition data reported will be readily understood in all parts of the country. With regard to incomplete dispositions, the main oversight is "period of incarceration." This, of course, is very pertinent to any identification record. It is realized that in some states the period of incarceration is not fixed by the court. In such instances dispositions submitted should show the sentence as "indeterminate."

Thank you for your continued cooperation in these and all other matters designed to improve our fingerprint identification services.

Very truly yours,

JOHN EDGAR HOOVER, *Director.*

Senator BURDICK. Do you have any policy in regard to releasing this information to credit bureaus?

Mr. GRAY. We do not release it.

Senator BURDICK. You do not?

Mr. GRAY. The FBI does not; no, sir.

Senator BURDICK. If it showed up in their report it is an assumption that it came from a police station?

Mr. GRAY. Yes, and if we know about it—it could be that the police station, the police agency, would be subject to our own sanctions—we would say, "We are not going to service you any longer if you are going to behave in this manner."

Senator BURDICK. So far as your office is concerned you release this information only to law enforcement agencies?

Mr. GRAY. Only to a contributor, yes.

Senator BURDICK. That is all.

Senator KENNEDY. Mr. Gray, some of the areas which I will touch on have been touched on by other members of the committee but, with your indulgence and patience, we will review some of these areas. I am sure the fact that you have thought about them and responded to them perhaps even make the responses easier for you.

As my colleagues have pointed out, there has been some question about the politicization of the FBI, and Senator Bayh and others have queried you about different statements and speeches and the appropriateness of such speeches, and I think one of the speeches, which may have been included in the record, which I imagine perhaps sets out in as great detail as any your commitment toward the administration, was the one that you gave on the 25th of July 1969,

when you were the Executive Assistant to the Secretary of HEW, to the appointees of the Department. Do you remember that speech at all?

Mr. GRAY. Yes, I do, I wrote every word of it.

Senator KENNEDY. Then I believe a national magazine took certain quotations of that speech and, at a later time, you indicated that the quotes had been taken out of context.

Mr. GRAY. That is right.

Senator KENNEDY. And then you issued——

Mr. GRAY. I prepared a memorandum.

Senator KENNEDY. You prepared a memorandum, and in that memorandum you quoted at some length the preceding paragraphs. I believe I have the copy of that memorandum here, and I will read those earlier paragraphs, and if for some reason or another it does not follow—I see you have the copy of the speech.

Mr. GRAY. Yes; I do, Senator.

Senator KENNEDY. Now, you indicated in a press release that the quotes had been taken out of context. If the Time article and your memorandum have not been included in the record, we will include that as part of the record!

Mr. GRAY. All right, Senator.

(The documents referred to follow:)

ADDRESS BY L. PATRICK GRAY III, EXECUTIVE ASSISTANT TO THE SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, TO ALL APPOINTEES IN THE DEPARTMENT AT THE DEPUTY ASSISTANT SECRETARY LEVEL AND BELOW, JULY 25, 1969

I am going to talk to you about some lessons learned in the first six (6) months. The approach will be practical, but threaded throughout will be the lofty ideals and the great concerns we have as we join together in HEW to serve the President, the Secretary and the people of our Nation.

At the risk of being tagged here and now as an over 30, "turned off" reactionary, let me emphasize to you the importance of the concept that we are here to serve, not to be served—that we are here to serve, not to enhance our own perfectly normal, human selfish interests. This may be out of tune with some of the thinking surrounding us today.

Each of us is possessed of our own desires, ambitions and goals. This is normal. This is commendable. At the same time, when we embark upon a career in the service of our government, whether that career is to be short term or long term, we must be quite willing to subjugate our own personal goals to a deep, personal commitment to serve our President, our Secretary, and our Nation.

This commitment must be our honing beacon throughout our career in the service of our government.

Each one of us is here in HEW because Richard Nixon was elected to the high office of President of the United States. Further we are here because Secretary Finch has seen fit to place trust and confidence in us and to approve our selection to fill a position in HEW.

In short we owe our positions to the capability of the President to come off the mat, so to speak, and drive through hard, vigorous years of campaigning to win the nomination of the Republican Party, and then go on to win the Presidency of the United States with the valiant help of hundreds of thousands of dedicated, hardworking supporters, campaign workers, and contributors.

So also are we here because Secretary Finch has seen fit to ask us to serve with him and to help him move this Department forward as he and the President seek the solutions to the people problems which, if not solved, might well rupture and destroy the society which the people of our Nation have created.

Obviously, we are a chosen few, an elite group—make no mistake about it—there are thousands of Republicans who are knocking at the door and who would be pleased to be in our positions.

Appreciate this hard fact of life. Appreciate the fact that every single member of the opposite political party is working hard day and night to ensure that the President of the United States is hampered and harassed in carrying out his programs and that the President of the United States is not reelected to serve a second term.

This is a real hard political fact of life. This is in keeping with the nature of our political system. Without such a system, one party government could produce a totalitarian state. We accept this fact of life; so does the opposing party. Accordingly, do not retch or quiver when we insist that the preponderant majority of our colleagues—political appointees—be members of our own party.

Again it is plainly obvious that we must be dedicated and devoted to the concept that our Republican President will be a great President, that his programs will be successful, and that he will be reelected to a second term.

Above all other qualities of character that we hold near and dear, we must have deep, abiding, sincere loyalty to our President and to our Secretary.

Earlier I placed great emphasis on *service*. Now I want to drive home hard the emphasis on *loyalty*. I do not speak of blind, automatic loyalty. I speak of a sincere, an intelligent, a freely made decision to join President Nixon and Secretary Finch because we believe in them, trust them, understand the goals and objectives they hold, and desire to support them with the deepest sense of dedication and total commitment.

Should there be any one of you here present today who cannot make this commitment, you must—in order to maintain your own dignity, self-respect, and integrity—examine deeply your own hearts and minds and reach a decision—to serve or not to serve.

Do not today understand me to be saying that each of you is to consider yourself as a *fanatic, blind, unreasoning, partisan* Republican of the brand often caricatured by Herb Block and others who are determined that an enlightened, human, understanding Republican President shall not succeed.

No. I am saying that you are here because you have made a profound commitment to support with total dedication the President of the United States; that you have made this commitment intelligently because you wish to join with him in bringing this country together again; that you have made this commitment intelligently because you wish to join with Secretary Finch in assisting him to perform the tough tasks which lie ahead—tasks which must be performed well in order that the President may accomplish his objective.

Our Nation has elected a Republican President. We have a Republican Administration. We have Republican approaches to the problems of our people. We have the knowledge of the President's goals. We have the common sense to know the desires and objectives of the President and the Secretary—we must have the loyalty, the courage, and the commitment to do their will—not our will. This means, plainly and simply, that we get on the track with the President and the Secretary and that we stay there and track with them.

You may say, "I am not political"—"I am an Independent"—"I do not care what party is involved, I vote for the man"—"Politics is a dirty business," and so on. From the vantage point of my ancient age, let me assure you that no American can afford to ignore politics, to ignore the machinery of government, to adopt an attitude of "Let George do it." This attitude is guaranteed to ensure the demise of the two party system—our form of democracy. No American can afford to avoid involvement, particularly in today's world, when the thing to do is to become involved, to participate, to take a position.

Now let's go on to other lessons learned:

Loyalty includes also a dedication to your immediate superior and to those who work with you in our cause, on our team.

Loyalty includes an avoidance of criticism of our leaders and of our colleagues. Criticism which is destructive in nature is cancerous—it will destroy us and our entire team. Snide remarks and facetious comments lightly made often come back to haunt us. Too often have I heard this form of banter engaged in innocently. Too often have I seen the results published in newspapers or made the subject of remarks by the boob-tube word mashers.

Loyalty includes having the common sense and decency to deal with others in a manner calculated to bring credit to the President and the Secretary. We are the President's people—we are the Secretary's team—and when we speak, we speak *for* the Secretary but we do not speak *as* the Secretary. We do not wear the Secretary's mantle. Therefore, while we speak from *strength*, we do not speak with *arrogance*. Courtesy is the key. Our errors here become the Secretary's errors and place him in a very delicate position. Instead of strengthening him, we weaken him

Loyalty includes the touching of all required bases as we set out on our daily rounds to carry out the will of the Secretary. We deal directly and candidly. We deal with those who ought to know and who have a responsibility to the Secretary, too. In short, we do not "end around."

I believe that I may have placed the concept of service and loyalty in the proper perspective and I want to go now to a few more pitfalls and pratfalls that can harm us, the President, and the Secretary.

Not one problem that we handle in HEW is simple. This is the lot of a Department responsible for the problems of people at the national level. Accordingly, not one task assigned to you is of a nature such that you can give it the so-called "light touch." You have to shred the problem; look at it from every angle; learn to work in depth; learn to dig hard; learn to turn in a work product that is as thorough, as logical, and as clear as you can make it. You should be concerned with the overview, the big policy, the grand decision. But you also are in a training period, a development period—we all are. Do the tasks assigned well and you will find that your personal job satisfaction is enhanced and your responsibilities are increased. Above all do not seek out only the so-called "glamour work;" put your shoulder to the wheel and be eager to tackle the "nitty gritty" chores, too.

The President and the Secretary appreciate another hard fact of life. Simply stated it is that intelligent members of an elite group—our team—will generate a wide diversity of views and rather strong opinions regarding the highly charged issues facing our Nation today. This is great and we do not want to stifle the minds and stagnate the thought processes of the members of our team. At the same time, and although we believe in and foster the thorough airing of our views and opinions within our own family, we must present a united front in support of a decision once made by the President or the Secretary. Our support must be total and absolute.

In conversations with others, we do not refer to RHF as "Bob." He is the Secretary to all within the Department and to outsiders. Be extremely careful at all times to maintain the dignity of his office, but do it with warmth and humility—not with arrogance. We have enough problems in HEW now without creating more by being inept or overbearing.

Even though each of us is close to the Secretary, resist at all times the temptation to enhance our own image by "puffing," or by our actions demonstrating how close we are to the Secretary. We would not be here if we were not close to the Secretary and those with whom we will come in contact know this political fact of life. You will demean yourself and the Office of the Secretary by taking "name dropping" advantage of your position.

Lobbyists—you will come in contact with them; they have a legitimate reason for existing. Be a courteous listener, but a most careful talker. Make no commitments whatsoever in the name of the Secretary. Moreover, do not even talk in such a manner to "lead on" a lobbyist—you trap yourself in a very difficult situation and you can hurt RHF badly by this sort of conduct. Again, be a courteous and attentive listener, but a most careful talker.

Telephone Conversations—The telephone is obviously an invaluable communication tool, but do not say in a telephone conversation that which you would not care to see in print the next day. Once again, the concept is that of tact, courtesy, patience, understanding, care and concern—but no commitments in the name of the Secretary, and no "puffing."

Mail—The principles I have spoken of thus far apply as well to all mail leaving the Department. When preparing correspondence for the Secretary's signature, or when reviewing it, never treat it lightly, no matter how simple the subject. The reasons are obvious—every letter portrays the image of our office and of the Department; further every letter reflects the substance of our positions and policies.

Security—Recent examples should be sufficient to impress upon each of us the critical importance of the general security of our office and our official, as well as unofficial, papers. Every Department of government is loaded with prying eyes—eyes that are prying for one reason or another. Be assured that none of this prying has as its objective the enhancement of the Nixon Administration or the enhancement of our Department. We deal with critical issues of great importance to many diverse groups in our land. Be mindful of security at all times; above all leave a clean desk when you leave for the day and be certain that critical papers are under lock.

The effective functioning of any group is related to the degree of cohesiveness and common purpose which has been established and accepted throughout the group.

Let's look to see if we have the ingredients in our make-up to generate that sense of cohesiveness and common purpose.

Why are we here?

- A. Because we believe in President Nixon and Secretary Finch.
- B. Because we are dedicated to them and their work.
- C. Because we ask only to serve; not to be served.
- D. Because we have no greed for personal aggrandizement.
- E. Because we feel a deep sense of personal pride, honor and humility in being asked to serve.

How do we operate?

First, we will operate as the Secretary desires us to operate.

Second, our mission is to do just as much for the Secretary as we can to remove from his shoulders unnecessary burdens.

Third, we do our work in accordance with the guidelines laid down by the Secretary.

Fourth, we are staff assistants to the Secretary—not decision makers or policy makers, even though we may well have a strong input to him prior to the moment decisions are made and policies established. Once made, we support them to the hilt!

Fifth, we operate in such a way as to reflect credit upon the Secretary for choosing us to occupy the important positions to which he has appointed each of us.

Sixth, we do not throw around the weight of the Secretary's Office. We are courteous and considerate in all of our dealings with the people in the Department, yet we are not to be hoodwinked or misled into presenting slanted information to the Secretary.

I believe that each of us can agree that we have the ingredients required to function effectively in behalf of the President and the Secretary.

Our objective—to assist to the fullest extent, the Secretary in his objective to make this the *best* Department in the Nixon Administration; to establish this Department as a Department on the move, a Department composed of compassionate and understanding people who are determined to generate and manage plans and programs designed to enrich the lives of all Americans; to make this Department so attractive and so meaningful in its work, that members of the civil service, and others not now in government, will be eager to join HEW and assist the Secretary to achieve his objectives. Imaginative, creative, dedicated, and competent people form the heart and flesh, the bone, sinew and muscle of any organization whether it be the corner grocery store, or a major Department of the Government of the United States. We must have them and we must work with them in such a manner that they can realize their full potential in the best interests of the people of the United States.

[Time magazine, January 15, 1973]

THE ADMINISTRATION

"TATTLETALE GRAY"

The Federal Bureau of Investigation likes to present itself to the public as a well-oiled crime-fighting monolith that functions without so much as a ping. If that image was never entirely accurate in J. Edgar Hoover's day, it is even less true now under the bureau's acting director, L. Patrick Gray, 56. More and more the bureau's interneine troubles have been surfacing—mainly because Gray's own agents are privately protesting his policies. The most recent and glaring example: Gray's reshuffling of nine veteran members of his headquarters staff, which, among other things, wiped out the bureau's long-standing Crime Records Division. For years it was an elite outfit that served Hoover as a liaison with Congress and the press.

Gray insists that the men are being given jobs that are every bit as important as their previous ones, and that several of the assignments are promotions. However, at least two of the men chose to resign. Gray claims that he is getting rid of "Hooverites," yet some agents accuse him of retaining the most hated of Hoover's hard-line policies.

Among these policies are the harsh disciplinary measures that agents consider unjust; the persistence of power cliques that virtually run the bureau; the perpetuation of Hoover's notorious "blacklist" of people to be shunned, socially and otherwise, by FBI agents; the maintenance of so-called penal colonies, field offices to which agents in disfavor are banished; and leaking FBI information to embarrass officials Gray considers to be his enemies.

Still, nothing has damaged morale at the bureau as much as one of Gray's own innovations—the publicizing of his disciplinary actions. He terms it "airing the linen," but around the bureau these days the practice has earned him the nickname "Tattletale Gray."

Intelligence.—Most of those sound like basic housecleaning problems that inevitably crop up when an organization of the size and complexity of the FBI loses the only chief it ever had. But the nagging problem that will not go away is Gray's tie with President Nixon. Whatever Hoover's flaws, no one could accuse him of playing partisan politics; he intended the bureau to be above such doings and made that ideal stick during his reign.

Gray left the Navy in 1960 to join the staff of Vice President Richard Nixon, and served on the Nixon campaign teams in 1960 and 1968. There have been disturbing indications that Gray is not the wholly apolitical administrator that he now claims to be. Back in 1969, when he joined the Health, Education and Welfare Department, he told a meeting of Administration appointees, "Do not retch or quiver when we insist that the preponderant majority of our colleagues—political appointees—be members of our own party." He added: "Loyalty includes an avoidance of criticism of our leaders and of our colleagues. Criticism which is destructive in nature is cancerous—it will destroy us and our entire team."

Gray coached Richard Kleindienst in his testimony before the Senate Judiciary Committee during the I.T.T. controversy, and last summer, at the request of the White House, made campaign speeches for Nixon. He began his talks in Ohio after a presidential aide told him that the state was "crucially vital to our hopes in November." In September he ordered his agents to collect political intelligence for Nixon, and within the bureau, defended his actions by simply shrugging: "Wouldn't you do that for the President?" Although the request came from a member of Nixon's staff, the White House said later that it was improper to give the assignment to the FBI.

An even pricklier matter is the ongoing Watergate bugging case and the White House anger about news leaks. Several agents complained that Gray's spot inspection of the Washington field office in search of the leaks was actually slowing down the Watergate investigation. Recently Gray transferred three FBI officials who pushed the Watergate investigation into the White House and presidential re-election committee. Two accepted the transfers. The third quit the bureau. Said one Washington agent: "I've been around here a long time, and no one has ever questioned my integrity. Now, because the White House is upset, my integrity has been challenged twice in one week."

Gray did relax Hoover's mandatory weight limits—then turned around and disciplined an agent for disobeying an order to lose weight. On the other hand, he refused to censure an agent whose son had been involved in a drug scandal or to discipline an agent for delinquent reports on some 72 cases to which he was assigned. Said Gray sensibly: "I might have some overdue reports if I was handling 72 cases." He has also reduced some padded conviction statistics Hoover used to cite to make the bureau look good—although a drunken Indian arrested on a reservation may still end up in the FBI's crime figures.

Thus far, Nixon himself has had nothing but praise for Gray, but it remains to be seen whether the President will permanently give Gray the coveted chair.

JANUARY 10, 1973.

[MEMORANDUM]

SUBJECT: TIME MAGAZINE ARTICLE OF JANUARY 15, 1973 ENTITLED "TATTLETALE GRAY"

The above article includes a number of false, inaccurate, or misleading statements. I will deal with each one of them individually below.

1. "Gray's own agents are privately protesting his policies"

On December 19, 1972, I asked Acting Associate Director W. Mark Felt to conduct a survey of morale among the agents throughout the Bureau. Mr. Felt

and Assistant Director Leonard W. Walters contacted the heads of 21 field offices. The results were that morale among the agents is at least as high as ever or at most higher than ever in the history of the Bureau. Some sample comments follow:

"Outstanding, never higher; exuberance expressed with frequency by Agents at innovative changes; deep impression of Mr. Gray as a leader upon his visit; Agents working freely on weekend urgent assignments with no grumbling; 99% of Agents highly disposed toward innovative changes made by Mr. Gray; individual production and accomplishments high which is proof of the pudding; Agents giving of their own time with gusto; great teamwork among Agents demonstrating high morale; Agents and clerical personnel alike glowing with comments concerning impression of Mr. Gray and his leadership; never observed morale higher among Agents; morale 100%; high impression of Mr. Gray's acceptance of responsibility for a correct law enforcement decision in aborting skyjacked flight at Orlando, Florida (same expression by local police officials); morale never higher not only among rank and file Agent personnel but supervisory staff as well; unanimous support of innovative changes of Mr. Gray; terrific impact of Mr. Gray's visit and changes wrought; best morale ever observed in any office; high morale throughout field."

2. "Gray's reshuffling of nine veteran members of his headquarters staff . . . wiped out the bureau's longstanding Crime Records Division"

On December 1, 1972, I announced that I had transferred to my immediate office responsibility for relations with Congress and the news media. In addition, I announced that I had requested a management survey of the remaining functions of the Crime Research Division. That survey was completed on December 6 and recommended transferring all remaining functions of the Division to several other divisions. This was approved by me on December 12 and effected by December 19. Therefore, the Crime Research Division had been abolished by that date and its personnel were reporting to their new supervisors in other divisions.

The nine transfers referred to were issued December 29, 1972, and could not have wiped out a then non-existent Crime Research Division. Eight of them involved members of the FBI who had been assigned previously to the Crime Research Division but were now functioning in their new divisions. The ninth involved an official of the General Investigative Division. Listed below are the transfers, none of which involved any change in rank or salary, but all of which involved substantially greater responsibility and less supervision in the performance of the new duties.

Name	Old assignment	New assignment	Disposition
James F. Bland	Director's office	SAC, Albany	Retired.
Harold P. Leinbaugh	do	ASAC, Detroit	Do.
Donald G. Hanning	Training division	ASAC, Philadelphia	Do.
George W. Gunn	do	ASAC, San Francisco	Pending.
William H. Stapleton	Administrative division	ASAC, Chicago	Retired.
George T. Quinn	Training division	Inspector	Accepted.
Gordon E. Malnfeldt	Associate director's office	do	Do.
Bernard M. Suttler	Training division (Washington, D.C.)	National Academy (Quantico)	Retired.
Henry A. Schutz, Jr.	General investigative division	Inspector	Accepted.

3. "Gray claims that he is getting rid of 'Hooverites' "

I have never stated or claimed that I am getting rid of Hooverites. In fact, I have specifically stated and been quoted in the press to the contrary. (Washington Star-News, January 3, 1973, p. A 17)

4. Gray has retained the most hated of Hoover's hardline policies:

(a) "harsh disciplinary measures"

I have disciplined members of the FBI when appropriate and only to a degree commensurate with the severity of their misconduct.

(b) "the persistence of power cliques that virtually run the bureau"

All authority in the Bureau reposes in the Acting Director. Certain authority is delegated by him to the Associate Director, the Assistant Directors in charge of the various headquarters divisions, and the Special Agents in Charge of the field divisions. Perhaps it may be true that "power cliques" may have controlled the selection of personnel for advancement in the FBI in the past, but this is no longer true. Selection Boards composed of Assistant Directors

and SACs now review records of FBI personnel and recommend to the Acting Director those best qualified for advancement.

(c) "the perpetuation of Hoover's notorious 'black-list' of people to be shunned, socially and otherwise by FBI agents"

I know of no such list or of the perpetuation of it.

(d) "the maintenance of so-called penal colonies, field offices to which agents in disfavor are banished"

I have never heard of nor used the term "penal colonies" with reference to the field offices. When circumstances warranted, I have transferred Special Agents in Charge from larger to smaller field offices to reduce their supervisory responsibilities and thus given them a chance to improve their own capabilities.

(e) "leaking FBI information to embarrass officials Gray considers to be his enemies"

I have not and do not leak information to the press. In all my contacts with the news media, I have done all I could to deal openly and fairly with them at all times.

(f) publicizing of disciplinary actions—"He terms it 'airing the linen'"

I have never used the term "airing the linen" with reference to any disciplinary action. Furthermore, I have never publicized a disciplinary action. I did give a full and complete statement on announcing the retirement of Wesley G. Grapp, the former SAC in Los Angeles. However, this was done solely to protect the Bureau and give all the facts to counter false reports and rumors that this was the first case of scandal or corruption in the Bureau.

5. "Gray . . . served on the Nixon campaign teams in 1960 and 1968."

I served in the Office of the then Vice President Nixon from about July 1, 1960 to January 1961. I did not serve in the campaign organization of the President during 1968.

6. Gray "told a meeting of Administration appointees, 'Do not retch or quiver when we insist that the preponderant majority of our colleagues—political appointees—be members of our own party.'" He added: "Loyalty includes an avoidance of criticism of our leaders and of our colleagues. Criticism which is destructive in nature is cancerous—it will destroy us and our entire team."

These quotations are extracted from a talk I gave to all political appointees at HEW on July 25, 1969. They are, of course, taken out of context. The full context is as follows: "Appreciate the fact that every single member of the opposite political party is working hard day and night to ensure that the President of the United States is hampered and harassed in carrying out his programs and that the President of the United States is not re-elected to serve a second term."

"This is a real hard political fact of life. This is in keeping with the nature of our political system. Without such a system, one party government could produce a totalitarian state. We accept this fact of life; so does the opposing party. Accordingly, do not retch or quiver when we insist that the preponderant majority of our colleagues—political appointees—be members of our own party."

Later in the same speech, I stated:

"Loyalty includes also a dedication to your immediate superior and to those who work with you in our cause, on our team."

"Loyalty includes an avoidance of criticism of our leaders and of our colleagues. Criticism which is destructive in nature is cancerous—it will destroy us and our entire team. . . ."

"The President and the Secretary appreciate another hard fact of life. Simply stated it is that intelligent members of an elite group—our team—will generate a wide diversity of views and rather strong opinions regarding the highly charged issues facing our Nation today. This is great and we do not want to stifle the minds and stagnate the thought processes of the members of our team. At the same time, and although we believe in and foster the thorough airing of our views and opinions within our own family, we must present a united front in support of a decision once made by the President or the Secretary. Our support must be total and absolute."

7. "Gray coached Richard Kleindienst in his testimony before the Senate Judiciary Committee during the I.T.T. controversy"

As Deputy Attorney General-Designate, I assisted the Attorney General in preparing for his confirmation hearings before the Senate Judiciary Committee.

No one coached Mr. Kleindienst to my knowledge. Also in that capacity, I later acted upon official requests and inquiries from the Chairman of the Committee.

8. "Gray . . . made campaign speeches for Nixon. He began his talks in Ohio after a presidential aide told him that the state was 'crucially vital to our hopes in November' "

I gave no campaign speeches whatever for the President. I spoke before the City Club of Cleveland, Ohio on August 11, 1972, on the subject of "Freedom Under Law", at the invitation of the City Club. I made no mention whatever of the President, his opponent, or the political campaign. The speech dealt mainly with the problem of crime in a constitutional democracy. That was the only speech I have given in the State of Ohio since being named Acting Director. It is true that I did receive a White House memorandum regarding this speech. A copy is attached.

9. "In September, he ordered his agents to collect political intelligence for Nixon, and, within the bureau, defended his actions by simply shrugging: 'Wouldn't you do that for the President?'"

I have never made any such statement, within the Bureau or anywhere else. I have made no public comment whatever on this matter.

Under date of September 1, 1972, Geoff Shepard of the White House staff, prepared a memorandum for the Deputy Attorney General on the subject of "Information for Campaign Trips: Events and Issues." This requested two categories of information: (1) identification of the substantive issue problem areas in the criminal justice field; and (2) a list of events relating to the criminal justice area that would be good for John Ehrlichman to consider doing. The memorandum indicated an interest in this information in 15 specified states. It requested the information by close of business on September 7, 1972.

Under date of September 8, 1972, the office of the Deputy Attorney General forwarded to the office of the Acting Director a copy of the White House memorandum requesting an evaluation of the questions. This noted that the White House deadline already was passed and asked for a response as quickly as possible. The memorandum from the office of the Deputy Attorney General was processed by a member of his staff, not by the Deputy Attorney General.

The memorandum from the office of the Deputy Attorney General was received in the office of the Acting Director of the FBI at 10:32 a.m. on September 8, 1972. Mr. Gray was out of Washington at the time and the matter was handled by his Executive Assistant, David D. Kinley. He forwarded it to the Assistant Director of the Crime Records Division, Thomas E. Bishop. Mr. Bishop discussed the matter with Acting Associate Director W. Mark Felt, and thereafter Mr. Bishop had one of his subordinates prepare a teletype to 21 FBI Field Offices which he approved to be sent late on September 8, 1972, setting a deadline of the opening of business on September 11, 1972. This teletype set out virtually verbatim the text of the request in the White House memorandum of September 1, 1972.

The material received from the Field Offices in response to the teletype was summarized into a memorandum on September 11, 1972, which was approved by Messrs. Bishop, Felt and Kinley and was then delivered to the office of the Deputy Attorney General late on the same date. The information supplied by the Field Offices required no investigation to obtain it—it was information readily available within the Field Offices pertaining to forthcoming meetings and conferences on matters of similar interest in law enforcement and criminal justice fields.

Mr. Gray was out of Washington during the entire period of September 8 to 11, 1972, returning to the city after 7:00 p.m. on September 11, 1972. His first knowledge of this matter was on the late afternoon of September 12, 1972.

Personnel involved in the handling of this project have stated they did not question the propriety in complying with the request since it dealt with information of a broad nature concerning police and the criminal justice system, since it had been requested by the White House, and since the request had come through the offices of the Deputy Attorney General and the Acting Director.

10. "Gray's spot inspection of the Washington field office in search of the leaks was actually slowing down the Watergate investigation."

I have ordered no spot inspection of the Washington Field Office to determine the source of leaks in the Watergate case. I have heard no complaints whatever that the Watergate investigation was slowed down by me.

11. "Recently, Gray transferred three FBI officials who pushed the Watergate investigation into the White House and presidential re-election committee. Two accepted the transfers. The third quit the bureau."

I have transferred two members of the FBI involved in the Watergate investigation. On September 29, 1972, at his own request, I re-assigned the Assistant Director in charge of the General Investigative Division to his former position as Special Agent in Charge of the San Francisco Field Office. Also, on September 29, 1972, I re-assigned the Special Agent in Charge of the Washington Field Office to head the St. Louis Field Office because he allowed certain false and misleading information to be reported to FBI headquarters concerning an incident during an anti-war demonstration in May 1972.

The third individual was never offered a transfer. He headed the Accounting and Fraud Section of the General Investigative Division. I had no intention of reassigning him because of his demonstrated expertise in this field. However, on December 6, 1972, he resigned voluntarily to take an investigative position with HUD.

12. "[Gray] refused to censure an agent whose son had been involved in a drug scandal"

The case referred to must be that of Special Agent Francis E. Burke. On March 14, 1972, he was censured, placed on probation, and reassigned from the Coeur d'Alene, Idaho, Resident Agency to the Milwaukee office. This action was taken by Mr. Hoover because Burke failed to report to the Bureau allegations made to the Coeur d'Alene Police Department that his son was dealing with narcotics and stolen goods. Investigation by the local Police Department produced no concrete evidence in support of these allegations. On May 25, 1972, Burke wrote me requesting reassignment from Milwaukee to Coeur d'Alene because of the poor health of his wife and the fact that his mother was widowed. On June 15, 1972, I transferred Burke to the Butte office. At the time, I commented to my associates at the Bureau as follows: "(1) Are we surmising that his ability to function effectively has been impaired, or do we have concrete evidence that it has been impaired? I find none. (2) No father is always certain from one day to the next of the behavior of his children. Is it a positive requirement that every SA be able to maintain discipline in his home and that he do so? Some fathers can, some cannot, and often due to no fault of their own, particularly in today's climate. (3) Agents have had family problems, and I am sure will have them in the future. Transfer away from family does not help solve such problems. (4) I am analyzing this case with the interests of the FBI paramount, but with consideration for the human factors. (5) SA Burke has been rated Excellent since 1961. (6) Order SA Burke to Butte, the Headquarters city, *unless* we have to set up a chain of transfers to fill a vacancy in Milwaukee and thus penalize other Agents. Let me know. (7) These transfers for reasons found here are abominable."

13. Gray refused "to discipline an agent for delinquent reports on some 72 cases to which he was assigned. Said Gray sensibly: 'I might have some overdue reports if I was handling 72 cases' "

I do not recall ever making such a statement. Officials responsible for these matters cannot recall such a statement, nor do they have any idea what case is being referred to.

Attachment.

THE WHITE HOUSE,
Washington, June 13, 1972.

Memorandum for: Hon. L. Patrick Gray.
From: Patrick E. O'Donnell.
Subject: Freedom's Forum—The City Club, Cleveland, Ohio.

The City Club has asked our assistance in attempting to secure your participation as a key speaker sometime during the period following July 1, 1972. Since its founding fifty years ago, Cleveland's City Club has been a focus and one of the bulwarks of freedom of speech in one of America's great cities. The Club maintains a deep interest in affairs of government, economics and politics, both national

and international. It offers a prestigious meeting place for the open discussion of important social, political and economic problems.

They meet every Friday at noon and have a 300 maximum attendance. However, if you were inclined, they could "go public" and provide almost a crowd of any size you might desire. Both Secretaries Hodgson and Shultz have recently addressed the Club and just recently Ambassador Bush delivered a well-received speech.

With Ohio being crucially vital to our hopes in November, we would hope you will assign this forum some priority in planning your schedule. In the event you are interested, I have full background material available. Incidentally, Under Secretary of Commerce Jim Lynn is quite familiar with the Club.

Many thanks.

Mr. GRAY. It was not a press release, though, Senator, I didn't make a press release. I wrote a memorandum.

Senator KENNEDY. I see.

Mr. GRAY. And I gave it to certain—I gave it rather wide distribution.

Senator KENNEDY. Your memorandum says that the Time quotations "are, of course, taken out of context. The full text is as follows." Then your memorandum goes on to say—do you want to read that yourself or do you want me to?

Mr. GRAY. I prefer that you read it, Senator.

Senator KENNEDY. I would prefer that you would, but that is all right.

Mr. GRAY. Your voice may be stronger than mine at this moment and that is why I am—

Senator KENNEDY. You do very well.

Mr. GRAY. No, I have a little trouble with my Secrets. [Laughter.]

Senator KENNEDY. As follows:

Appreciate the fact that every single member of the opposite political party is working hard day and night to insure that the President of the United States is hampered and harassed in carrying out his program and that the President of the United States is not reelected to serve a second term.

This is a real hard political fact of life. This is in keeping with the nature of our political system. Without such a system one-party government could produce a totalitarian state. We accept this fact of life, so does the opposing party. Accordingly, do not retch or quiver when we insist that the preponderant majority of our colleagues, political appointees, be members of our own party.

Senator KENNEDY. Now this is where your memorandum stops quoting, but the speech itself continues, and I would like to read briefly since the part I have read preceded the language that was quoted by Time, and the part that follows the Time quote is not included in the release:

Again it is plainly obvious that we must be dedicated and devoted to the concept that our Republican President will be a great President, that his programs will be successful, and that he will be reelected to a second term.

Above all other qualities of character that we hold near and dear, we must have deep, abiding, sincere loyalty to our President and to our Secretary.

Earlier I placed great emphasis on service. Now I want to drive home hard the emphasis on loyalty. I do not speak of blind, automatic loyalty. I speak of a sincere, an intelligent, a freely made decision to join President Nixon and Secretary Finch because we believe in them, trust them, understand the goals and objectives they hold, and desire to support them with the deepest sense of dedication and total commitment.

Should there be any one of you here present today who cannot make this commitment you must in order to maintain your own dignity, self-respect and integrity, examine deeply your own hearts and minds and reach a decision to serve or not to serve.

Do not today understand me to say that each of you is to consider himself as a fanatic, blind, unreasoning partisan kind of Republican, the brand often caricatured by Herblock and others who are determined that an enlightened, human, understanding Republican President shall not succeed.

No, I am saying you are here because you have made a profound commitment to support the total dedication of the President of the United States and that you have made this commitment intelligently because you wish to join with him in bringing this country together again and you made this commitment intelligently because you wished to join with Secretary Finch in assisting him to perform the tough tasks which lie ahead, tasks which must be performed well in order that the President may push his objective.

Our nation has elected a Republican President, we have a Republican Administration, we have Republican approaches to problems of our people. We have the President's goals, we have the common sense to know and acknowledge the common objectives of the President and Secretary, and we should have the loyalty, the courage and commitment to do their will—not our will. This means, plainly and simply, that we get on the track with the President and the Secretary and that we stay there and track with them.

Now an earlier paragraph, on page 2 of your speech, at the top you have:

Each one of us is here in HEW because Richard Nixon was elected to the high office of President of the United States. Further we are here because Secretary Finch has seen fit to place trust and confidence in us and to approve our selection to fill a position in HEW.

In short, we owe our positions to the capability of the President to come off the mat, so to speak, and drive through hard, vigorous years of campaigning. . . .

The part that "Each one of us here in HEW", if you could change that to FBI, "because Richard Nixon was elected to the high office of President of the United States." Is this still your feeling?

Mr. GRAY. Certainly not, and I expressed that in my statement to the committee. Remember this statement, Senator Kennedy, was made to political appointees at HEW at the Deputy Assistant Secretary level and below. I would invite your attention to the pledges I made in my statement to the committee and I would also say to you again, as I said in my statement, that I view my return to the FBI as a return to the service of my country, as distinguished from my former pursuit while I was helping Bob Finch make the transition at HEW.

And I think what might also be very important to insure that we consider both sides of this is to take a look at page 11 and just the last lines there:

Imaginative, creative, dedicated, and competent people form the heart and flesh, the bone, sinew and muscle of any organization whether it be the corner grocery store or a major department of the Government of the United States. We must have them and we must work with them in such a manner that they can realize their full potential in the best interests of the people of the United States.

Senator KENNEDY. Then we will just wind up this part of the questioning, you have on page 1:

At the same time, when we embark upon a career in the service of our government, whether that career is to be short term or long term, we must be quite willing to subjugate our own personal goals to a deep, personal commitment to serve our President, our Secretary, and our Nation.

Mr. GRAY. That is correct, Senator.

Senator KENNEDY. Would you reverse that order now?

Mr. GRAY. No, you have got to feel it as I felt it and accept the situation that existed in HEW. There were many people over there that I called snow shovelers, who were there for personal aggrandizement and I was addressing myself to them. The things I hit hardest

were the last two sentences that I read, in the last two paragraphs, because there is no doubt about it—anybody who knew me there over in HEW knew exactly what kind of a critter I was.

Senator KENNEDY. That is what we are going to try to find out.

Mr. GRAY. I am sure you are, that is why I am here.

Senator KENNEDY. Could you just, before getting into some other questions, could you tell us the latest on Wounded Knee?

Mr. GRAY. Yes, sir, the latest word is that I ordered another experienced SAC in there to assist the SAC I have now in there, and we also have information that Senator McGovern and Senator Abourezk and some of their staff members are going out in U.S. Air Force aircraft. Right at the time I left FBI headquarters, the last memorandum handed me was that the situation was stable as of this moment. But I don't know what it is right now.

Senator KENNEDY. The memorandum ought to show I have a staff member on that plane, too.

Mr. GRAY. Yes, it does, I already mentioned the Senators, but you are correct.

Senator KENNEDY. This week's Time magazine contains information about alleged wiretaps on newsmen, according to the article, requested by the White House, authorized by the Justice Department, installed by the FBI. How would you respond to those charges?

Mr. GRAY. I would have to say, first, that with regard to the general matter of wiretaps—

Senator KENNEDY. No, just on these charges. How do you respond specifically, I will come on to general wiretap questions later on. How do you respond?

Mr. GRAY. How do I respond to these charges? When I saw this particular article and checked the records and indexes of the Federal Bureau of Investigation, and I am told also that the Department of Justice checked the records of the Internal Security Division of the Department of Justice, there is no record of any such business here of bugging news reporters and White House people.

Senator KENNEDY. Well, is that the full answer?

Mr. GRAY. That is my answer, yes, sir, that is my full answer.

Senator KENNEDY. Did you talk to anyone about it at the White House or is it just a matter of your answer is "I just checked the record and we didn't find any authorization and we didn't do anything else."

Mr. GRAY. That is my answer, that we checked the records and indexes of the Federal Bureau of Investigation, yes, sir.

Senator KENNEDY. Could you describe that in some greater detail. These are some rather serious charges.

Mr. GRAY. I know they are rather serious charges.

Senator KENNEDY. Tell us what you did exactly.

Mr. GRAY. I went to the records and checked the records.

Senator KENNEDY. What records?

Mr. GRAY. The records that we keep on national surveillance wiretaps, the authorizations, the memorandums that are prepared, the reports and the indexes that are filed in connection therewith.

Senator KENNEDY. You mean just because it was not, there wasn't an indication or a mark on an official document, you let it go at that?

Mr. GRAY. I don't know what you mean by a mark.

Senator KENNEDY. Well, unless you had some official designation that this was going on——

Mr. GRAY. That is correct.

Senator KENNEDY (continuing). You didn't feel that you had to pursue it any further?

Mr. GRAY. That is correct because, you know, Mr. Hoover is not going to do something like this in the first place.

Senator KENNEDY. I am not asking Mr. Hoover.

Mr. GRAY. And in the second place——

Senator KENNEDY. I am asking about you.

Mr. GRAY. In the second place, every one of these come across my desk, every single one and, in the third place, when I came into the Federal Bureau of Investigation on May 3, the very first thing that I said is, I will not permit any wiretaps that are not in accordance with law. That is my answer, and that is what I have done. That is what I have said repeatedly.

Senator KENNEDY. Well, you have indicated that you reviewed what wiretaps were authorized, and since any taps on the White House didn't appear on that list, that is the extent of your investigation?

Mr. GRAY. That is the extent of my investigation.

Senator KENNEDY. You don't feel—let me ask a question.

Mr. GRAY. Yes, sir.

Senator KENNEDY. Did you feel that you ought to talk to anybody at the White House about this?

Mr. GRAY. The White House has already issued a denial, and the answer is no, Senator.

Senator KENNEDY. You didn't talk to anybody at the White House?

Mr. GRAY. No, sir; I did not; I have not.

Senator KENNEDY. You didn't feel that you should, or had to, because you had checked this other file in the FBI?

Mr. GRAY. That is right. I looked at our records, the ones I work with every day—these things come through all the time.

Senator KENNEDY. Did you talk with anybody in the Justice Department about it?

Mr. GRAY. I was advised—yes, I did—I was advised——

Senator KENNEDY. Whom did you talk to?

Mr. GRAY. I talked to Jack Hushen, public information officer.

Senator KENNEDY. Public information officer?

Mr. GRAY. Yes; because he called me, and he said this has appeared in Time magazine—I hadn't even seen it—"What do you know about it?" And I said, "You had better start checking the records in the Department of Justice and we will check the records in the Federal Bureau of Investigation, and that has got to stop," and that is all.

Senator KENNEDY. Is he in the process of checking them now?

Mr. GRAY. He reported to me later that the Assistant Attorney General——

Senator KENNEDY. When did he report to you?

Mr. GRAY. Let me say that the date of this was March 5. Yes; it came out before that—it came out on Monday—and I think he had an advance on it, and I think he called me on the weekend, but I am not sure about when he called me, Senator.

Senator KENNEDY. Well, you didn't call him? He called you?

Mr. GRAY. That is correct, because I had not seen it.

Senator KENNEDY. What did he say to you?

Mr. GRAY. He told me there is this article in Time, and he went on to tell me what it alleges.

Senator KENNEDY. Yes.

Mr. GRAY. And that is when I told him that he be absolutely certain that he check and verify the records of the Department of Justice maintained in the Internal Security Division, and I would be—actually be—certain that our records were checked.

Senator KENNEDY. And you didn't have any—that is the only contact you had with the Justice Department?

Mr. GRAY. On this?

Senator KENNEDY. On this issue.

Mr. GRAY. Yes; I haven't talked to Assistant Attorney General Olson on this at all. I have not discussed this with the Attorney General at all.

Senator KENNEDY. He called you even though it alleges in the article that it was with Mr.—at some time he called you back—the Public Information Officer called you back; is that right?

Mr. GRAY. Yes, because it was in conjunction with reading a press release that he was going to put out, and I wanted him to be absolutely certain that he had made these checks with the Assistant Attorney General in charge of the Internal Security Division.

Senator KENNEDY. How many conversations did you have?

Mr. GRAY. Two.

Senator KENNEDY. Two, and then he called you back and said there were none on the list?

Mr. GRAY. That is right, when he was discussing the press release he was going to put out.

Senator KENNEDY. So do I gather the extent of your investigation is a review of your own files, and a telephone call to the public information officer of the Justice Department, and no one in the White House, about the allegations and charges by Time magazine?

Mr. GRAY. That is correct, because I had no formal complaint there had been any—

Senator KENNEDY. I was listening to you earlier when you were talking about how your Inspection Division follows up every single complaint that comes on out when it affects the FBI.

Mr. GRAY. On one of us.

Senator KENNEDY. But when a crime like this, and it is a crime. Would it not be a crime?

Mr. GRAY. If these acts were committed, certainly it is a felony; no question about it, certainly.

Senator KENNEDY. But the extent of your investigation is, as I stated, just a review of your own files, the files of the FBI, on what wiretaps had been authorized, and since you didn't see any approval there, and after a routine call from the public information officer from the Justice Department, you let that drop; is that correct?

Mr. GRAY. I would not classify it as just a routine call. He was quite upset when he read this article to me, and I am sure he was speaking for the Attorney General. I am sure that there had been discussion between the Attorney General and the Assistant Attorney

General in charge of the Internal Security Division where those reports are made. I have to assume this—this is a normal type of procedure—and I did what I would do under these circumstances—I checked our records and indexes.

Senator KENNEDY. That is the sole extent of what you did?

Mr. GRAY. That is correct, Senator Kennedy, that is exactly what my testimony is.

Senator KENNEDY. In your conversations with the Public Information Officer of the Justice Department, did he indicate what the Justice Department was doing to try to find out whether this was true or not?

Mr. GRAY. Just told me.

Senator KENNEDY. What?

Mr. GRAY. He told me that the Assistant Attorney General in charge of the Internal Security Division had checked his records and indexes, and I told him we ought to be absolutely certain about it.

Senator KENNEDY. You didn't think you ought to talk to the Assistant Attorney General?

Mr. GRAY. No, I didn't.

Senator KENNEDY. Why not?

Mr. GRAY. Why not? The thought really never entered my mind I would have to talk to him. I have to check the FBI records, that is what I have to check.

Senator KENNEDY. And you are satisfied with a public information officer's comments that the Assistant Attorney General in charge of this unit had nothing on that?

Mr. GRAY. This was my contribution to the decisionmaking process before the Attorney General gave the authorization to send out the press release. I told him to make absolutely certain, to check those Department of Justice records because records do exist.

Senator KENNEDY. Why wouldn't you go to the man in charge rather than the pressman?

Mr. GRAY. The pressman reported it to me, and I went to my people.

Senator KENNEDY. Why wouldn't you go to the guy in charge in the Justice Department rather than the pressman?

Mr. GRAY. I didn't have to go to the pressman; he came to me, Senator.

Senator KENNEDY. And you never felt you had to follow up?

Mr. GRAY. I testified that I did not feel that.

Senator KENNEDY. Even to talk to the Assistant Attorney General who, if these things were going on, would know the most about it, you didn't think you would have to get in touch with him?

Mr. GRAY. I did not; no, sir.

Senator KENNEDY. Or do any other kind of investigation?

Mr. GRAY. No, sir; since I have been sitting in that chair, I have been signing all the paperwork that is involved in these national security taps, and since May—

Senator KENNEDY. This is a crime?

Mr. GRAY. Of course, it is a crime.

Senator KENNEDY. And you don't feel you had to do anything more to review it?

Mr. GRAY. No, sir.

Senator KENNEDY. This is a serious allegation, it charged a crime, and you didn't feel that you had to do anything more than receive a call from—

Mr. GRAY. The proper place to make this charge, you know, is with the U.S. attorney and not a magazine if there is any verity to it, Senator.

Senator KENNEDY. Well, I don't know whether we would be as far as we are now in the Watergate if we didn't have the press write about it; wouldn't you agree with that?

Mr. GRAY. I am not—

Senator KENNEDY. About these charges?

Mr. GRAY (continuing). I am not saying anything against the press at all.

Senator KENNEDY. And allegations?

Mr. GRAY. And I further differ with you about your statement, we would have been exactly where we are with or without the press because from day 1, as I testified yesterday, I realized that the credibility of the Federal Bureau of Investigation was at stake.

The CHAIRMAN. Wait a minute, let him finish his answer.

Mr. GRAY. Let me finish my answer.

Senator KENNEDY. That is a matter we can disagree on, too.

Mr. GRAY. Sure, lots.

Senator KENNEDY. But we can't disagree to the extent of the investigation of a very serious allegation and charges about a serious crime.

Mr. GRAY. That is correct; I checked the records and indexes of the FBI.

Senator KENNEDY. You checked the records?

Mr. GRAY. I said that, Senator, and that is my testimony.

Senator KENNEDY. OK.

Mr. GRAY. All right.

Senator KENNEDY. Let's go a little bit into the question of the Segretti situation again.

As I understand it, at the hearings yesterday there was discussion about the copies of various FBI materials shown, or made available, to Mr. Segretti prior to his grand jury appearance in the Watergate investigation, and, as I recall your testimony, I believe you said that no investigation was conducted of those allegations. That despite the fact that these materials have been disseminated to the Justice Department personnel and to assistant U.S. attorneys out in the field, and, of course, I imagine presumably to your own agents, your own Bureau, nothing was done to investigate those allegations or charges other than a phone call to the White House?

Mr. GRAY. Senator, we don't investigate unless we have a violation of law. Our ground zero is found in our jurisdictional authority, and there is no violation of law, there is only a breach of trust if this occurred. I don't know that it occurred, and if it occurred Segretti was hearing what he had said himself.

Senator KENNEDY. Well, I am interested in what steps were taken to find out or track this down by the FBI?

Mr. GRAY. I testified as to the steps.

Senator KENNEDY. We are just going to take a little time.

One telephone call?

Mr. GRAY. Yes, one telephone call.

Senator KENNEDY. One telephone call.

Mr. GRAY. That is correct.

Senator KENNEDY. Did you ever think of talking to Mr. Segretti about how he got the information?

Mr. GRAY. No, I did not because there was no need to do that. We talked to Mr. Segretti on June 26 and on June 28, and we also showed him on June 30 certain pictures trying to get him to identify them, and he appeared before the grand jury on the 22d day of August, and the information he gave at the grand jury was relayed on to our agents by the assistant U.S. attorney conducting the grand jury. We instituted the investigations that were requested then, and that is the fact of the matter.

Senator KENNEDY. But you never asked him who gave him the information?

Mr. GRAY. No, I didn't, and no agent of the FBI asked him who gave it to him because there is no violation of law, Senator. We just can't go around doing it.

Senator KENNEDY. What do you do then?

Mr. GRAY. We get harpooned when we do.

Senator KENNEDY. What do you do when there is unrestricted information or FBI leaks or whatever?

Mr. GRAY. We try in many ways to ascertain how those leaks occur. I am not going to discuss publicly, Senator, how we try to do it.

Senator KENNEDY. Well, you didn't in this case, though, did you, Mr. Gray?

Mr. GRAY. No, I did not. I did not.

Senator KENNEDY. All right. How do you know that these leaks didn't take place within the FBI?

Mr. GRAY. I don't.

Senator KENNEDY. But yet you didn't feel that you even ought to investigate the FBI?

Mr. GRAY. No.

Senator KENNEDY. What?

Mr. GRAY. No; I did not.

Senator KENNEDY. Why not?

Mr. GRAY. I had made the decision not to.

Senator KENNEDY. What was the basis?

Mr. GRAY. There was no basis for it because there was no violation of law.

Senator KENNEDY. Even if the FBI had leaked the material? Aren't you interested in that?

Mr. GRAY. We are interested in that, Senator.

Senator KENNEDY. What did you do about it in this case?

Mr. GRAY. I did nothing about it.

Senator KENNEDY. How do you know it wasn't an FBI agent?

Mr. GRAY. I don't know that it wasn't an FBI agent.

Senator KENNEDY. Why didn't you do it?

Mr. GRAY. Because I made a decision not to do it because it was not of that import to me.

Senator KENNEDY. What was not, the leak by the FBI?

Mr. GRAY. There was no violation of law. Senator, I have tried to run down many, many leaks in the FBI and I don't run down every one.

Senator KENNEDY. This isn't a usual one, is it?

Mr. GRAY. This is not any more unusual.

Senator KENNEDY. This is not a usual one?

Mr. GRAY. It is not as bad as some of the others.

Senator KENNEDY. How do you draw the line then? Which are the bad ones you investigate and which are the ones that are not so bad that you don't?

Mr. GRAY. Again it is a judgment.

Senator KENNEDY. This one didn't fall under the bad ones?

Mr. GRAY. I did not investigate it; no.

Senator KENNEDY. Not within the FBI, you did not investigate it?

Mr. GRAY. No, didn't investigate it.

Senator KENNEDY. You didn't think you ought to investigate and try to find out whether any of the leaks had taken place in the U.S. attorney's office?

Mr. GRAY. I did not.

Senator KENNEDY. And didn't think you ought to investigate it with regard to the White House, other than a routine call, would you say?

Mr. GRAY. I wouldn't classify it as a routine call.

Senator KENNEDY. How would you classify it?

Mr. GRAY. I got pretty angry.

Senator KENNEDY. One call?

Mr. GRAY. It wasn't, "Hello, John, how is it today."

Senator KENNEDY. Well, tell us about it.

Mr. GRAY. I testified about it yesterday.

Senator KENNEDY. Tell us again.

Mr. GRAY. I said, "I read the story, is there any substance to it at all?" And he said, "Absolutely not. I did not even have any of the reports with me in Miami."

Senator KENNEDY. And so what did you say?

Mr. GRAY. I said, "All right, that is good enough for me, John" and hung up.

Senator KENNEDY. And that is the extent of it—

Mr. GRAY. That is the extent, Senator.

Senator KENNEDY. You probably remember sometime ago there was that Look magazine piece about Mayor Alioto, which led to a libel suit, and we asked Mr. Rehnquist during the course of his testimony—I believe Senator Ervin did—about some of the procedures that were being followed about the leak to Look magazine, and he said that the FBI had reported that, and here is what Mr. Rehnquist said on page 604 of the hearings, part I:

The FBI reported that, after the institution of the libel suit by Mayor Alioto against Look magazine, it received information that one of its San Francisco agents had been a source of data for the controversial article. The agent acknowledged that he had been in contact with one of the co-authors of the article and had on various occasions given and confirmed information that appeared in the article. At no time were official files of the FBI furnished to Look, and the agent's disclosures and confirmations of information were not made with FBI or other Department of Justice authorization. Appropriate disciplinary action was taken against the agent in question and he retired.

It seems the FBI was really willing to go after some apparent leaks of material in that particular case but not with regard to the Segretti case or the Watergate or however you want to call it.

Mr. GRAY. I would have to differ with you, Senator. The cases

can be distinguished because there it was information that an agent of the Federal Bureau of Investigation had been the source of the leak. We have no information regarding anyone being the source of this leak.

Senator KENNEDY. Do you have to—

Mr. GRAY. All we have is a statement in a newspaper.

Senator KENNEDY. Just a statement in a newspaper?

Mr. GRAY. That is right, sir. If I had had information that any one individual had been a source of that leak I would have investigated it.

The CHAIRMAN. We will recess now until 2:15.

(Whereupon, at 12:30 p.m., the committee was recessed until 2:15 p.m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. Let us have order.

Proceed, Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

We were reviewing this morning, Mr. Gray, the followup actions on behalf of yourself to the Time magazine allegations of wiretaps on newsmen, and also the Segretti case, and I would like to move on to a couple of other areas. But, perhaps, before doing so, I might just follow up on the Time magazine allegation first.

I think earlier, and perhaps it is just a clarification for the record, I think earlier this morning you indicated that after you had this call from the Press Officer of the Justice Department, sometime over the weekend, last weekend, you checked the indexes of the FBI to see if there was in fact any wiretapping of the White House. Is that correct?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. That is right.

Senator KENNEDY. And I think your testimony this morning was to the effect that you didn't find any indication on the index?

Mr. GRAY. That is correct, Senator.

Senator KENNEDY. Well, did you gather, from any other sources, information that would have led you to believe there may have been?

Mr. GRAY. I did not.

Senator KENNEDY. You have no basis for the veracity of that story then?

Mr. GRAY. Not in that particular, no, sir.

Senator KENNEDY. Well, what do you mean by "in that particular"?

Mr. GRAY. Well, the way it is written.

Senator KENNEDY. Well—

Mr. GRAY. We have our records of national security surveillances, you know.

Senator KENNEDY. That is correct.

Mr. GRAY. And this is what we checked, and we found no evidence to the effect that we were tapping any newsmen or any White House personnel.

Senator KENNEDY. Or court ordered surveillances?

Mr. GRAY. Title III, organized crime?

Senator KENNEDY. Yes.

Mr. GRAY. I checked only the national security record. I didn't check the Title III Organized Crime because every one of those is issued by a judge, and I didn't think to check any of those because a judge issues such an order under title III provisions. I did not check title III.

Senator KENNEDY. I see. But you have no indication then that either, or you have no reason to believe that either from information that had been made available to you or made available to top FBI agents that this—

Mr. GRAY. Had no reason to believe it.

Senator KENNEDY (continuing). That this had taken place?

Mr. GRAY. No, sir, I had no reason to believe that.

Senator KENNEDY. Why didn't you check under title III?

Mr. GRAY. Because every title III surveillance has got to be the result of an order issued by a judge, and certainly a judge is not going to be issuing an order in a national security surveillance area, and we have got to demonstrate probable cause and all the rest of it. It is a pretty thorough procedure and I didn't even think that title III was involved here. We can check the title III and certainly will do that if the Senator would wish us to do that.

Senator KENNEDY. Would you?

Mr. GRAY. I have no objection to that. Yes, sir, I would be happy to.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. The FBI has never had any title III wiretaps on anyone at The White House or any member of the press.

Senator KENNEDY. On the Segretti case, and the leakages of the FBI file, when you talked with Mr. Dean, I think you indicated the conversation this morning, and perhaps could I bother you to review it again with us here as you remember it?

Mr. GRAY. Senator, you know I have put that on the record about three times, and maybe four times. It is on the record and I will stand by it. It is my testimony under oath.

Senator KENNEDY. I know you are going to stand by it under oath.

Mr. GRAY. Sure, and I did. I made the telephone call to John Dean and I hit the overhead and I was angry and I asked him if he had done this thing and he said, "Absolutely not. I was in Miami but I didn't even have the FD-302's with me."

Senator KENNEDY. Sure. Was your question, to the best of your memory, asking him whether he actually—

Mr. GRAY. I read the thing out of a newspaper to him, Senator, and I said, "Did you do this?"

Senator KENNEDY. Did you do what?

Mr. GRAY. Do this. "Did you show this information to Segretti as it is alleged to have occurred?" and he said, "Absolutely not, under no circumstances. I did not have the FD-302's with me." I would like to say for the record, too, if I may, that the Federal Bureau of Investiga-

tion interviewed Mr. Segretti on the 26th day of June, we interviewed him——

The CHAIRMAN. Speak a little louder.

Mr. GRAY. I am sorry, sir. We interviewed Mr. Segretti on the 26th day of June, 1972, on the 28th day of June, 1972, and also on the 30th day of June, 1972, when we showed him a picture and asked him to identify that individual. The only two reports of interviews that we have from Mr. Segretti are on the 26th and the 28th of June. We did not interview him two days prior to August 19.

Senator KENNEDY. Well now, he, as I understand, Mr. Dean indicated that he himself did not leak the FBI report?

Mr. GRAY. No, we didn't talk in terms of leak, Senator Kennedy.

Senator KENNEDY. Well, how did he—I mean I am just trying to understand a little better whether he said "I didn't show the FBI report," that still leaves a pretty wide——

Mr. GRAY. No, he said, "I didn't even have them with me." He said he did not.

Senator KENNEDY. Could he have made some notes before or copies and brought those with him?

Mr. GRAY. I would doubt it very much, Senator Kennedy.

Senator KENNEDY. Did you ask him——

Mr. GRAY. I didn't ask him.

Senator KENNEDY. Whether he had passed on even any of the information——

Mr. GRAY. No, I did not ask him.

Senator KENNEDY (continuing). Any of the information that was in it?

Mr. GRAY. No, sir; I did not ask him that.

Senator KENNEDY. You just asked him whether he had shown the report to Mr. Segretti?

Mr. GRAY. In fact, this was the allegation when I read it, and I read it to him out of the paper that morning.

Senator KENNEDY. Did you ask him whether he had seen Segretti?

Mr. GRAY. No, I did not.

Senator KENNEDY. Do you know whether he saw Mr. Segretti?

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

Senator KENNEDY. At one point while you were investigating the Watergate case, there were allegations in the press that a former Assistant Attorney General, Mr. Mardian, after he left the Justice Department and joined the Committee To Reelect the President, either ordered or was in some way involved in the destruction of relevant documents at the Committee To Reelect. Could you tell us what investigation, if any, the FBI conducted into those allegations?

Mr. GRAY. We endeavored to interview Mr. Mardian, and we did interview him on July 17, 1972, and he claimed the attorney-client privilege and said no more to us.

Senator KENNEDY. He what?

Mr. GRAY. He claimed the attorney-client privilege with regard to his role with the principal, this is what we were interviewing him about.

Senator KENNEDY. Well, who was his client?

Mr. GRAY. I will have to take a look at the specific interview sheet. I will get the interview sheet, the FD-302, and provide the answer. I

don't remember. I think he claimed that he had advised Mr. Stans and Mr. Mitchell.

Senator KENNEDY. So he didn't respond any further?

Mr. GRAY. That is my recollection, Senator, but I want to check the actual interview sheet.

Senator KENNEDY. But you accepted his claim of lawyer-client relationship?

Mr. GRAY. Senator, you know we have a point beyond which we cannot go.

Senator KENNEDY. I am just asking you did you accept it?

Mr. GRAY. We tried to get whatever information we could from him.

Senator KENNEDY. And he said that it was a lawyer-client relationship?

Mr. GRAY. This is my best recollection.

Senator KENNEDY. And you accepted that?

Mr. GRAY. He was interviewed on July 17, 1972, at which time he stated he would furnish no information relative to this matter. He invoked an attorney-client relationship with respect to Maurice Stans, George Gordon Liddy, and Hugh Sloan, stating he had counseled each one of those individuals and that is what our FD-302 would show.

Senator KENNEDY. He had counseled which individuals?

Mr. GRAY. Those three individuals, the ones I read: Stans, Liddy, Sloan.

Senator KENNEDY. Is his position that he had counseled them before the destruction?

Mr. GRAY. That is what—no, I am not going to get into the destruction aspect. I am not looking at the 302. His position as reflected there was he had counseled them.

Senator KENNEDY. For any period of time, or for how long a period?

Mr. GRAY. It doesn't say in that statement.

Senator KENNEDY. Did you ask him?

Mr. GRAY. I don't know, Senator. I will have to look at the 302.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After a review of the record, Senator Kennedy, I find that Mr. Mardian advised our Agents that he had, in the capacity of an attorney rather than as an employer, spoken to Mr. Liddy, Mr. Stans and Mr. Sloan, and as such, he could not divulge either the nature or the substance of his conversations with those men. It is my understanding that the attorney-client privilege which he was invoking is a continuing one and exists until revoked by the client. Our Agents did not ask Mr. Mardian how long a period of time this privilege would be claimed.

Senator KENNEDY. Who else did you interview about those alleged destructions of the files?

Mr. GRAY. We interviewed quite a few people. Once again, I will have to go to the 302's to find which of them were asked specific questions regarding any destruction of files.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I find that there are two situations in which records at the Committee to Reelect the President were allegedly destroyed. The first of these relates to financial records of contributions before April 7, 1972, when the new Disclosure Act took effect. The second involved alleged destruction of records at the Committee offices after the arrests of the five men at the Democratic Headquarters on June 17, 1972. Our Agents contacted a number of people at the Committee concerning these points and during the Federal grand jury inquiry a

number of people were also questioned concerning the records destruction. Those questioned included Jeb Magruder, Herbert Porter, Maurice Stans, Hugh Sloan, Paul Barrick, Lee Nunn, Sally Harmony, Judith Hoback, Robert Odle, Robert Houston, Sylvia Panarites, Millicent Gleason and Martha Duncan.

Senator KENNEDY. Do you remember whether you talked to Frederick LaRue? His name was mentioned in this.

Mr. GRAY. I believe Mr. LaRue was interviewed.

Senator KENNEDY. Could you tell us when?

Mr. GRAY. Yes, he was interviewed on July 18, 1972, and again in more detail on July 21, 1972.

Senator KENNEDY. Did you ask him about the destruction of files?

Mr. GRAY. I am going to have to answer that one specifically; I will have to go to the 302 to see the detailed report of interview, Senator, and I will do that.

The CHAIRMAN. Of course, that is not the question. Did you ask him? Did you interview him?

Mr. GRAY. No, I didn't interview him; the Federal Bureau of Investigation—a special agent of the Federal Bureau of Investigation interviewed him.

Senator KENNEDY. What can you tell us, then—I would be interested if you could tell us about the results of that interview—but what can you tell us about the interview into the allegations of the destruction of files by Mr. Mardian; what can you tell us?

Mr. GRAY. I am going to provide it for the record, Senator, because there are so many persons we interviewed, with so many leads and so many witnesses, that I can't possibly make any pretense that I can remember exactly who, you know. I could try to recollect, but that is dangerous. I would much rather be sure and be specific and be precise.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I find, Senator Kennedy, upon checking the records, that Mr. Mardian, who was Special Assistant to the Campaign Manager for the Committee to Reelect the President, was interviewed on July 17, 1972, at the request of Assistant U.S. Attorney Earl Silbert regarding his knowledge of the activities of Sloan and Liddy while they worked for the Committee to Reelect the President. There was no allegation that Mr. Mardian had any information regarding the destruction of records. In addition, Mr. Mitchell advised us on July 5, 1972, that Mr. Mardian was with him at a political meeting in California from June 16 through June 20, 1972. Liddy's alleged destruction of records took place on June 17, 1972. In addition, Mr. LaRue was not interviewed regarding destruction of records as there was no allegation that he had any such information. Mr. LaRue was interviewed on two occasions, July 18 and 21, 1972, as I mentioned above but these interviews dealt with matters other than the destruction of records.

Senator KENNEDY. That is the way it should be, obviously. Can you tell us whether there actually was, as a result of the investigation, destruction of those files?

Mr. GRAY. Can I tell you that there was destruction of those files? We had allegations to that effect, and statements to that effect made to us by individuals that we interviewed; yes, sir, I think I can say that; yes, indeed.

Senator KENNEDY. Would that be a crime?

Mr. GRAY. I don't know.

Senator KENNEDY. What does your legal counsel say, if this was—

Mr. GRAY. I didn't specifically ask that question of him, because all during the conduct of this investigation we were working hand in

glove with the assistant U.S. attorney. If at any time an assistant U.S. attorney thought we were uncovering evidence of a crime, he would have pointed us in that direction regardless of what I wanted to do, Senator.

Senator KENNEDY. What did you want to do?

Mr. GRAY. I said regardless of what I wanted to do.

Senator KENNEDY. Did he ever indicate to you that he thought that there was a possible crime?

Mr. GRAY. No, I don't recall that specifically; and what I wanted to do from day 1, as we say in the FBI, was to give it a full court press with no holds barred and investigate to the hilt, and I believe we did.

Senator KENNEDY. Well now, but you had reason to believe that this could have been a crime, may have been a crime?

Mr. GRAY. No, I don't; no, I don't. I am not testifying to that effect at all, Senator. I want to look at the facts and the circumstances, and I want to look at the possible statutes that are applicable before I give you an answer to that question, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have had this matter researched, Senator Kennedy, and I have been informed that if destruction of files is brought about by bribery, misrepresentation, intimidation, or force or threats thereof it could constitute a violation of Title 18, U.S. Code, Section 1510 (Obstruction of Criminal Investigations). However, in the absence of the elements listed (bribery, etc.) the act of destruction by an individual having lawful possession would not appear to be a crime unless the files were specifically protected by a statute or the destruction was the last step in a continuing criminal conspiracy (Title 18, U.S. Code, Section 371) to violate other substantive Federal laws and to avoid detection.

An example of statutory record-keeping requirements is found in the Federal Election Campaign Act of 1971, Title III of which requires keeping detailed and exact records of all contributors, the name and address of contributors, and all expenditures made by political committees covered by the statute. It should be noted that this statute became effective on April 7, 1972.

Senator KENNEDY. But at least you did have reports from your investigators that such destruction had taken place based upon their investigation?

Mr. GRAY. I read in some reports, Senator, I believe it was one individual or maybe two who stated to us that there had been a destruction of files within the Committee To Reelect the President, yes, sir, but I can't recall specifically which person. I read that in a rather large stream of 302's and teletypes that came across my desk.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I find that there are two situations in which records at the Committee to Reelect the President were allegedly destroyed. The first of these relates to financial records of contributions before April 7, 1972, when the new Disclosure Act took effect. The second involved alleged destruction of records at the Committee offices after the arrests of the five men at the Democratic Headquarters on June 17, 1972.

Senator KENNEDY. And did they allege that Mardian had been involved?

Mr. GRAY. No, sir; I recall no such allegation as that. But I want to check the record and give you an accurate report before I state under oath that he was not.

Senator KENNEDY. Or Mr. LaRue?

Mr. GRAY. No, sir; I don't believe any mention was ever made of Mr. LaRue in this context, but I will check the 302's and verify it.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. As I indicated previously, there was no allegation that Mr. Mardian had any information regarding destruction of records at the Committee to Reelect the President. With respect to Mr. LaRue, we interviewed him on July 18, and 21, 1972, upon the request of Mr. Silbert, to determine his knowledge of the activities of Sloan and Liddy. There was no allegation that Mr. LaRue participated in or had any information concerning destruction of records and, in fact, when we interviewed Mr. Mitchell, he stated that Mr. LaRue as well as several other officials of the Committee were in California over the weekend of June 17 when records at the Committee were allegedly destroyed by Mr. Liddy.

Senator KENNEDY. Where does that lie now, that investigation, the investigation of destruction of the records?

Mr. GRAY. The Watergate investigation itself?

Senator KENNEDY. No; just the destruction of the records.

Mr. GRAY. The destruction is a part of the total investigation, and I would have to ask the Assistant U.S. Attorney and the Department of Justice where we are on that right now because we have not been pushed in that area.

Senator KENNEDY. You have not been what?

Mr. GRAY. Pardon, sir?

Senator KENNEDY. You have not been what in that area?

Mr. GRAY. Pushed, directed, guided in that area, to the best of my knowledge at this moment—but I will ascertain the facts.

Senator KENNEDY. Could this not be considered as an obstruction of justice if the records were actually destroyed?

Mr. GRAY. I doubt it because I think what you are talking about—if you are talking about the same records that I have a recollection of—you are talking about those that were compiled prior to April 7, and I know—

Senator KENNEDY. How do you know?

Mr. GRAY. What?

Senator KENNEDY. How do you know?

Mr. GRAY. I don't know.

Senator KENNEDY. Why are you assuming that?

Mr. GRAY. Well, I assume that these are the ones you are talking about, because I know as a fact that after April 7, new records were started. I specifically asked that question myself and I do recall that, and I can testify under oath to that effect.

Senator KENNEDY. Was that the question that was asked Mr. Mardian, whether it was just records before the April period?

Mr. GRAY. That is my recollection, that we were dealing with records prior, of contributions and disbursements prior to April 7.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Senator, at this time I would like to state that Mr. Mardian was not questioned concerning what records existed prior to April, 1972, nor was he questioned concerning any destruction of records. The investigation did not develop any allegation that Mr. Mardian had been involved in the destruction of records.

Senator KENNEDY. Well, I am not sure that that was particularly the newspaper allegation, was it?

Mr. GRAY. I don't know the newspaper allegations.

Senator KENNEDY. Why did you just ask them then—

Mr. GRAY. Why did I do what?

Senator KENNEDY. If you will wait for the question. What specific questions did you ask him besides which records had been destroyed before April? Did you ask him whether any records that came after April had been destroyed, or any other records that dealt with the alleged Watergate incident?

Mr. GRAY. No, I think my notations were to the effect of what records were maintained, what records are our interviewees telling us were destroyed, and what is the present condition of records at the Committee to Re-Elect the President. That is my best recollection of the questions that I asked at the time, Senator.

Senator KENNEDY. Who destroyed them, if they were destroyed?

Mr. GRAY. Oh, yes, we would want to know that.

Senator KENNEDY. One other area. Mr. Segretti. As I understand, Mr. Gray, Donald Segretti was interviewed during your investigation; is that correct? You have indicated that, given us the dates?

Mr. GRAY. Yes, I gave you the dates—the 26th of June, 1972, the 28th of June, 1972, and also we saw him on the 30th of June in an effort to get him to identify pictures, Senator.

Senator KENNEDY. Could you tell us why he was investigated?

Mr. GRAY. Why he was investigated?

Senator KENNEDY. Yes.

Mr. GRAY. He turned up, his telephone number turned up, as I recollect. He was one of those telephone numbers that we ran down. This was my recollection. I would like to check my records to make sure I am correct, though.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After reviewing the records, Senator, I find that my recollection was correct and that we conducted investigation concerning Mr. Segretti because a review of the telephone toll records of Mr. Hunt's calls had showed numerous phone calls between Hunt and Segretti.

Senator KENNEDY. My recollection—

Mr. GRAY. It is.

Senator KENNEDY. Yes.

Mr. GRAY. Then we are in agreement.

Senator KENNEDY. Do you remember what he—there was some interview with him then, on June 26, and on the 28th; is that correct?

Mr. GRAY. Yes, sir.

Senator KENNEDY. And do you know whether he indicated that Hunt had asked him—what Mr. Hunt had asked him to do?

Mr. GRAY. No. There is a little note here that I made, that he refused to give us any names, dates, or places at all. He was not too cooperative and helpful.

Senator KENNEDY. He was uncooperative?

Mr. GRAY. That is right, in the sense of giving us names, dates, and places. He talked to us once we contacted him, but he did not give us names, dates, and places. But this later, we are advised, came out at the Federal Grand Jury. I would like not to get into that.

Senator KENNEDY. What other investigations were conducted on Mr. Segretti, other than the two interviews on the 26th and 28th, do you know?

Mr. GRAY. I am not really sure I understand that question. We were not investigating him for anything other than his involvement, if any, in this IOG situation at the Democratic national headquarters.

Senator KENNEDY. Were his telephone toll cards obtained?

Mr. GRAY. I believe that they were; yes, sir.

Senator KENNEDY. Why were his toll cards obtained?

Mr. GRAY. I think we probably wanted to see to whom Segretti could lead us. We obtained an awful lot of toll calls. As I recall, there were 2,200 of them, not from Segretti, though, but from all the people involved in this investigation as interviewees or as principals.

Senator KENNEDY. Who did they lead to?

Mr. GRAY. I don't recall with that specificity, Senator.

Senator KENNEDY. Would there be any names on there—would you remember them?

Mr. GRAY. No; I wouldn't. I would have to provide that for the record for you, Senator. I just don't remember that.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Our records show that during the period of time we felt was pertinent and checked, from about August, 1971 to June, 1972, there were about 700 calls charged to Mr. Segretti. The investigating Agents screened these calls to try to pinpoint those which would appear to involve the Watergate subjects (Hunt, Liddy, McCord, Barker, Martinez, Fiorini and Gonzalez). We also looked for calls to the Committee to Reelect the President, Committee to Reelect the President people, the White House, White House people, or calls which might show Segretti was in contact with Hunt or Liddy during their travels. The greater majority of these calls did not appear to relate to the people involved in the Watergate incident. We did learn that Mr. Segretti was in touch with the published telephone number of the White House on several occasions; with hotels in Miami, Washington, D.C., and Chicago; with Mr. Dwight Chapin's residence; and with Mr. Hunt, both at his office and at his residence.

Senator KENNEDY. Were his bank records obtained, too?

Mr. GRAY. I think we did but I am not sure on that. May I provide that for you, too. I know that as a result of—I can tell you what we did as a result of the Federal Grand Jury, but I am getting myself into difficulty here.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. The records show that we did examine Mr. Segretti's bank accounts and access to the accounts was gained through issuance of a Federal grand jury subpoena.

Senator KENNEDY. Now, as I understand, both the telephone records and the bank records were obtained, is that correct?

Mr. GRAY. I believe we did. I believe we did, because I didn't put any restrictions on them. The investigators did what was normal and standard, and I am sure I am right but I want to be specific and precise on it.

Senator KENNEDY. Now, was Mr. Kalmbach interviewed?

Mr. GRAY. Yes, sir, he was.

Senator KENNEDY. Why was he interviewed?

Mr. GRAY. Well, that goes to the Federal Grand Jury.

Senator KENNEDY. I am sorry—

Mr. GRAY. Well, we had information—you know, I am going to get myself into trouble with Judge Sirica because I know why we went to Mr. Kalmbach and I know where the information came from but I have got a problem here with it.

Senator KENNEDY. Other than the Grand Jury, can you tell us what questions he was asked by the investigators?

Mr. GRAY. Mr. Kalmbach?

Senator KENNEDY. Yes.

Mr. GRAY. No, I would have to go to the 302's and give you that specifically, which I am perfectly willing to do, and tell you exactly what he told us and how he told us, just what the text is there in that 302.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the records, I have found that Mr. Kalmbach was interviewed on September 4, 1972, at Los Angeles. This interview was conducted at the request of Assistant U.S. Attorney Silbert, who directed the grand jury inquiry. Mr. Silbert wanted us to find from Mr. Kalmbach details concerning payments of money to Segretti such as how much was paid, where the money came from and whether reports were made by Segretti. Mr. Kalmbach said that in either August or September, 1971, he was contacted by Mr. Dwight Chapin and was informed that Captain Donald Henry Segretti was about to get out of the military service and that he may be of service to the Republican Party. Mr. Chapin asked Mr. Kalmbach to contact Segretti in this regard but Mr. Kalmbach said he was not exactly sure what service Chapin had in mind other than he believed he would be of service to the Republican Party. He said he did not press Chapin in this regard. He did contact Segretti and agreed that Segretti would be paid \$16,000 per year plus expenses and he paid Segretti somewhere between \$30,000 and \$40,000 between September 1, 1971, and March 15, 1972. Mr. Kalmbach said he maintained no records of expenditures to Segretti and said he never received any written or verbal reports from Segretti. He said he was very rarely contacted by Segretti and believes he only met him personally on two occasions, the dates of which he could not recall. He said he merely acted as a disbursing agent for Segretti's salary and expenses and he has no idea how Segretti received his instructions or whom he reported to.

Mr. Kalmbach was asked whether he had to account to anyone for his expenditures to Segretti and said he did not have to account to anyone. He was asked how much was in the funds he used to pay Segretti and he did not answer this question. He said on one occasion he gave Segretti \$5,000 and subsequently \$20,000 to cover Segretti's expenses. He said he had no knowledge of what Segretti was doing to justify these expenses or to earn his salary. He said the money he used to pay Segretti came out of campaign funds that were obtained from contributors prior to April 7, 1972. He said although he usually paid Segretti in cash, an occasional check may have been written. He stated he did not have any information pertaining to the burglary of the Democratic Headquarters and could furnish no information concerning that matter. He said he does not know Hunt but had learned of his involvement in this matter from the media. He stated he was acquainted with Liddy but had only limited contact with Liddy. Such contacts took place in connection with Liddy's work as legal counsel to the Finance Committee to Reelect the President. He was asked if he had any knowledge of McCord and he stated he never had any dealings with McCord and only met him on one occasion at the Finance Committee to Reelect the President in Washington, D.C., at which time McCord identified himself to Kalmbach as the security officer for the Committee.

Senator KENNEDY. And Mr. Chapin, did you interview him?

Mr. GRAY. Yes, we did, Senator.

Senator KENNEDY. Why did you interview Mr. Chapin?

Mr. GRAY. That also stems from the Grand Jury, and there is a possibility here, which is subject to my verification, that they were on the toll call records, and that Donald Segretti had telephoned

these men. There is that possibility but I can't remember with enough certainty to state it.

Senator KENNEDY. Did you interview everyone that Mr. Segretti had called?

Mr. GRAY. The Federal Bureau of Investigation?

Senator KENNEDY. Yes.

Mr. GRAY. No, sir; there would have been a selective screening at the case agent and field supervisory level and they would have done that themselves. I would not have interfered, though. I would not have said, "Don't do this or don't do that." I turned them loose.

Senator KENNEDY. What is the basis of the screening?

Mr. GRAY. It is basically to save manpower and get your most probable parties first.

Senator KENNEDY. How do you decide which ones you are going to get?

Mr. GRAY. The case agents from the knowledge of the case and the total buildup of the statement pattern as it is being developed, discuss this among themselves and their supervisors and they begin to zero in. In these investigations one thing leads to another. It is that type of situation.

Senator KENNEDY. Why would Kalmbach and Chapin be on the list of the interviewed and some others not be?

Mr. GRAY. I think it was a natural and probable consequence by that time.

Senator KENNEDY. Why?

Mr. GRAY. Because it was certainly an obvious conclusion to be drawn by anybody that these would be people who should be interviewed, because of some of the allegations that were made once again in the Federal Grand Jury.

Senator KENNEDY. Did you ever talk to Chapin's boss?

Mr. GRAY. Who is that, sir?

Senator KENNEDY. Mr. Haldeman.

Mr. GRAY. Mr. Haldeman, no, sir, we did not.

Senator KENNEDY. Did anybody that you know of in the FBI talk to him?

Mr. GRAY. No, sir, I know of no one from the FBI who talked to Mr. Haldeman. I know of no one in the FBI who sent out a lead to talk to Mr. Haldeman and I know of no one in the FBI who recommended that we talk to Mr. Haldeman, and when I asked these very same questions in our skull sessions—

Senator KENNEDY. You asked the same questions?

Mr. GRAY (continuing). I asked those very same questions in our skull sessions.

Senator KENNEDY. Why did you ask them?

Mr. GRAY. Why did I ask them? Because once again I wanted to leave no stone unturned.

Senator KENNEDY. You think if they asked Mr. Chapin's boss that some stone might have been turned?

Mr. GRAY. I doubt it very much because we have no indication in the total statement pattern, the total evidentiary pattern of development of this investigation to indicate that he was involved. We did interview Mr. Ehrlichman, so the natural conclusion has got to be drawn, Senator, that if we had thought, if any of my investigators

had thought that Mr. Haldeman should have been interviewed such a recommendation would have been made, such a lead would have been carried through.

Senator KENNEDY. But the thought came through your mind though, did it not, about interviewing Mr. Chapin's boss about what activities Mr. Chapin—

Mr. GRAY. This is when we were preparing for this confirmation.

Senator KENNEDY (continuing). It is not an unusual thought to have, is it?

Mr. GRAY. No, it isn't an unusual thing under the circumstances. I asked it and I checked it out when we were going through our skull sessions in preparing for these confirmation hearings.

Senator KENNEDY. It might have been?

Mr. GRAY. I did not ask it during the conduct of the investigation, however.

Senator KENNEDY. But you did ask it during the skull sessions?

Mr. GRAY. Sure because I knew this would be a question that would be asked me and one I would have to answer.

Senator KENNEDY. What would have been the type of thing you might have been looking for with Mr. Haldeman, what Mr. Chapin's duties were?

Mr. GRAY. No.

Senator KENNEDY. What sort of thing?

Mr. GRAY. Any participation, guidance, direction, involvement in the IOC. That was the criminal matter that we had under investigation.

Senator KENNEDY. Limited only to that?

Mr. GRAY. Sir?

Senator KENNEDY. Limited only to that?

Mr. GRAY. Yes, sir. That is correct.

Senator KENNEDY. Did Haldeman have access to the FBI reports?

Mr. GRAY. I cannot answer that question because I do not know the answer.

Senator KENNEDY. Well, to your own knowledge, you don't know whether he had, he ever had access to it?

Mr. GRAY. No, I have to testify that I do not know.

Senator KENNEDY. Could you find that out, would there be a way of your finding that out?

Mr. GRAY. Oh, yes, I think there probably would be a way of finding that out. I would ask him.

Senator KENNEDY. Would you do that?

Mr. GRAY. Yes, sir, I would.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I contacted Mr. Haldeman on Friday, March 2, 1973, and Mr. Haldeman stated he did not have access to the FBI reports in this matter.

Senator KENNEDY. I have some other areas; what way would you like to proceed, Mr. Chairman?

I have some other areas. Do you want me to proceed now? I would like to, if I could. Unless other members of the committee are interested in asking some questions now, what I would like to do is to talk a little bit about procedures within the FBI. Mr. Gray has indicated

an interest in opening up and talking a bit about that. I have some questions in those areas that I will be glad to start in on.

The CHAIRMAN. Senator Mathias wanted to ask some questions.

Senator KENNEDY. All right.

The CHAIRMAN. About how long have you got?

Senator MATHIAS. Mr. Chairman, I wouldn't take more than 10 minutes, 15 at the outside.

The CHAIRMAN. After you conclude suppose we go over to Tuesday morning.

Senator KENNEDY. After Senator Mathias?

Senator TUNNEY. What time in the morning?

The CHAIRMAN. 10:30 Tuesday morning.

Senator BAYH. Mr. Chairman, I am not going to be here Tuesday morning and I have a few questions I would like to ask the witness if it would be possible.

The CHAIRMAN. How much time?

Senator BAYH. I don't think it would take more than couple of minutes.

The CHAIRMAN. I am going to be on a plane in a few minutes.

[Laughter.]

Senator BAYH. I will try my best.

The CHAIRMAN. Call your campaign off and attend to your job. [Laughter.]

Senator BAYH. I would be glad to try my best to carry the mantle of the temporary chairmanship in extenso if the Chair will permit me, and I promise not to—

[Laughter.]

Senator TUNNEY. Mr. Chairman, I also am not going to be here on Tuesday, and I also have about 15 minutes of additional questions that I would like to ask.

Senator KENNEDY. Mr. Chairman, would it make sense to have, after we have all had an opportunity to examine the material, have Mr. Gray come back up? I am sure I have other—

The CHAIRMAN. That is something that the committee is going to have to determine. The Chairman can't determine it.

Senator KENNEDY. Won't Mr. Gray be coming back after we have had a chance to examine the material anyway, if any member of the committee would want to question him?

The CHAIRMAN. I would think that would be what the committee would decide.

Senator KENNEDY. Maybe that would be better.

Senator MATHIAS. Mr. Chairman, could I have the floor?

The CHAIRMAN. Proceed.

Senator MATHIAS. Mr. Gray, as you know, there has been considerable interest in the National Crime Information Center, its size, and its utility as a crime fighting, law enforcement service and device.

The CHAIRMAN. Suppose we adjourn at 4:15 until 10:30 Tuesday morning. That gives Senator Bayh 15 minutes.

Senator TUNNEY. Where does that leave me.

The CHAIRMAN. It leaves you out. (Laughter.)

I am not going to stay around here all afternoon. Proceed.

Senator MATHIAS. As you know, there has been considerable interest in the National Crime Information Center, its size, its utility as a crime-fighting and law-enforcement device, its effect on personal rights to privacy, and all of this area.

Despite the NCIC's national importance and the nationwide interest in its potential, there is, in fact, very little, if any, legislative base for it. We, in Congress, never really have set statutory standards for its development and for its operation, for the philosophy with which its activities are conducted, and the statutory base that does exist is a precomputer concept.

Now, what I am wondering is whether you would be willing to cooperate with the Congress in a serious and announced effort to provide a statutory basis for the NCIC, and to the related facilities.

What I have in mind is a basis that will serve as a guide, and as a foundation upon which we could build the kind of broad public confidence that this part of your activities should have.

Mr. GRAY. Senator Mathias, I, too, share the feeling that all of the many pluses, the many positive aspects of NCIC have not been sufficiently impressed upon the mind of the people in the United States. This may be our fault, and again it may not be our fault, but to answer your question specifically: Yes; I would be willing—more than willing—to work with this committee, or any subcommittee, or any other appropriate committee of the U.S. Senate, as I am working now with Congressman Don Edwards, House Judiciary Subcommittee No. 4, in this very area.

Senator MATHIAS. Well, I think this is important because here we have a great data bank of information which is not just of theoretical interest but of enormous personal interest to practically every American, and we have no statutory guidelines as to who holds the key, or under what circumstance he delivers it up, and to whom the key should rightfully be entrusted. All of that is just really a pretty vague and misty area.

I was pleased to note that in appendix A, which you submitted to the committee in your opening statement, you listed as one of the 13 avenues of inquiry instituted during the time you were the Acting Director, the avenue entitled Bureau Files, and you suggest certain questions which you asked with regard to the National Crime Information Center and the Identification Division. I am interested in the NCIC, because I think it can be of great value to the country, but I am interested in it also because I think it offers the potential for very serious abuse, very easy abuse.

The questions that you asked in the fifth avenue of inquiry were these: Are we taking accurate security precautions to prevent leaks to unauthorized persons? Are State safeguards adequate to insure the confidentiality of National Crime Information Center information? This, of course, relating to the ability of various State and local police authorities to get printouts from the system. Are classification procedures completely responsive to our needs and the needs of other Federal agencies? Is there a need for certain of our files of a very sensitive nature including greater security than the criminal files?

What sort of investigation, can you tell the committee, did you undertake in order to get the answers to these questions?

Mr. GRAY. Well, initially, Senator, what was done in the Federal Bureau of Investigation was to prepare position and study papers on each of these areas, and these were given to me and all of the top

executives of the FBI who constitute the executive conference. We had an opportunity to study them, and then we went down for 2 days at the National Academy at Quantico. We had a very thorough discussion of each study paper and, as I said in my opening statement, this formed the first of a long series of avenues of inquiry. We have progressed much beyond what I have here in exhibit D to my statement. We have been having continuous meetings on this, and I think that really we have once again not gotten across to the public what we are doing in the National Crime Information Center and, indeed, what the National Crime Information Center really is—the fact that we have the advisory policy board, and how that advisory policy board is selected. We have an awful lot to tell about NCIC, and I had a lot of questions on it earlier. I actually have been over there, watched it operate, know the monitoring, checked out the safeguards. We have the codings, and we have the terminals and controls, and that sort of thing.

Senator MATHIAS. Well, could you answer your own first question here?

Mr. GRAY. Yes.

Senator MATHIAS. Are we taking adequate security precautions to prevent leaks?

Mr. GRAY. Yes, sir; I can answer that question. But I will also have to say that the experts in computer systems technology will say to you that a computer system that cannot be penetrated is not yet designed. So there is always that risk. We have tried, working with the computer companies, to build in all the safeguards that we can conceivably build in, and to guard carefully the terminals, to guard carefully our codes. We have a constant problem, as you probably know, and it is a real problem with the States, because we require dedication either of the computer, or that the computer be under the control of a law enforcement agency. We are contractually in agreement with these law enforcement agencies so that we do have some sanctions, and if we find that abuse is occurring, we can terminate their participation in the NCIC. That is the only sanction we have right now. Those are contractual—those are signed contracts.

Senator MATHIAS. So that really your answer to your question—your second question—is that you are not totally happy with State safeguards?

Mr. GRAY. Well, I say that we have some problems because there are States, and there are big municipalities, who don't want to come to agreement with us and, as a result, are not in the system. We won't let them in, and this is a problem.

The Governors have this problem, and the mayors and the law enforcement officials of some of the bigger cities. An example is Cincinnati. I don't know whether we have settled it with Cincinnati or not, but apparently not.

Senator MATHIAS. But lack of safeguards in major metropolitan areas that might really need this kind of device prevents them from getting it?

Mr. GRAY. Yes; it could be a problem, yes, sir. The fact they will not dedicate—they have either to dedicate the computer or to give control to a law enforcement agency. The real danger here, you know, is the co-mingling of all this information that is programmed in a

State or municipal computer system. You have all kinds of information there which we don't want co-mingled with the criminal justice system.

Senator MATHIAS. So if you and I hold credit cards from the same company, and I get your bill or you get mine, this same problem might occur?

Mr. GRAY. That could happen, yes, sir, but that would be remote.

Senator MATHIAS. What about classification procedures; do you find them responsive?

Mr. GRAY. So far, working with our advisory committee, we are satisfied with those.

Senator MATHIAS. What about a classification of files of a sensitive nature giving them greater security treatment than criminal files?

Mr. GRAY. Are we talking of these last two questions directed right to our files? We are not in the NOIC area now and that is what I had reference to. Within the Federal Bureau of Investigation we chopped heavily, that is, in the number of officials of the Bureau who could classify. We cut them down heavily, far more actually than I wanted to cut them down, under the pressure of the Commission established by the President to oversee the Federal Government. I resisted the cuts and we had to take them bitterly. They have been cut and the classification authority is much more narrow now.

The other one, yes, there is a need for certain of our files of a very sensitive nature to be given greater security than the criminal files, and indeed they are, and indeed they are separate and distinct from them. One of the things that concerns me very greatly is the handling of those files on a day-to-day basis, the accountability of those files, and the dissemination of information. I have done everything that I can do, and will continue to do, to tighten up, and the people in the FBI know I am not satisfied yet.

Senator MATHIAS. Would you illustrate to the committee the kind of files that you are referring to?

Mr. GRAY. The highest order of national security.

Senator MATHIAS. I have prepared a number of written questions. I am not going to take your time or the committee's time to propound them to you now. I will submit them for the record and give you a copy of them. I would say that I recognize the time pressures that are on you and the voluminous information that is requested of you by the committee up to this point. Some of these questions will require merely factual answers but others are really looking for your personal views. So, notwithstanding the time pressure, it would be very helpful if you can respond to these questions because I think to the extent that it involves your evaluation, your personal evaluation, it can be helpful to the Committee and to the Senate, and I think maybe helpful to you in getting the approval of the Senate.

Mr. GRAY. I am pleased to do that, Senator. The only thing I would like to invite your attention to is that yesterday the committee wanted us to key responses to the pages of the transcript, and I said I would provide answers in 48 hours. That was modified to provide answers 48 hours after receipt of the transcript.

Senator MATHIAS. Well, in order to facilitate that process I will ask unanimous consent now that the questions be included at this point in the record—

Mr. GRAY. All right, that will help.

Senator MATHIAS (continuing). As if propounded.

Senator KENNEDY (presiding). It is so ordered.

(The document referred to follows:)

QUESTIONS BY SENATOR MATHIAS SUBMITTED IN WRITING TO L. PATRICK GRAY AND INSERTED IN THE RECORD OF THE HEARINGS ON MR. GRAY'S NOMINATION OF THE SENATE JUDICIARY COMMITTEE

(A) How many individual files are now contained in the NCIC? How many of these are summary files? How many are complete files? How do you distinguish between the two categories? What would be your personal estimate as to the rate of growth in the number of files that would be contained in the NCIC over the next year, five years, ten years?

(B) How many of the files above are criminal history files of particular individuals? How many of these are summary files? How many are complete files? What is your personal estimate as to the number of such files the NCIC will contain or have access to in one year, five years, ten years?

(C) What Federal officials are authorized to have access to these files? For what purpose may a Federal official attain such access? For how long may he retain the information he has so acquired? Is the rule governing access available in a written form? If so, could you provide a complete set of such rules or regulations to the Committee? What procedures are there for ensuring that the rules governing access are actually obeyed? In what way, if any, have you altered the rules governing access to the files contained in the NCIC in your tenure as Acting Director? Have you instituted any studies to determine if these rules are adequate and are being obeyed? If so, could you provide the results of these studies to the Committee? What regulations have been established for dealing with cases of improper access to these files? Could you provide the Committee with a copy of these regulations? Have you knowledge of any cases of improper access? If so, could you provide us with the pertinent details?

(D) May a Federal official give information obtained from the NCIC to any officials outside the FBI? If so, to whom? For what purpose? Under whose authority? What safeguards have been established to make sure that the regulations governing the dissemination of information are obeyed? In what way have you changed the regulations governing dissemination of information during your tenure as Acting Director? Have you instituted studies to determine if further changes are advisable? If so, could you provide the Committee with a description of these studies and the results of these studies? If you have determined that there have been instances of improper dissemination of information, could you supply us with the relevant details, together with a description of the action taken regarding the individuals involved in such improper conduct?

(E) Do you demand that states establish a system of safeguards as stringent as that which you have established? If not, why not? Could you provide a summary of the safeguards against improper access of dissemination of information contained in the NCIC or related state systems that have been established by each state that provides or receives information from the NCIC? In your opinion, are these safeguards entirely adequate? If not, do you believe the Federal government should take a more active role to assure that adequate safeguards are developed and enforced by participating states? If not, why not? Have you ever provided to the States a model set of regulations to safeguard the NCIC system from improper access or abuse? If so, could you provide this committee with these regulations? If not, do you believe that such a model might help to assure that the NCIC and related state systems would be properly utilized?

(F) How much money will it cost to operate the NCIC this year? To operate related state systems? Approximately how much of the funds for operating related state systems originate with the Federal government and through which Federal agency are they channelled to the states? How much money has been spent to develop the NCIC and related state systems in the past? From what

sources did this money originate? What is your best estimate of the amount of funds necessary to expand the NCIC as projected during the next year, five years? To expand related state systems as projected during this same period? To operate the system as so expanded during each of these years? Would you regard this expenditure of funds as a more cost effective method of assuring criminal justice than a comparable expenditure of funds on other activities of the FBI?

(G) Could you provide the committee with a complete accounting of how the NCIC deals with arrest records in cases where a trial is still pending, in which charges have been dropped, in which the individual has been found innocent, in which the individual has been found guilty, etc.? Do you insist that the information in this regard in the NCIC be up to date? Do you insist that states and Federal officials provide disposition records as well as arrest records? If so, what sanctions have been established to deal with officials or states that do not regularly provide disposition records? Do you insist on the same standards of performance by participating state systems? What safeguards have you instituted to make certain that the regulations established in this regard are being carried out? In what way have you changed the procedures in this area since you became Acting Director?

For what purpose does the FBI disseminate arrest records, conviction records, or both?

Who are the recipients of FBI arrest and conviction records? Are the recipients ever private agencies or organizations? Are the recipients ever public agencies other than law-enforcement agencies? If so, who are they and what is the purpose in disseminating FBI records to such private or non-law-enforcement public agencies?

(H) Does the FBI collect records of juvenile delinquency hearings or of hearings to determine whether a person is in need of supervision (PINS)?

What procedures does the Bureau have to learn whether such juvenile records are required to be kept secret by State law? What procedures does the Bureau have to implement these State law requirements of confidentiality?

Are juvenile records which are required to be kept confidential by State law ever disseminated to *any* other public or private agency? If so, to whom and why?

When federal agencies such as the Civil Service Commission cease to request arrest information from the prospective employees, does the Bureau still continue to furnish such information? If so, why?

What is the rationale for ever disseminating arrest records where the arrest involved did not result in a conviction?

(I) What procedures exist for challenging the contents of a citizen's FBI file where (a) the originating source for the information in the file is not the Justice Department, or (b) it is the Justice Department?

In addition to the above questions requesting basic information, I would appreciate answers to the following questions which I have prepared with the cooperation of the Senior Senator from North Carolina, Senator Ervin.

(J) What is the legal status of guidelines adopted by the NCIC Advisory Policy Board on March 31, 1971 and amended on August 31, 1971? Are they simply general operational guidelines or have they been formally adopted by the Director of the FBI? Why have they not been promulgated by the Attorney General pursuant to section 301 of Title 5 of the U.S. Code?

(K) It is clear that these guidelines relate to the interchange of information between the central NCIC computer and the various state information systems. As a general matter, the guidelines require the individual state systems to adopt their own rules and regulations on specific issues concerning privacy and security. However, it is not procedures concerning information it stores in its own computer, e.g. information on multi-state offenders and information stored at NCIC's own computer on an interim basis for participating states which do not yet have the capability of keeping complete criminal history files on offenders. For example, guideline II B. requires states to adopt a systematic audit to assure that files are regularly and accurately updated. However, there seems to be no requirement that NCIC do the same with its central computer, including, how often is it conducted? Another example of this ambiguity in the guidelines, is guideline VI concerning Right to Challenge. That guideline makes it clear that state systems must adopt procedures permitting a right of access and challenge. However, it is not clear whether NCIC has done the same for its own computer and if so, exactly what those rules provide.

(L) In a letter dated October 24, 1972 attached to the GAO report on NCIC, L. M. Pellerzi, Assistant Attorney General for Administration refers to an inaccuracy in an earlier draft of the report concerning a 9 month expungement rule for arrests not followed by disposition. Although this is clearly not a present rule of NCIC, was this ever used by NCIC possibly as a result of the order in the case of *Menard v. Mitchell*? If such an expungement rule has never been followed, what policy was followed by NCIC during the period that the system was subject to the order in *Menard*? What technical problems exist which would make it impossible for NCIC to operate under such an expungement rule if Congress were to reinstate *Menard* or a similar rule prohibiting dissemination of raw arrest data to non-criminal justice agencies?

(M) Ms. Carey in her report on LEAA at page 45 suggests that certain state CCH systems participating in NCIC collect and disseminate non-public record information. However, I assume that even if this is the case, interstate exchange of that information over NCIC would be prohibited by the guidelines. If that assumption is invalid, please correct me.

(N) A number of provisions in the Advisory Committee guidelines require affirmative action by the states and would take on greater meaning if the state regulations adopted in response thereto could be made available to the Subcommittee. Examples of such provisions are Rule II B requiring systematic audits, Rule IV on Control of Criminal Justice Systems and Rule VI on Right to Challenge. Could you please make available to the Subcommittee staff copies of the rules relating to security and privacy, as well as the general systems descriptions for all the state CCH systems which have signed contracts with NCIC.

(O) The guidelines state at Rule VIII that a permanent Committee on Security and Confidentiality will be established. Has this Committee been established? If so, please forward a list of its membership. Please do the same for the NCIC Advisory Policy Board. Guideline VIII also mentions that the Committee on Security and Confidentiality would address itself to three specific areas including purging and secondary access. Has the Committee conducted these studies? If so, please provide the Subcommittee with copies of any reports concerning these studies.

(P) Have there been any inspections pursuant to Rule IX F? If so, please make the results of such inspections available to the Subcommittee. Have any incidents of non-compliance with the guidelines come to the attention of the Privacy and Security Committee? If so, please explain what action has been taken in each case.

(Q) Do the NCIC guidelines discussed above apply to the "Wanted Person File" of NCIC or only to the CCH? If these guidelines do not apply, please explain why?

(R) Earlier letters written by the Department in response to the survey questions prepared by the Senate Subcommittee on Constitutional Rights concerning both the Fingerprint Record Files concerning NCIC suggest an interface between the fingerprint files and the NCIC. For example, the following statement appears in the November 3 response by the Identification Division:

The FBI automated fingerprint processing system is being designed so that it will be completely compatible with the Computerized Criminal History (CCH) system . . .

Throughout the NCIC guidelines reference is made to the FBI fingerprint identification card as the source document for a record entry. For example, guideline I C is explicit in requiring some type of interface between the Identification Records and NCIC:

Each cycle in an individual's record will be based upon fingerprint identification. Ultimately the criminal fingerprint card documenting this identification will be stored at the state level or in the case of a Federal offense, at the national level. At least one criminal fingerprint card must be in the files of the FBI Identification Division to support the computerized criminal history record in the national index.

Does this interface mean that all information circulating in the NCIC system will become a part of the fingerprint identification records (RAP sheets)? Or is this interface only one way, in the sense that information from RAP sheets will go into the NCIC system but NCIC information will not go into the Bureau's fingerprint RAP sheet dissemination system?

(S) To what extent do the NCIC guidelines apply to the criminal history information contained on the RAP sheets—for example, records of arrest which frequently appear on the RAP sheets. If these guidelines do not apply, why not?

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have had answers prepared to the questions submitted for the Record by Senator Mathias. Our response is keyed to the alphabetical designation given to each question.

(A) As of February 23, 1973, there was a total of 3,943,468 records contained in the NCIC computer. This total is broken down as follows:

Stolen securities.....	1, 331, 099
Stolen vehicles.....	782, 983
Stolen articles.....	616, 123
Stolen guns.....	572, 232
Stolen license plates.....	222, 976
Stolen boats.....	6, 490
Wanted persons.....	123, 358
Criminal histories.....	288, 207
Total.....	3, 943, 468

None of these records are summaries. With respect to the records concerning stolen property, each record contains information which specifically identifies the stolen item as well as the identity of the police agency which placed the article into NCIC and which holds the theft report.

Information in the wanted persons file relates to individuals for whom Federal warrants are outstanding or individuals who have committed or who have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdiction originating the entry and for whom a warrant has been issued. Each record shows the identity of the police agency entering the record and includes information concerning the name (and alias) of the wanted person; descriptive data (sex, race, height, weight, hair color), as well as at least one numerical identifier (date of birth, FBI Number, Social Security Number, automobile operator's license number); fingerprint classification, if known; offense charged with; date of warrant; and agency holding warrant.

Information concerning computerized criminal histories is contained in the response to the Question (B).

The estimate of the number of records that will be contained in NCIC one year hence is 5,200,000; five years hence is 10,100,000; and ten years hence is 21,700,000.

(B) As of February 23, 1973, there were 288,207 criminal history records entered in the NCIC computer. Each record represents one particular individual. None of these are summary records. By way of explanation, computer programs have been prepared which allow the computer, upon request, to prepare a summary computerized criminal history record based upon the data contained in the complete computerized criminal history record. There are submitted for the Record two documents which will acquaint the Committee with the format of both the complete computerized criminal history record as well as the summary record: Simulated Record, U.S. Department of Justice, Federal Bureau of Investigation, National Crime Information Center Criminal History Record; and Simulated NCIC Summary Record. It is estimated that the NCIC computer will contain 1,000,000 computerized criminal history records one year hence; 3,000,000 computerized criminal history records five years hence; and 8,000,000 computerized criminal history records ten years hence. With respect to the 8,000,000 total this is believed to be the maximum that will be stored in the NCIC computer.

(C) Any Federal agency can request and receive all information contained in the NCIC for purposes of discharging its official and mandated responsibilities.

Federal agencies authorized direct access, meaning the ability to access the NCIC computerized files by means of a terminal device, are limited to:

(1) Law enforcement agencies and departments that are responsible for enforcement of Federal criminal laws,

(2) Federal prosecutive agencies and departments,

(3) Federal courts with a criminal or equivalent jurisdiction,

(4) Federal parole, probation, and correctional agencies.

There is no limitation on the length of time NCIC information may be retained by a Federal agency.

Rules governing direct access to NCIC wanted persons and stolen property records (which are equally applicable to Federal agencies) are set forth in the 558-page NCIC Operating Manual (five copies of which will be provided the Committee), which states, "The National Crime Information Center is a computerized information system established as a service to all law enforcement agencies—local, state and Federal." Rules governing direct access to the NCIC criminal history records are set forth on pages 12 and 13 under "Who May Access Criminal History Data" of a document captioned, "National Crime Information Center, Computerized Criminal History Program, Background, Concept and Policy, As Approved by NCIC Advisory Policy Board," dated September 20, 1972. (A copy of this paper has previously been furnished for the Record.)

With respect to procedures adopted governing direct access to NCIC, a brief background of the origin of the provisions contained in the NCIC policy paper may be helpful. I would like to point out that the procedures apply to all users of NCIC, both at the Federal and state levels.

Prior to implementation of the NCIC criminal history file, a resolution was adopted May 15, 1967, by the Committee on Uniform Crime Records, International Association of Chiefs of Police (IACP), which provided that the controls governing access to NCIC data must remain, as they have been historically placed, with law enforcement agencies. That is, terminals having direct transaction capability with NCIC must be located in a law enforcement agency. The NCIC Advisory Policy Board took note of the above and concurred fully with the content of the IACP resolution at its meeting in Washington, D.C., on June 4, 1969.

The issue of shared-time governmental computerized information systems and their compatibility with the IACP resolution was considered at length during the June 4, 1969, Board meeting. This discussion was predicated upon the fact that in certain localities law enforcement accessed NCIC through a computer system operated by a civilian governmental agency.

The NCIC Advisory Policy Board noted that the needs of law enforcement in information storage and retrieval as well as in message interchange could not be adequately served by other than a dedication of computer and related hardware. Further, it was noted that in those instances where such dedication of the system to law enforcement did not exist, management control of the law enforcement application within that system should be established.

The wanted persons and stolen property data stored in NCIC is considered documented police information and access to that data is for use of duly authorized law enforcement agencies. It is incumbent upon agencies operating an NCIC terminal to afford the necessary measures to make that terminal secure from any unauthorized use. Any departure from this responsibility would warrant the removal of the offending terminal from further system participation in order to protect all other users.

Agencies participating in the NCIC as control terminals are charged with assuming responsibility for and enforcing system security with regard to all other agencies which they in turn service.

The FBI daily monitors transactions coming into the NCIC computer. We also utilize communications equipment and computer programs which assist in assuring that security requirements are being met. In the last analysis, we must depend on the individual agencies for maintenance of the confidentiality of NCIC information.

With the establishment of the NCIC Computerized Criminal History Program in December, 1970, the NCIC Advisory Policy Board in March, 1971, readdressed NCIC policy specifically as it relates to the interstate exchange of criminal history data. One requirement adopted by the NCIC Advisory Policy Board in March, 1971, and approved by the Attorney General in June, 1971, was that all computers capable of interfacing directly with the NCIC computer for the interstate exchange of criminal history information *must* be under the management control of a criminal justice agency authorized as a control terminal agency.

Control terminal agencies in the NCIC system prior to being allowed the right to receive criminal history data are required to complete an agreement binding the agency to abide by all present and future rules, policies, and procedures of the NCIC as approved by the NCIC Advisory Policy Board and adopted by NCIC. The control terminal agency has responsibility for enforcing system security with regard to other agencies which it in turn services. A control terminal not qualified to receive criminal history data is locked out of receiving such data by the NCIC computer.

From May 3, 1972, to date, three changes have occurred with respect to criminal history policy of the NCIC.

As state computer systems' development progressed, it became evident that some states were centralizing computer operations in other than criminal justice agencies. In order to allow participation in the criminal history program by those states where the state computer is not under the direct control of a criminal justice agency, the NCIC Advisory Policy Board on September 20, 1972, adopted the following modification of policy which is in effect at the present time.

In those instances where criminal justice agencies are utilizing equipment and personnel of a noncriminal justice agency for NCIC/CCH purposes, the following criteria will apply in meeting NCIC/CCH management control provisions:

(1) The hardware, including processor, communications control, and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

(2) The criminal justice agency must exercise management control with regard to the operating of the aforementioned equipment by:

a. having a written agreement with the noncriminal justice agency operating the data center providing the criminal justice agency authority to select and supervise personnel,

b. having the authority to set and enforce policy concerning computer operations, and

c. having budgetary control with regard to personnel and equipment.

Further, the original policy paper of NCIC designated the types of agencies, such as the police, prosecutive departments, the courts, and correctional institutions that could directly access the NCIC/CCH File. No allowance was made for a state agency which had as its sole function by statute the development and operation of a criminal justice information system. Thus, it became necessary for the NCIC Advisory Policy Board to consider the matter of whether such a state agency would be able to have direct access to the criminal history information contained in NCIC. After consideration, on September 20, 1972, the Board broadened the category of agencies that can access NCIC for criminal history data to include such agencies.

The policy of the NCIC, before it was amended September 20, 1972, provided that criminal history data on an individual from the national computerized file would be made available outside the Federal Government only to criminal justice agencies for criminal justice purposes. This precluded the dissemination of such data for use in connection with licensing and local or state employment other than with a criminal justice agency. The policy specifically stated, "There are no exceptions pending legislative action at state and Federal level or Attorney General regulations."

Public Law 92-184, approved December 15, 1971, provided for the exchange of identification records, as authorized by state statutes and approved by the Attorney General, with officials of state and local governments for purposes of employment and licensing.

By reason of the passage of Public Law 92-184, this particular section of the NCIC policy paper was amended to read as follows:

"Criminal history data on an individual from the national computerized file will be made available outside the Federal Government only to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such data for use in connection with licensing or local or state employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to state and Federal statutes. There are no exceptions."

Experience to date indicates that the security and confidentiality requirements as contained in the NCIC policy paper governing access to criminal history records are sufficiently stringent and no studies have been conducted since May 3, 1972, in this area.

Presently, NCIC criminal history records are being exchanged with various criminal justice agencies which have signed agreements with the FBI to abide by all rules, policies and procedures of the NCIC as approved by the NCIC Advisory Policy Board. This agreement includes a provision which states that NCIC reserves the right to immediately suspend furnishing criminal history data to a criminal justice agency when either the security or dissemination requirements approved by the NCIC Advisory Policy Board and adopted by the NCIC are violated. Agencies serviced within a state by a state computer system tied to the NCIC enter into a similar agreement with the state system. It is a responsibility of the state system to insure its users abide by policy, security and dissemination

requirements of the NCIC. Any noncompliance is subject to inspection and review by the NCIC Advisory Policy Board and failure to conform with NCIC policy can result in discontinuance of service to the user agency.

We have no knowledge of any case of improper access to NCIC.

(D) A Federal agency can give information obtained from NCIC to another agency outside the FBI.

With respect to information obtained from the NCIC Wanted Persons and Stolen Property files by a Federal agency, there is no specific restriction as to further dissemination of the information by that agency. The NCIC Operating Manual recognizes that information obtained can be exchanged with other governmental bodies (at any level) on a need-to-know basis. Traditionally, data such as this has been freely exchanged among law enforcement agencies and we have no regulations governing such exchange.

With respect to furnishing a computerized criminal history record to another Federal agency, an admonition is contained on the record that it is provided for official use only. The FBI has no further control over the information once it leaves our possession. We must rely upon the Federal agency to afford proper security to the information. We give the record to the Federal agency for its official use. If the Federal agency has an official use in furnishing the record to someone outside the FBI (such as a U.S. Attorney giving the record to a U.S. Judge), then it could do so. Criminal history records are regarded as confidential and safeguards protecting against their unauthorized disclosure rest at the Federal agency level to which dissemination is made. Unauthorized use of a criminal history record by a Federal agency could subject that agency to possible termination of the NCIC criminal history service.

The only changes in NCIC policy during my tenure as Acting Director have been set out in the answer to Question (C).

By reason of the fact that any dissemination we make of criminal history data is made pursuant to Federal statute or regulations, and further because we have absolutely no knowledge of instances of improper dissemination of criminal history data, no studies have been undertaken directed toward changing dissemination policy. The FBI will support Federal legislation which would provide civil and criminal remedies against anyone responsible for unauthorized dissemination of a criminal history record.

(E) Initially it should be understood that the NCIC is a user's system. The states have been instrumental in the development of all NCIC policy including that which deals with security and privacy. The policy has been developed and discussed at various regional and national meetings since the inception of NCIC.

The states are expected to establish a stringent system of safeguards comparable to NCIC. Each has been provided copies of the NCIC policy paper. This paper along with the security procedures and policy included in the NCIC Operating Manual and the NCIC/CCH agreement which must be signed by participants in the Computerized Criminal History Program provides a model on which the state systems can base state regulations for safeguards against misuse or improper access.

A summary of safeguards regarding each state which provides or receives information from NCIC is not available. There is being submitted for the Record, pursuant to the request made in Question (N), a copy of one state's rules and regulations, as well as copies of two states' user agreements, which we believe to be representative of the safeguards being adopted by the states.

Although states following NCIC safeguards are considered to have adequate safeguards, we recognize a need for Federal legislation containing provisions for civil and criminal remedies for misuse of the system, especially the Computerized Criminal History File. In this regard, legislation was introduced on September 20, 1971, cited as "Criminal Justice Information Systems Security and Privacy Act of 1971." This proposed legislation, in addition to other provisions, contained management control requirements consistent with the NCIC policy and provided civil and criminal remedies for misuse of criminal history data. This proposed legislation was not enacted.

(F) With respect to the questions posed concerning NCIC costs, it should be pointed out that costs for development and operation of the NCIC fall into two areas—FBI costs and state costs. FBI costs are for the central computer in NCIC and for operating this facility and the network it serves; namely, the dedicated communications lines to the various state and local law enforcement control terminals. The only communications costs to be borne by the states are the intrastate communications lines making up state network systems. The FBI's portion

of NCIC costs is specifically earmarked in the FBI's budget and is paid out of appropriated funds.

Insofar as state costs are concerned, cost data could only be obtained through a detailed analysis with respect to each of the 50 states because of the separate and varying problems and conditions that exist in each state. As a consequence, we have no knowledge or information concerning states' costs for development and operation of their data systems which may be devoted in whole or in part to the NCIC system. We have been advised that LEAA has a Comprehensive Data Systems Program for funding state data systems which in many cases will include NCIC and computerized criminal history facilities. We have been advised that LEAA is requiring each state to submit a computerized data system plan which will include an estimate of total costs plus required incremental cost to be supported by the Federal Government. Based on this reported LEAA requirement, it is expected that state costs for development of data systems, including state NCIC costs, will become available in the future.

In response to the request for FBI cost data, a schedule showing the amount of funds expended by the FBI from the inception of NCIC, along with funds budgeted for the next five years for NCIC operations, follows:

<i>FBI costs for National Crime Information Center</i>		<i>Cost</i>
Year:		
1966	-----	\$94, 329
1967	-----	105, 194
1968	-----	130, 915
1969	-----	325, 598
1970	-----	1, 752, 516
1971	-----	2, 786, 865
1972	-----	3, 978, 508
1973 ¹	-----	5, 178, 455
1974 ¹	-----	7, 888, 142
1975 ¹	-----	6, 623, 813
1976 ¹	-----	7, 656, 948
1977 ¹	-----	9, 081, 226
1978 ¹	-----	10, 933, 214

¹ Actual and estimated.

In 1967, the President's Commission on Law Enforcement and Administration of Justice declared, "An integrated national information system is needed to serve the combined needs at the national, state, regional and metropolitan or county levels of the police, courts, and correction agencies, and of the public and research community." The NCIC system substantially complies with the kind of system prescribed by the President's Commission. It has been widely and enthusiastically accepted by the law enforcement community and hailed by law enforcement people at all levels. It is one of law enforcement's greatest advances. In our view the tax dollars spent on this valuable criminal justice information system are well invested and highly justified in relation to other expenditures in the fight against crime.

(G) In responding to this question, it should be recognized that while the Wanted Persons File and the Stolen Property Files of NCIC have full participation by all states, there is limited participation at this time by the states in the interstate exchange of criminal history records. The state programs which will result in the full system described in the NCIC policy paper are in varying stages of development. For the system to be fully operational will require that each of the states possess essential services such as identification, information flow, and computer systems capabilities. Until such time as this full capability is realized, we must operate with the criminal history data that is acquired by the states and within the framework of the states' technical resources.

By way of further background, the FBI Identification Division has served since 1924 as the national clearinghouse for fingerprint cards and identification records. In that capacity it acts as the custodian of fingerprint identification information submitted by various law enforcement and governmental agencies on the Federal, state and local levels. Responsibility for the accuracy and completeness of the information contained in the record rests with the arresting or contributing agency and only that agency can change or alter the record. The FBI's function is to exchange such data with these authorized sources. There has been previously furnished for the Record Section 534, Title 28 of U.S. Code and

the pertinent portion of Public Law 92-544 which is the statutory authority for the FBI to collect and exchange identification records.

With specific reference to how NCIC deals with an arrest record, once a computerized criminal history record has been established concerning an individual, any arrest data received is entered into that record. At such time as additional information is received, such as charges dropped, acquittal, or conviction, this data likewise would be entered into the record to show the disposition of the arrest.

If an inquiry is received at any time for the criminal history record, the record as currently existing is furnished.

We have constantly urged that both arrest and disposition data be submitted promptly to the FBI so that the manual records, as well as those records that have been computerized, can be kept up-to-date. We have supplied to the Committee a detailed account of FBI efforts in this respect.

There are no sanctions, mandatory requirements or performance standards to assure nationwide reporting of disposition to either the computerized or manual systems. This is unfortunate, but true, and I support Federal legislation to require reporting of arrest disposition. Participation in both the computerized and manual programs is voluntary on the part of all states and contributors. The design of the NCIC/CCH system was accomplished with the cooperation of the states and was done with the intention of better serving the criminal justice system and improving the reporting processes. Implicit in the design is the inclusion of arrest dispositions.

Since May 3, 1972, two changes have occurred in the handling of identification records in the manual system. On December 26, 1972, the Attorney General approved a policy whereby the FBI will not accept for retention or recording on the record, data on certain minor offenses. In addition, in our manual system we are no longer maintaining data on persons 80 years or older. These changes were initiated to make the manual system consistent with criteria adopted for handling of computerized criminal history records.

In accordance with statutory authority, arrest and conviction data is disseminated to authorized recipients of such data for law enforcement purposes, Federal employment screening purposes, and employment and licensing purposes on the local level when appropriately authorized by state statute. It should be noted at this point in time, such dissemination is almost entirely from the manual system by reason of the limited data base of CCH.

Arrest and conviction data is disseminated from our files to authorized officials of the Federal Government, the states, cities and penal and other institutions for official use only. Any Federal agencies, upon request, can receive such data for official use. Except for federally chartered or insured banking institutions as specifically provided by statute (Title II, Public Law 92-544), no arrest or conviction data maintained by the FBI is disseminated to private agencies. In accordance with our statutory authority, we do disseminate arrest and conviction data to Federal, state and local governmental agencies for other than law enforcement purposes. Such dissemination is for the purpose of employment screening or licensing. Examples of such agencies include Education Boards, Alcoholic Beverage Control Boards, Real Estate Boards, as well as licensing authorities for issuing of gun permits, legal and medical licensing boards and the like.

(H) The FBI Identification Division does not collect records of juvenile delinquency hearings or of hearings to determine whether a person is in need of supervision. Data collected by the Identification Division relates to individuals who have been arrested and the disposition of such arrests. If an individual is placed on parole or probation as the result of arrest charges furnished to the FBI, the parole or probation information will be posted to his identification record. Subsequent arrest data received during the term of parole or probation will be furnished to the criminal justice agency supervising the individual during the probationary or parole period.

With respect to procedures the FBI has to learn whether juvenile records are required to be kept secret by state laws, the massive size of the criminal files of our manual identification system prohibits the segregation of juvenile arrest records from adult arrest records. All contributors of arrest data are aware that the FBI does not have any provisions for keeping juvenile arrest records which have been ordered sealed or which are otherwise required to be kept confidential in a separate file and all contributors were last advised of this fact by letter dated January 22, 1971. Consequently, the FBI Identification Division has filed juvenile arrest records in its general criminal file when such cards were submitted to it unless the arrest data contained on the juvenile arrest fingerprint card or disposition report

indicated that the arrest information had been ordered sealed or was otherwise required to be kept confidential. All incoming arrest data to the FBI Identification Division is reviewed upon receipt and those juvenile records containing information indicating the arrest data has been ordered sealed or otherwise kept confidential are extracted and returned to the submitting agencies for appropriate compliance with the sealing provisions of state law. No record of such juvenile arrest data is maintained by the FBI Identification Division and no subsequent dissemination of such juvenile arrest data is possible. This procedure implements state law requirements of confidentiality as to juvenile arrest records.

The NCIC/CCH file from its inception has excluded juvenile offender information unless the juvenile has been tried in court as an adult. With the approval of the Attorney General to establish a uniform criteria for juvenile arrest data maintained by the FBI, in February, 1973, all contributors of arrest information were advised that juvenile arrest records would be excluded from the files of the manual identification system unless the arrest data submitted clearly indicated that the juvenile had been tried in court as an adult. In implementing this policy, all juvenile records currently being received by the FBI which do not clearly indicate the juvenile has been tried in court as an adult are being returned to the submitting agency and no record of the arrest is maintained by the FBI.

Juvenile arrest records submitted to the Identification Division which contain information indicating the arrest data is required to be kept confidential by state law are not retained by the FBI, and therefore, are never disseminated to any other agencies. Arrest data from a juvenile record which is retained by the FBI, such as a record of a juvenile tried in court as an adult for a serious offense, may be disseminated upon inquiry from agencies authorized to receive such data. Such dissemination is made in the same manner and to the same agencies entitled by our statutory authority to receive adult criminal arrest data. Except for Federally chartered or insured banking institutions as specifically provided by statute (Title II, Public Law 92-544) no arrest data maintained by the FBI is disseminated to private agencies.

Even though Federal agencies such as the Civil Service Commission may cease to request arrest information from prospective employees, the FBI Identification Division will furnish arrest data to the particular agency in response to the receipt of an applicant fingerprint card from that agency. This is done in compliance with Title 28, Section 534, United States Code and Public Law 92-544, which authorizes the FBI, among other things, to collect and exchange identification records with officials of the Federal Government. To prohibit the dissemination of an arrest record of an applicant for Federal employment could have harmful effects on our national security and our ability to maintain the integrity of our governmental institutions. Military facilities would be unable to properly evaluate the propriety of placing an applicant in a position where he would have access to sensitive information or a Government agency, attempting to fill a position in its payroll office, would not be able to determine if an applicant had been arrested for embezzlement if dissemination of such prior arrest records were prohibited.

The arrest record files of the FBI Identification Division as well as those of many State and local Identification Bureaus are replete with lengthy arrest records of long-time hoodlums and members of organized crime whose arrests never resulted in conviction. Many sex offenders of children are not prosecuted because parents of the victim do not want to subject the child to the traumatic experience of testifying. Others are not tried because key evidence has been suppressed or witnesses are, or have been made, unavailable. The latter situation is not uncommon in organized crime cases. To prohibit dissemination of such arrest records would be a disservice to the public upon whom they might prey again. Regardless of whether or not an arrest is supported by a conviction, certainly the Federal Government and the law enforcement community have the right to be informed of arrest data for purposes of Federal security clearances and in discharging all law enforcement responsibilities. We have had cases in recent years wherein the subject of a rape case has had the case against him dismissed because of a legal technicality and subsequently the subject admitted before a United States District Judge that he was in fact guilty of the crime. Barring expungement, should law enforcement be prohibited from receiving the past arrest record of this individual who may well commit a similar crime again? In another such case, an individual attacked one of our own female FBI employees with a knife; he was subsequently committed to St. Elizabeth's Hospital and then released. Following his release, he was arrested again for assault and not convicted. Thereafter, he applied for employment with a law enforcement agency and this arrest information certainly would be pertinent in

considering his application. When one considers the potential school teacher with two prior rape arrests and no convictions, a gun permit applicant with three prior felonious assault arrests and no convictions, an applicant at a Federally chartered bank with a grand larceny arrest and two bank burglary arrests and no convictions, and a police applicant with a prior peeping tom arrest and no conviction, the rationale for disseminating arrest records not supported by convictions is substantial.

It should be noted that all arrest records disseminated from the FBI Identification Division carry a caveat that admonishes the recipient to communicate with the agency contributing the fingerprints, where the disposition is not shown or further explanation of the charge or disposition is desired. In addition, our Final Disposition Report forms, which are made available without charge to all contributors of fingerprints to the Identification Division, contain instructions and an admonishment pertaining to the vital value of the Final Disposition Report. This Final Disposition Report form points out emphatically that it is vitally important for completion of a subject's record in the FBI Identification Division files that the report be submitted in every instance where fingerprints were previously forwarded without the final disposition noted thereon.

(I) Procedures have been in existence for many years which allow a citizen to challenge the contents of his fingerprint arrest record maintained by the FBI Identification Division. Generally, such challenges must be initiated with and/or channeled through the original arresting agency.

In the case of non-Federal arrests and convictions the FBI Identification Division serves merely as custodian of the information submitted by contributing agencies and any request for altering, amending or removing data in the fingerprint files must be received from the law enforcement agency which originally submitted the information. This procedure provides authentication for the request, as well as providing positive identifying data which enables us to make the necessary changes in the particular arrest record. The FBI interposes no objection to expunging such non-Federal arrest data and regularly effects such expunction by returning fingerprints to the arresting agency. This usually occurs when charges have been dismissed, subject acquitted or other similar action taken. The return of the fingerprints results in the complete and automatic expunction of the arrest record from our files.

Concerning Federal arrests and convictions (where the originating source for the information in file is the Justice Department or some other Federal law enforcement agency) the FBI Identification Division will, upon receipt of inquiry from a citizen who provides sufficient identifying data to locate an arrest and conviction record in our files, look into the matter through contact with the Federal arresting agency involved and correct or amend the arrest record based on the facts that are established. Federal arrest fingerprints may be expunged only on the basis of an official court order and the courts usually require the Federal agency originally submitting the arrest fingerprints to the FBI Identification Division to retrieve the record. In other words, the original submitting agency should request expungement of the record in question. In all Federal expungement cases, the United States Attorney requests the court to order that the fingerprints of the party seeking expungement be taken for comparison with the prints on the record to be expunged in order to assure that the right record is erased.

The same basic procedures would apply in the event a record in the CCH file was challenged.

(J) The NCIC Policy Paper takes on legal status when a state seeking participation signs an agreement, which is in the nature of a contract, to abide by the terms set forth therein. This paper, which has been furnished to the Committee, has remained substantially the same since March 31, 1971, with only minor modifications, since that time. The material contained in this document has been formally adopted by the Director of the FBI and approved by the Attorney General.

No suggestion has been made to the Attorney General to promulgate the provisions of the NCIC policy paper pursuant to Section 301 of Title 5 of the U.S. Code as it is believed that specific Federal legislation is needed.

It is noted in this regard that Public Law 91-644 amending the Omnibus Crime Control and Safe Streets Act of 1968 provides in Section 519(b) of the Act that, "Not later than May 1, 1971, the Administration shall submit to the President and to the Congress recommendations for legislation to assist in the purposes of this title with respect to promoting the integrity and accuracy of criminal justice data collection, processing, and dissemination systems funded in whole

or in part by the Federal Government, and protecting the constitutional rights of all persons covered or affected by such systems."

On September 20, 1971, the Attorney General submitted to the Congress for its consideration a legislative proposal entitled "Criminal Justice Information Systems Security and Privacy Act of 1971." Section 6 of this Legislative Proposal states, "The Attorney General is authorized, after appropriate consultation with representatives of State and local law enforcement agencies participating in information systems covered by this Act, to establish such rules, regulations and procedures as he may deem necessary to effectuate the provisions of this Act." The proposed legislation was not enacted.

(K) The FBI functions both as administrator of the NCIC system and as a user agency. The FBI, as a user, is subject to and abides by the rules, policies, and procedures as set forth in the NCIC policy paper. The NCIC staff receives from the Identification Division arrest and disposition data on Federal offenders for entry or updating in the CCH File. Similar data submitted by nonparticipating states where there is an existing CCH record on file is received from the Identification Division so that the existing CCH record can be updated. Procedures utilized for the processing of the data provide for a continuing audit of the records on file.

The NCIC policy paper states, "The person's right to see and challenge the contents of his record shall form an integral part of the system with reasonable administrative procedures." "Access" is permitted only for criminal justice agencies. Item (I) above discusses procedures for challenging the contents of a manual record. These procedures are also applicable to the computerized record.

(L) The draft of the report by the Comptroller General of the United States to the Congress of the United States entitled "Development of a Criminal History Exchange—Need to Determine Cost and Improve Reporting" erroneously reported that an NCIC official had said that if an arrest recorded in the criminal history exchange system is not followed by a related disposition entry within 9 months, the arrest entry will be removed.

No such 9-month rule for removal of arrest entries has been or is in existence in the NCIC computerized criminal history program and, consequently, was never used by NCIC as a result of the order in the case of *Menard v. Mitchell* or any other case.

The expungement policy followed by NCIC with respect to the computerized criminal history program since its inception has remained unchanged. It is as follows:

Each control terminal agency (a state criminal justice agency on the NCIC system servicing statewide criminal justice users with respect to criminal history data) shall follow the law or practice of the state or, in the case of a Federal control terminal, the applicable Federal statute, with respect to purging/expunging data entered by that agency in the nationally stored data. Data may be purged or expunged only by the agency originally entering that data. If the offender's entire record stored at the national level originates with one control terminal and all cycles (a "cycle" consists of data concerning an arrest and the subsequent judicial action and correctional status changes related thereto) are purged/expunged by that agency, all information, including personal identification data will be removed from the computerized NCIC file.

This policy rests on a fundamental concept of the NCIC computerized criminal history program which is stated as follows:

* * * The NCIC system places complete responsibility for all record entries on each agency—local, state, or Federal. Likewise, clearance, modification and cancellation of these records are also the responsibility of the entering agency. Each record, for all practical purposes, remains the possession of the entering agency. * * *

Should the Congress prohibit dissemination of "raw arrest data to noncriminal justice agencies" it would be possible, technically, to identify the "raw arrest data" in NCIC on the basis of definition. Responsibility for restricting dissemination would rest with the control terminal agency in each state and the Federal control terminal (FBI). It is technically possible to so restrict the dissemination, having knowledge of the identity of the requesting/inquiring agency.

(M) Nonpublic information may not be stored, exchanged or disseminated through or by the NCIC system.

(N) Copies of the various regulations adopted by the states relative to security and privacy, and general descriptions of their individual systems have not generally been made available to the FBI.

We do have and make available for the Record the rules and regulations for the Ohio System (document titled "LEADS, Rules and Regulations"). We also have available copies of an agreement which the States of Michigan and Georgia require to be signed by their system users. These are submitted for the Record (document captioned "Exchange of Criminal Justice Information Agreement") and document captioned "Law Enforcement Information Network, Computerized Criminal History Participation Agreement-LEIN/NCIC").

The security and privacy provisions of the NCIC system, as contained in the NCIC policy paper previously submitted to the Committee, represent the minimum required of the participating states in that regard, and the individual states may, of course, establish more stringent requirements within the provisions adopted for the NCIC system overall. The NCIC policy paper requires under Rule IX A that, "Each control terminal agency shall sign a written agreement with the NCIC to conform with system policy before participation in the criminal history program is permitted. This would allow for control over the data and give assurance of system security." The agreement required by Rule IX A is signed by the head of the appropriate state agency and the Director (or Acting Director) of the FBI. A copy of the standard agreement is attached for the Record (document titled "Federal Bureau of Investigation, National Crime Information Center, Interstate Exchange of Computerized Criminal Histories Agreement").

(O) The permanent Committee on Security and Confidentiality was established by the NCIC Advisory Policy Board on August 18, 1971. The list of members follows:

Colonel John Plants, Michigan State Police—Chairman
Mr. Herbert D. Brown, Illinois Department of Law Enforcement
Dr. Robert R. J. Gallati, New York State Identification and Intelligence System

Mr. O. J. Hawkins, California Department of Justice
Colonel D. B. Kelly, New Jersey State Police
Dr. Howard Livingston, North Carolina Police Information Network
Mr. William L. Reed, Florida Department of Law Enforcement
Colonel Wilson E. Speir, Texas Department of Public Safety
FBI—NCIC Representative

The current Chairman of the NCIC Advisory Policy Board is selecting a new Security and Confidentiality Committee.

The current membership of the NCIC Advisory Policy Board is as follows:

Chairman	Colonel Robert M. Chiaramonte
Mr. O. J. Hawkins	Superintendent
Assistant Director	Ohio State Highway Patrol
California Department of Justice	Columbus, Ohio
Sacramento, California	Mr. Edmund I. Hoekaday ¹
Vice Chairman	Superintendent
Colonel D. B. Kelly	Missouri State Highway Patrol
Superintendent	Jefferson City, Missouri
Department of Law and Public Safety	Mr. Clarence M. Kelley
Division of State Police	Chief of Police
West Trenton, New Jersey	Kansas City, Missouri
Mr. William E. Kirwan	Mr. Robert K. Konkle
Superintendent	Superintendent
New York State Police	Indiana State Police
Albany, New York	Indianapolis, Indiana
Major Albert F. Kwiatek	Colonel John R. Plants
Director of Technical Services	Director
Pennsylvania State Police	Division of State Police
Harrisburg, Pennsylvania	East Lansing, Michigan
Colonel Walter E. Stone	Colonel R. L. Bonar
Superintendent	Superintendent
Rhode Island State Police	West Virginia State Police
North Scituate, Rhode Island	South Charleston, West Virginia
Mr. John R. West	Captain J. H. Dowling
Deputy Superintendent	Communications Bureau
Boston Police Department	Police Department
Boston, Massachusetts	Memphis, Tennessee

Dr. Howard M. Livingston
 Director, North Carolina Police Infor-
 mation Network
 Department of Justice
 Raleigh, North Carolina
 Colonel Ray Pope
 Director
 Department of Public Safety
 Atlanta, Georgia
 Honorable William L. Reed
 Commissioner
 Florida Department of Law Enforce-
 ment
 Tallahassee, Florida

Mr. Oliver Furseth¹
 Chief
 Washington State Patrol
 Olympia, Washington
 Mr. L. Clark Hand
 Superintendent
 Idaho State Police
 Boise, Idaho
 Colonel James J. Hegarty
 Director
 Arizona Department of Public Safety
 Phoenix, Arizona
 Mr. George P. Tielseh
 Chief of Police
 Seattle, Washington

¹ Now retired—these former members not yet replaced.

The Security and Confidentiality Committee addressed the matter considering the criteria for the purging of records from the NCIC computerized criminal history file by recommending that consideration should be given to this purging at the national level only in the event of inaction by the states and that no action should be instituted at the national level to establish purge criteria at that time. It was believed by the Committee that each state should be developing its own criteria for purging. The NCIC Advisory Policy Board which met September 19-20, 1972, in Washington, D.C., concurred in the Committee's recommendation.

No considerations have been afforded criteria for secondary access to criminal history data or a model state statute for protecting data in the development of a new system.

(P) There have been no inspections pursuant to Rule IX F of the NCIC policy paper. Since the inception of CCH on-line availability on November 29, 1971, there have been no allegations of security violations made to the Security and Confidentiality Committee and thus there has been no need for an inspection.

It can be noted that the Security and Confidentiality Committee has been active with respect to the security and privacy issue. In 1972, the Committee reviewed a number of criminal justice information systems which were desirous of participating in the interstate exchange of criminal history information in the near future to determine if they would meet the criminal justice management control provisions of the NCIC Advisory Policy Board. Five states and one metropolitan system were found to not meet the requirements at this time. These agencies have been advised of the reasons for exclusion by the Committee so they may take necessary steps to qualify for CCH participation.

(Q) Provisions of the NCIC Computerized Criminal History Program Background, Concept, and Policy document relate to the NCIC Computerized Criminal History Program and not to the NCIC Wanted Person File.

The NCIC Advisory Policy Board considers data in the NCIC Computerized Criminal History File to be sensitive and, as such, to be guarded against misuse. It does not take that position with respect to persons for whom arrest warrants are outstanding (wanted persons). It is considered to be in the public interest to allow information concerning persons who are fugitives from justice to be made readily available to persons in the criminal justice community and the public (the more exposure—the greater the likelihood the fugitive will be identified and apprehended). As a practical matter, it should be recognized that although the same restrictions do not exist concerning wanted persons records as on criminal history records, only criminal justice agencies have the capability of accessing wanted persons information in the NCIC computer. However, no restrictions exist with respect to dissemination of wanted persons records received by criminal justice agencies.

(R) Recognizing that the liberty, or even the life, of an individual might be at stake, law enforcement has traditionally taken greater care to determine the true identity of the subjects of its records than any other record-keeping profession. The most positive means of identifying individuals known to date is fingerprint examination. Yet, only law enforcement over the years has used fingerprint identification as a means of insuring the accuracy and integrity of its records.

For example, it has been standard operating procedure at the FBI Identification Division to require that every entry on a manual identification record ("rap" sheet) be backed by an arrest fingerprint card. This means that before any new arrest data is added to an existing record, the fingerprints appearing on a current arrest card must be compared with the fingerprints already on file of the person who is the subject of the record. Further, it is only on the basis of a fingerprint comparison that a manual identification record will be disseminated as positively belonging to a particular individual.

The fingerprint comparisons are performed by skilled technicians. If a fingerprint technician finds the two sets of fingerprints to be identical, his finding must be verified by having another technician compare the prints, as a "double check" procedure, before new arrest data is added or the record is disseminated as a positive identification. The objective of this meticulous procedure is to avoid false entries in a person's identification record and to insure against associating a record with the wrong person.

In view of the traditional use of fingerprints as a device to insure the validity of law enforcement records, it was only natural that the fingerprint card would be adopted by law enforcement when it developed the Computerized Criminal History (CCH) program for NCIC. Hence, the NCIC guidelines require a "criminal fingerprint card taken at the time of arrest as the basic source document for all record entries and updates" and "at least one criminal fingerprint card must be in the files of the FBI Identification Division to support the computerized criminal history record in the national index."

Besides its identification role, the FBI Identification Division assists the CCH program by making available manual identification records (rap sheets) on persons who have a prior history of arrests so that these past arrests can be made a part of the computerized record when that person is made a subject in CCH. Under the NCIC guidelines concept, once a person's manual record is converted to a computerized record in CCH, the CCH record supplants the manual record. Therefore, under this concept, arrest information from manual rap sheets will be entered into the CCH system, but CCH arrest information will not go into the FBI's manual rap sheet dissemination system.

The FBI Identification Division is presently engaged in a program to automate its own internal work procedures. This is being done to achieve greater efficiency and to realize manpower and operating cost savings to the Government. The automated fingerprint processing system for the Identification Division is being designed to be compatible with the CCH system. This is being done in order to facilitate and improve the Identification Division's ability to carry out its responsibilities under the NCIC/CCH program.

(S) The NCIC guidelines apply only to criminal history information contained in the Computerized Criminal History (CCH) system and not to that contained in manual identification records ("rap" sheets). This is because the guidelines were written to provide guidance and controls for the computerized information system that makes up CCH and not the older manual rap sheet system which is to be eventually supplanted. Further, it must be recognized that many of the system requirements of the NCIC guidelines would be inapplicable, unnecessary, or impractical in the case of manual files. Of course, once criminal history information is copied from a manual identification record and entered into a CCH record, that information becomes part of the CCH system and is governed by the NCIC guidelines.

Although the NCIC guidelines do not apply to manual identification record files, most of the major provisions of the guidelines are followed in the operation of the manual files. This results partially from the fact the guidelines incorporate responsibilities and constraints contained in enabling statutes, laws, and regulations that affect both the computerized and manual systems. And, partially from a conscious effort on the part of the administrators of both the NCIC and the manual identification record systems to achieve uniformity wherever practical. Examples of this are the adoption by the NCIC guidelines of the traditional manual system practice of requiring a fingerprint comparison prior to entering data into a record, and the recent adoption by the FBI Identification Division of the NCIC guideline policy of no longer accepting records on nonserious offenses for storage at the national level.

SIMULATED RECORD

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATIONNATIONAL CRIME INFORMATION CENTER
CRIMINAL HISTORY RECORD

FBI/123456Z

DATE RECORD PRINTED 1/23/73

MID/EH-C HAI/BRO, JOHN SEX/M RAC/M POB/FL DOB/092843 HGT/507 WGT/160
 EYE/BRO HAI/BRO SMT/SC R HND FPC/206610C0101205030910 ICG/ARMD AND DANGEROUS
 ADDITIONAL IDENTIFIERS -
 CRY/SC CHIN SC I HND
 ZEN/SMITH, HARRY/DOE, JIM
 SCOTUS BRE/01130 ISS/110472

CYCLE 1-

ARREST- AGCY/IS M/SMALL INDIANAPOLIS IN STATE ID/F092243 NAME USED/SMITH, HARRY DATE ARR/122668
 CHARGE NO.01 CITATION/718410/2312
 OFFENSE/INTERSTATE TRANSP STOLEN VEH-DYER ACT
 CHARGE NO/00
 OFFENSE/CARRYING CONCEALED-GUN

COUPE- AGCY/

COURT NO/01
 OFFENSE/INTERSTATE TRANSP STOLEN VEH-DYER ACT DISP/CONVICTED
 CONFINED/00M FINT/0000 OTHER/INLETEN

CUSTODY- AGCY/IN USP TERRE HAUTE

A DATE/050269 STATUS/RECEIVED

B DATE/042271 STATUS/PAROLED

CYCLE 2-

ARREST- AGCY/IS M/SMALL LOUISVILLE KY STATE ID/F092243 NAME USED/DOE, JIM DATE ARR/063071
 CHARGE NO.01
 OFFENSE/ROBBERY-BANKING-TYPE INST
 CHARGE NO/02
 OFFENSE/PAROLE VIOLATION

COURT- AGCY/

COURT NO/01
 OFFENSE/ROBBERY-BANKING-TYPE INST DISP/CONVICTED
 CONFINED/12M OTHER/DET PAR VIO CONC W/THIS CHG

CUSTODY- AGCY/IN USP TERRE HAUTE

A DATE/110371 STATUS/RECEIVED

END

OFFICIAL USE ONLY - ARREST DATA BASED ON
 FINGERPRINT IDENTIFICATION BY SUBMITTING AGENCY OR FBI

SIMULATED NATIONAL CRIME INFORMATION CENTER
SUMMARY RECORD

FBI Identification Number

Date of Inquiry

NCIC SUMMARY MULTIPLE STATE FBI/123456Z 01/23/73

Entry Type

EH-C DOE, JOHN M W FL DOB/092243 HGT/507 WGT/160 EYE/BRO

Caution Indicator

HAI/BRO FPC/206610C0101205030910 SMT/SC R HND, SC CHIN

Hair Color

COMMENT/ARMD-DANG- Armed-Dangerous

Additional Comment Field Reason for Caution

TOTAL ARRESTS - 2

Offense	Charges	Convictions
Stolen vehicle	1	1
Weapon offenses	1	0
Robbery	1	1
Parole violation	1	0

LAST ARREST STATUS (INCLUDED ABOVE) -

Date Last Arrest Arresting Agency (US Marshal)

063071 USM LOUISVILLE KY

Arrest Charge Numbers

01 ROBBERY-BANKING-TYPE INST

Arrest Offenses

02 PAROLE VIOLATION

COURT STATUS (INCLUDED ABOVE) -

Court Court NumberCourt OffenseCourt Disposition

01 ROBBERY-BANKING-TYPE INST-CONVICTED

Confinement-120 MonthsOther Sentence Provisions-Returned as Parole Violator

CONFIN/120M

OTHER/RET PAR VIO CONC W/THIS CHG

Concurrent with this Charge

CUSTODY STATUS-

Custody or Supervision AgencyDate ReceivedCustody or Supervision Status

IN USP TERRE HAUTE 110371 RECEIVED

(US Penitentiary)

END

End of RecordFEDERAL BUREAU OF INVESTIGATION NATIONAL CRIME INFORMATION CENTER,
INTERSTATE EXCHANGE OF COMPUTERIZED CRIMINAL HISTORIES AGREEMENT

The National Crime Information Center of the FBI, hereinafter called NCIC, agrees to furnish to _____, a criminal justice agency serving as a control terminal agency in the NCIC system such criminal history information as is available in NCIC files subject to the following provisions.

_____ agrees to abide by all present rules, policies, and procedures of the NCIC as approved by the NCIC Advisory Policy Board as well as any rules, policies, and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

NCIC reserves the right to immediately suspend furnishing criminal history data to _____ when either the security or dissemination requirements approved by the NCIC Advisory Policy Board and adopted by the NCIC are violated. NCIC may reinstate the furnishing of criminal history data in such instance upon receipt of satisfactory assurances that such violation has been corrected.

Either NCIC or _____ may, upon 30 days notice in writing, discontinue service.

_____ agrees to indemnify and save harmless the Federal Bureau of Investigation, its Director and employees from and against any and all claims, demands, actions, suits, and proceedings by others; against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment or any cause of action whatsoever, and against any loss, cost, expense, and damage resulting therefrom, arising out of or involving any negligence on the part of _____ in the exercise or enjoyment of this Agreement.

This Agreement will become effective on _____.

In witness whereof, the parties hereto caused this agreement to be executed by the proper officers and officials.

FEDERAL BUREAU OF INVESTIGATION
NATIONAL CRIME INFORMATION CENTER:

NCIC CONTROL TERMINAL
AGENCY:

By _____ By _____

Title: Acting Director. Title _____

Date _____ Date _____

LEADS—RULES AND REGULATIONS

To assure the continued proper functioning of the Ohio LEADS, each agency signing an agreement for LEADS services shall conform to the following rules and regulations duly agreed upon in regular session by the Ohio LEADS Steering Committee. Each agency further agrees to abide by whatever actions the Steering Committee shall decide to take as a result of violations of these rules and regulations.

Failure to comply with the rules and regulations may result in the order of terminal suspension by the Steering Committee.

SECTION I—GENERAL

(1.1) LEADS terminal agencies shall meet all monetary obligations to the terminal vendor.

(1.2) Suggestions, tips, or other pertinent instructions listed in the manual, newsletter, or bulletins will have the same effect as rules or regulations wherein that effect may be reasonably applied.

(1.3) Rules and regulations of the National Crime Information Center or that of any other data or message switching system, when properly disseminated, will have the same weight as the rules and regulations of LEADS.

(1.4) LEADS operators, supervisors or agency heads shall cooperate with any efforts of the Steering Committee, or persons authorized to act in their name, in actions, investigations, or efforts to improve the system.

(1.5) LEADS manuals, NCIC manuals, or other authorized printed materials necessary to the proper functioning of a terminal shall be maintained in an up-to-date condition readily accessible to those persons charged with terminal operation or control.

(1.6) Operational instructions from LEADS Control will have the same effect as orders from the Steering Committee.

(1.7) LEADS terminals shall not be changed in any manner or moved from the installed position without permission of the Steering Committee or persons empowered to act in their behalf. Any relocation charge shall be at the expense of the user.

(1.8) LEADS terminal agencies shall be responsible for assuring the original and continuing training of all persons whom they authorize to operate their terminal.

(1.9) Each terminal agency will make every reasonable effort to acquaint the enforcement personnel of their agency with the capabilities, rules, regulations, and services offered by LEADS.

(1.10) Each LEADS terminal agency shall designate one person as LEADS Terminal Supervisor for purposes of supervision, training, and control of their terminal.

SECTION II—OPERATIONAL

(2.1) Data stored in LEADS, NCIC, or other interfaced system shall be restricted to the use of duly authorized law enforcement personnel and shall not be sold, transmitted, or disseminated to any non-law enforcement agency or person.

(2.2) LEADS message switching shall not be used for personal communication between operators.

(2.3) Procedures for entry, inquiry, and message switching as outlined in the LEADS manual shall be adhered to.

(2.4) Messages, entries or inquiries for a non-terminal law enforcement agency should be handled by a terminal user upon request. Any formal or informal agreement made between a terminal agency and non-terminal agencies, for the purpose of this rule, shall be filed with the LEADS Steering Committee.

(2.5) LEADS terminal agencies shall validate entries by that terminal as often as necessary. Invalid entries will be removed as soon as possible.

(2.6) LEADS terminal agencies shall correctly maintain equipment leased to it, and shall notify the equipment contractor as soon as a malfunction is noted.

(2.7) Each terminal agency shall make every reasonable effort to assure accuracy, completeness, and conciseness of all messages transmitted.

(2.8) Each terminal user shall make every reasonable effort to promptly respond to messages requiring a reply directed to their terminal.

(2.9) ALLTERM and Quadrant messages will be strictly controlled to assure that only those messages reasonably meeting statewide or area law enforcement needs will be transmitted.

(2.10) LEADS terminals shall not be turned off, unplugged, or rendered inoperative in any manner unless such action has been authorized by LEADS Control or the equipment contractor.

These rules and regulations were adopted at the regular meeting of the LEADS Steering Committee, December 16, 1969.

EXCHANGE OF CRIMINAL JUSTICE INFORMATION AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 19__, by and between the Georgia Department of Public Safety (Georgia Crime Information Center), hereinafter sometimes referred to as GCIC, and _____ hereinafter sometimes referred to as Customer.

GCIC agrees to furnish to Customer, a criminal justice agency within the State of Georgia, such criminal history, NCIC, and Georgia Law Enforcement System information as is available to GCIC, subject to the following conditions.

Customer agrees to abide by all rules, policies, and procedures now or hereafter established by the National Crime Information Center of the Federal Bureau of Investigation (NCIC) and by GCIC.

Customer agrees and acknowledges that its access terminal location and security, and its computer system configuration are subject to approval by and will conform to continuing requirements established by NCIC and GCIC. Customer agrees to notify GCIC at least thirty (30) minutes prior to the performance of any maintenance upon Customer's access terminal by any person who is not a member of Customer's staff authorized to operate the terminal; Customer agrees and acknowledges that its access terminal will be placed in a restrictive mode during such maintenance by such unauthorized personnel.

GCIC reserves the right to terminate Customer's access to criminal history/data without notice to the Customer, at any time it may appear to GCIC that any security or dissemination requirement of NCIC or GCIC has been violated. GCIC may thereafter reinstate Customer's access upon receipt of satisfactory assurances that such violation has been corrected. Customer agrees and acknowledges that its computer system use and configuration will be continuously monitored by a GCIC command terminal.

Either GCIC or Customer may, upon thirty (30) days written notice to the other, discontinue service under this Agreement.

This Agreement will become effective _____, 19__.

In witness whereof, the parties hereto have executed this Agreement on the date first above written.

Customer

*Georgia Department of Public Safety
(Georgia Crime Information Center)*

By _____ By _____

Title _____ Title _____

Date _____ Date _____

LAW ENFORCEMENT INFORMATION NETWORK—COMPUTERIZED CRIMINAL HISTORY PARTICIPATION AGREEMENT

(LEIN/NCIC)

The National Crime Information Network of the FBI, hereinafter called NCIC, agrees to furnish to _____, a criminal justice agency,

Agency
through the Michigan Law Enforcement Information Network (LEIN), criminal history information as is available in NCIC files, subject to the following Provisions:

_____, agrees to abide by all present rules, policies, and Agency

procedures of LEIN and NCIC as approved by the LEIN Advisory Committee and the NCIC Advisory Policy Board, as well as any rules, policies, and procedures hereinafter approved and adopted by these respective groups.

LEIN reserves the right to immediately suspend furnishing criminal history data to the aforementioned criminal justice agency when either the security or

dissemination requirements approved and adopted by the LEIN Advisory Committee or the NCIC Advisory Policy Board are violated. LEIN may reinstate the furnishing of criminal history data in such instance upon receipt of satisfactory assurances that such violation has been corrected.

-----, agrees to indemnify and save harmless the Law
Agency

Enforcement Information Network and its officials and employees from and against any and all claims, demands, actions, suits, and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, and against any loss, cost, expense, and damage resulting therefrom, arising out of or involving any negligence on the part of -----, in the exercise of enjoyment of this agreement.

Agency

This agreement will become effective upon the confirming signature of the Director of the Michigan State Police.

In witness whereof, the parties hereto caused this agreement to be executed by the proper officers and officials.

Law Enforcement Information Network

BY -----	AGENCY -----
Signature	BY -----
TITLE Director, Department of State Police	Signature
DATE -----	TITLE -----
	DATE -----

Senator MATHIAS. Now, in appendix D, under the section entitled "Additional Changes in FBI Policies and Procedures," you list 32 changes. Only three of these, I think, relate directly to the information retention; No. 12, which you referred to, purged inactive arrest records of individuals age 80 and older from the fingerprint files. No. 28 discontinued the program of gathering biographical data on nonincumbent congressional candidates, and No. 31 discontinued the compilation of statistics on the recovery of stolen motor vehicles which were transported in interstate commerce, unless the vehicle was recovered specifically as a result of FBI investigative efforts.

Now, I would suggest that these are all steps in the right direction, but I am wondering if they are all the changes in this particular area that have been made and whether you could provide us with a more complete list, if there are additional items in this area, and particularly with the changes that relate to the NCIC, and to the facilities that relate to NCIC?

Mr. GRAY. The only other one that I can think of quickly and off-hand is that requiring weekly reports of any serials—that is papers, individual papers—that are legitimately charged out of our files. The reason for that is once again my concern for dissemination and access and that sort of thing. I did state earlier today, Senator Mathias, that we do have a rather good records management program in the FBI, and I would submit information for the record concerning that, but I will take a look and see what other things we have done. We tried to hit just the highlights here. We did not list all the changes. Some of them are not even listed here.

Senator MATHIAS. That is why I raised the point, because I wondered whether this was a comprehensive list.

Mr. GRAY. No, it is not. In fact, the changes that have been made in the organized crime area, for example, regarding strategy and tactics, are not in here, and I would not list them at all in any compilation. We have made substantial changes in that area.

Senator MATHIAS. If you can advise the committee to the fullest extent possible of those changes, I think it is important.

Mr. GRAY. Yes, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have previously supplied to the Committee a background, concept and policy paper dated September 20, 1972, which sets out detailed standards concerning the operation of the NCIC and the computerized criminal history program. From May 3, 1972, to date, the following changes have occurred with respect to the policy of the NCIC:

One requirement adopted by the NCIC Advisory Policy Board in March, 1971, and approved by the Attorney General in June, 1971, was that all computers capable of interfacing directly with the NCIC computer for the interstate exchange of criminal history information must be under the management control of a criminal justice agency authorized as a control terminal agency. Subsequently, as the development of state computer systems progressed, it became evident that some states preferred to place responsibility for computerized operations in other than a criminal justice agency. In order to allow participation in the criminal history program by those states wherein the computer is not under the direct control of a criminal justice agency, the NCIC Advisory Policy Board on September 20, 1972, adopted the following policy which is in effect at the present time:

"In those instances where criminal justice agencies are utilizing equipment and personnel of a noncriminal justice agency for NCIC/CCII purposes, the following criteria will apply in meeting the above management control provisions:

1. The hardware, including processor, communications control, and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

2. The criminal justice agency must exercise management control with regard to the operating of the aforementioned equipment by:

a. having a written agreement with the noncriminal justice agency operating the data center providing the criminal justice agency authority to select and supervise personnel,

b. having the authority to set and enforce policy concerning computer operations, and

c. having budgetary control with regard to personnel and equipment, in the criminal justice agency.

Further, the original policy paper of NCIC designated the types of agencies, such as the police, prosecutive departments, the courts, and correctional institutions that could directly access the NCIC/CCH File. No allowance was made for a state agency which had as its function the operation of an information system for the state's criminal justice agencies. Thus, it became necessary for the NCIC Advisory Policy Board to consider the matter of whether such a state agency would be able to have direct access to the criminal history information contained in NCIC. After consideration, on September 20, 1972, the Board broadened the category of agencies that can access NCIC for criminal history data to include:

"State control terminal agencies which have as a sole function by statute the development and operation of a criminal justice information system."

The policy of the NCIC, before it was amended September 20, 1972, provided that criminal history data on an individual from the national computerized file would be made available outside the Federal Government only to criminal justice agencies for criminal justice purposes. This precluded the dissemination of such data for use in connection with licensing and local or state employment other than with a criminal justice agency. The policy specifically stated, "There are no exceptions pending legislative action at state and Federal level or Attorney General regulations."

Public Law 92-184, approved December 15, 1971, provided for the exchange of identification records, as authorized by state statutes and approved by the Attorney General, with officials of state and local governments for purposes of employment and licensing.

By reason of the passage of Public Law 92-184, this particular section of the NCIC policy paper was amended to read as follows:

"Criminal history data on an individual from the national computerized file will be made available outside the Federal government to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such data for use in connection with licensing or local or state employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to state and Federal statutes. There are no exceptions."

Senator MATHIAS. Finally, Mr. Gray, there was a study published by the Lawyers Committee for Civil Rights Under Law, entitled "Law and Disorder: State and Federal Performance Under Title I of the Omnibus Crime Control and Safe Streets Act of 1968." In chapter 2 of that publication, there are some comments and a series of recommendations and conclusions on the subject of Computerized Criminal Information and Intelligence Systems.¹

In calling attention to this article, I do not necessarily endorse all of the recommendations, but I think they are worth looking at and evaluating, and I am wondering if you would take a look at those recommendations and let the committee have your comment on them.

Mr. GRAY. Senator, I would like to say that we are alert to these kinds of things because all too frequently we find—and this, once again may be due to our fault because we have not opened the windows—that there exists a paucity of information, so that these reports get off on the wrong track.

Senator MATHIAS. This is a good opportunity to put that record straight. That is the reason I am asking these questions.

Mr. GRAY. I know it, and we are happy to do it. As a matter of fact, Senator Mathias, we have been working on analyzing this particular report in our Computer Systems Division. We will supply the analysis to the committee.

Senator MATHIAS. I will ask unanimous consent, for the purpose of keeping the record straight, that chapter 2 of this study be inserted in the record at this point and that Mr. Gray be allowed to supply his comments on it for the record at this point.

Senator BAYH (presiding). Without objection.
(The document referred to follows:)

CHAPTER II—COMPUTERIZED CRIMINAL INFORMATION AND INTELLIGENCE SYSTEMS

FROM "LAW AND DISORDER: STATE AND FEDERAL PERFORMANCE UNDER TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968", PREPARED BY THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, 1973

The application of computer technology to criminal justice information systems was recommended by the President's Crime Commission as an important tool for improving the deployment of criminal justice resources and for keeping track of criminal offenders. The commission warned, however, that special precautionary steps would have to be taken to protect individual rights and recommended that primary control of computerized information systems be retained at the state and local levels to avoid the development of a centralized file subject to Executive manipulation.

LEAA has effectively concentrated a variety of resources, including research, discretionary and block grants, in the development of computerized information and intelligence systems. It has not, however, given adequate attention to the warnings of the Crime Commission or demonstrated adequate appreciation of the consequences of a massive accumulation of personal dossiers at the national level.

Millions of dollars of Institute and discretionary grants have supported the creation of a national computerized file of criminal histories that is fed by LEAA block grant-funded state information systems. The initial design of the system followed the decentralized model recommended by the Crime Commission, but in January 1970, former Attorney General John N. Mitchell decided—over the objections of LEAA—to make the system a more centralized one. To accomplish this purpose, he transferred the file system from LEAA to the FBI.

LEAA has simultaneously given the states substantial grants to create intelligence systems directed primarily toward organized crime, civil disorders and the activities of dissenters. (See Chapters I and IV.)¹ Some of these files are being maintained by the same agencies that operate the more reliable information files,

¹ See also Chapter III, describing the new kinds of intelligence and monitoring devices that LEAA grants have purchased.

creating the possibility that the two will be used jointly. At the federal level the Attorney General has the power to combine intelligence with information files, but he apparently has not exercised that power, on a regular basis.

All of this has occurred without broad public policy debate about the desirability of the new systems and with little serious effort to determine whether the contribution they make to controlling crime outweighs their potential for eroding privacy and individual autonomy, or whether that potential can be reduced or controlled.

LEAA's investment in information and intelligence systems must be placed in the context of the over-all Justice Department strategy for strengthening the law enforcement capability of the federal government and for building up the powers of police and prosecutors at all levels. During his tenure as Attorney General (1968-72) John N. Mitchell made it clear that these were major goals of his administration. To this end he greatly expanded federal surveillance of citizens thought to be threats to internal security, justifying his action on the theory that the Executive has inherent and discretionary power to protect itself.² He made aggressive use of existing laws, and sought and obtained significant new legislation to arm police and prosecutors with expanded authority to monitor individual conduct in order to prevent or punish potential crimes.³ These developments, when viewed in conjunction with the new surveillance technology funded by LEAA grants and the national computerized file on criminal offenders, greatly increase the capability of the government to monitor the activities of all citizens and to step in to prevent or punish those activities where it chooses to do so.⁴

The new criminal justice information network can be used in conjunction with the vast government and private computer dossiers being compiled by credit bureaus, insurance companies, welfare agencies, mental health units and others.⁵ Cumulatively, these files threaten an "information tyranny" that could lock each citizen into his past; they signal the end of a uniquely American promise—that the individual can shed past mistakes and entanglements, and start out anew.

There are no federal and few state laws regulating the national criminal information system or its components. Few laws control the host of related public and private information systems. And any constitutional protections that exist are limited and narrowly defined.⁶ Without controls, the systems continue to evolve primarily by force of their own momentum. In part through the well-meaning actions of LEAA the prophecy of Dr. Jerome Wiesner, MIT president, is being realized:

Such a depersonalizing state of affairs could occur without overt decisions, without high-level encouragement or support and totally independent of malicious intent. The great danger is that we could become information bound, because each step in the development of an information tyranny appeared to be constructive and useful.⁷

² See the statement of William H. Rehnquist, *Hearings on Federal Data Banks, Computers and the Bill of Rights*, Senate Subcommittee on Constitutional Rights, 92nd Congress, 1st Session (February-March 1971) p. 507, *et. seq.*, March 11, 1971. (Referred to hereafter as *Senate Constitutional Rights Subcommittee Hearings*.) The Supreme Court rejected the argument that warrantless wiretapping is permissible, in *United States v. United States District Court*, ___ U.S. ___, 40 U.S.L.W. 4761 (1972).

³ For example, under Mitchell's leadership the Justice Department implemented Titles II (expanding federal wiretapping powers) and III (weakening the strict exclusionary rules developed after the Supreme Court's ruling in *Miranda v. Arizona*) of the Safe Streets Act of 1968. In addition the department has sought and obtained new legislation such as the D.C. Crime Bill, the Organized Crime Act of 1970 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, which greatly expanded federal law enforcement powers. These three bills include a number of provisions of dubious constitutionality, such as authority for preventive detention of suspects, for police to enter homes without warning ("no-knock"), for courts to impose greatly expanded sentences for "dangerous special offenders," and for grand juries to function with increased powers.

⁴ A recent federal court ruling on another matter describes the congressional intent *not* to create a national police force through the LEAA program, in *Ely v. Felte*, 451 F.2d 1131, at 1136 (4th Cir. 1972), the court stated: "The dominant concern of Congress apparently was to guard against any tendency toward federalization of local police and law enforcement agencies." Congress feared that "over-broad federal control of state law enforcement could result in the creation of an Orwellian 'federal police force.' . . . The legislative history reflects the congressional purpose to shield the routine operations of local police forces from ongoing control by LEAA—a control which conceivably could turn the local police into an arm of the federal government."

⁵ The courts can and do protect individuals' constitutional rights when they are specifically threatened by overt government action. But judicial intervention is, by nature, episodic and primarily remedial rather than preventive. Until government overreaching ripens into concrete, demonstrable injury—such as the use of illegal evidence at trial, the loss of employment or the disbanding of a political organization—the courts will not recognize that it is harmful. See, for example, *Laird v. Tatum*, ___ U.S. ___, 40 U.S.L.W. 4850 (June 26, 1972), rejecting a claim that military surveillance of persons involved in domestic political activities violates the Constitution.

⁶ In many ways these data banks are far more threatening than those maintained by criminal justice agencies. The over-all problem of computers and privacy is well presented in Miller, *Assault on Privacy: Computers, Data Banks and Dossiers* (1972), and in the hearings cited above, n. 2.

⁷ *Senate Constitutional Rights Subcommittee Hearings*, March 11, 1971, p. 671.

Computerized criminal history files

When the LEAA program began, a few states had established centralized files of criminal offender histories to assist police departments in the identification and prosecution of suspects. For example, New York State's Identification and Intelligence System (NYIIS), operating on an annual budget in excess of \$5 million, had more than two or three million fingerprints and 500,000 summary criminal histories on its computer.⁸ Additional fingerprints and criminal histories existed in manual files. Included in both the files were "criminal wanteds" for felonies and misdemeanors, escapees from penal institutions, parole and probation absconders, elopees from mental institutions and missing persons. More than 3,600 local law enforcement agencies submitted information to the files and used them to check out suspects and new arrests. Other states, such as California, Michigan and Florida, were developing systems, but for the most part centralized, computerized recordkeeping was rudimentary. The extent to which the state files expedited or otherwise improved law enforcement had not been demonstrated.

At the national level the FBI maintained the National Crime Information Center (NCIC). This system operated through local law enforcement control terminals (as of early 1972 there were 102 terminals, of which 48 were computerized) that put the FBI in direct touch with approximately 4,000 of the nation's 40,000 local law enforcement agencies. NCIC cost about \$2.3 million per year to operate. The system contained files on stolen items, such as vehicles, firearms, boats and securities, and on wanted persons. Of the 3.1 million NCIC files, only about 300,000 were active criminal offender records. On an average, the NCIC system found a record or produced a "hit" on about 6 percent of the queries it received from local agencies (some estimates have been as low as 2 percent). In addition to the NCIC system, the FBI maintained more than 190 million identification and fingerprint files and approximately 20 million criminal offender records in permanent manual files.

Federal, state and local law enforcement agencies all contributed information to and could extract information from the NCIC files. In addition, NCIC records were searched as part of the identification service that the FBI provides for agencies of federal and state governments and other authorized institutions, including hospitals and national banks, which seek information on an individual's arrest record for purposes of employment clearances and licensing.⁹

Today it is clear the NCIC and the few systems such as NYIIS were relatively primitive, first generation data banks. In the past three years, with the investment of more than \$50 million in Institute, discretionary and block grant funds, LEAA has launched a program that by 1975 promises computerized criminal history files kept by all 50 states that will be tied in to ("interfaced with") a massive national file run by the FBI. The states will place in the central FBI file only information of public record pertaining to people who have been accused of "serious and other significant violations." The central file will consist of comprehensive histories of persons who violate federal laws or who commit crimes in more than one state and summary histories on offenders who have been involved solely in intrastate crimes.¹⁰ Any authorized inquirers¹¹ will have access to the central records, and will be referred to the relevant state files for further information. The individual state systems will include whatever information or intelligence the states choose to put into them and will be accessible on terms defined by each state.

This ambitious centralized program developed out of the System for Electronic Analysis and Retrieval of Criminal Histories (Project SEARCH), a \$16-million demonstration project supported by LEAA discretionary and Institute grants, in

⁸ NYIIS performs a variety of functions in regard to this data: fingerprint processing (not yet computerized), name searching, wanted system (NCIC interface), personal appearance/arrestee file searches and review of latent fingerprinting material. (NYIIS Fact Sheet)

⁹ Executive Order 10450 (April 1953) calls for an investigation of any individual appointed "in any department or agency of the government," and provides that "in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the FBI), and written inquiries to appropriate local law enforcement agencies . . ." In *McNard v. Mitchell*, 328 F. Supp. 718 (D.D.C. 1971), the court suggested the Executive Order should be reexamined, but refused to enjoin the use of NCIC for this purpose. The court did preclude the distribution of arrest records except for law enforcement and federal employment purposes, but Congress overruled this exclusion in approving the FBI's 1972 appropriation. (See n. 29, *infra*.)

¹⁰ Summary criminal histories contain public record information such as fingerprints (where available), personal description, arrests, charges, dates and places of arrest, arresting agencies, court dispositions, sentences, limited institutional data and limited information concerning parole and probation.

¹¹ "Authorized inquirers" include any agency that now participates in the FBI's system, plus any agency subsequently permitted to do so by the Attorney General.

which 20 states shared criminal histories through a computerized central data index.¹² SEARCH was intended as a prototype for a national computer file which would facilitate prompt apprehension of interstate felons.¹³

The project was funded through the California Council on Criminal Justice. Primary developmental responsibility was contracted to Public Systems Inc. (PSI), a research and development firm based in San Jose.¹⁴ PSI was aided by task forces and advisory committees composed of representatives from the participating states. The major assignment of the SEARCH group was to develop standard, computerized criminal history records, summaries of which could be filed in a central index. Computer terminals in the individual states could submit information to the central index and query it for identification of suspects. If the central index contained matching references concerning the subject of a query, the summary index data was transmitted to the inquiring police officer and he was told which state had the full file on the suspect. The officer could then request and obtain a copy of the suspect's full record via teletype from the state agency. The initial focus of the system—like its predecessors—was on police requirements; but the project design anticipated subsequent development of a capability to service the information needs of courts and corrections officials as well.¹⁵

On March 9, 1971, LEAA Associate Administrator Richard W. Velde testified before the Senate Subcommittee on Constitutional Rights that:

The basic problems facing SEARCH in the demonstration period have been solved. A common format for criminal histories was developed, and in machine-readable form. Each active participant converted at least 10,000 felony records to the SEARCH system for the demonstration. As the test period showed, a state making an inquiry of the central index with perhaps no more information than a driver's license number could find out if that person were in the (national) index and then be switched to the state holding the complete criminal history. It takes merely seconds to do all of that and receive the information.¹⁶

Computer experts were less sanguine about the success of the experiment. Some noted that only a small number of the SEARCH states had actually participated in the demonstration and suggested that the test simply duplicated what the FBI's NCIC had already demonstrated. *Datamation* magazine reported on the SEARCH demonstration as follows:

Ten states officially participated in the demonstration, but only New York made any extensive operational uses of the system, and a total of only five states conducted any demonstrations. . . . SEARCH met its demonstration objectives from a conceptual point of view, but did not achieve much operational success, because of design compromises, lack of updating capability for the central index and failure to develop record formats acceptable to all users, among other reasons.¹⁷

Despite these criticisms, and over the protests of LEAA Director Jerris Leonard and the states that had participated in the project, SEARCH became the launching pad for an expanded and "improved" criminal offender system to be operated by the FBI. Transfer of system control to the FBI meant that, instead of a network of state-controlled files tied into a limited central index, the SEARCH system became a national file run by a line operating agency. More importantly, judging from the debate on the subject that raged for months, FBI control meant diminished operational standards for the system's integrity, and attenuation of safeguards for individual privacy.

¹² The states participating in the SEARCH experiment were Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Texas, Utah and Washington.

¹³ As the FBI put it: "The purpose of centralization . . . is to contend with increasing criminal mobility." (NCIC Advisory Board, "Computerized History Program: Background, Concepts and Policy," as approved March 31, 1971, and amended Aug. 31, 1971). FBI data show that 25 percent of arrests involve interstate movement by felons. A preliminary survey by SEARCH put the figure at around 27 percent but estimated that most of these arrests were in contiguous states.

¹⁴ Eight of PSI's key personnel are from Sylvania Sociosystems Lab (a research and development arm of GTE Sylvania), and one is the former head of California's SPA, the California Council on Criminal Justice.

¹⁵ We disagree with LEAA's assumption that across-the-board increases in offender data are desirable for all decision-making processes within the criminal justice system. For example, arrest records not followed by convictions or juvenile offenses probably should not be made available to sentencing judges or to parole boards. LEAA recently made a grant to the Federal Judicial Center to finance the transfer of all data processed through the federal courts to the Justice Department. Sen. Ervin has questioned the propriety of this arrangement under the separation of powers principle. (Letter of July 27, 1972, from Sen. Ervin to the Hon. Alfred P. Murrah, Federal Judicial Center.)

¹⁶ *Senate Constitutional Rights Subcommittee Hearings*, p. 611.

¹⁷ Phil Hirsch, *Datamation* magazine, June 15, 1971, pp. 28-31.

The conflict between the FBI and the Project SEARCH group had emerged in May 1970. In a letter dated May 8, 1970, Jerome J. Daunt, then director of the FBI's NCIC system, wrote to the SEARCH group complaining about various recommendations in the Interim Report of the SEARCH Committee on Security and Privacy. Among other items, the letter stated:

Throughout the report Project SEARCH is described as an ongoing system. Future developments of this system are not the proper objectives of the Project SEARCH group. . . .

In view of the limited purpose of the Project SEARCH, further studies in the area of privacy and security are not justified. If there is a need, it should be done by some other body.

The conflict became more pointed. In a letter of Oct. 15, 1970, John F. X. Irving, then chairman of the state planning agency's executive committee, wrote to Attorney General Mitchell protesting the proposed transfer of control over the SEARCH system to the FBI as well as certain "changes in direction" of the system. Irving complained that duplication would result because the states intended to continue developing their own systems¹⁸ and protested that the FBI's plan to focus on data useful to the police only ignored the needs of courts and corrections agencies. Irving also argued that the FBI system, by dealing directly with city police departments instead of going through the states, would subvert the federal-state relationship contemplated by the Safe Streets Act.

The strongest protest in Irving's letter was directed to the potential invasions of privacy inherent in a federal information system.

Last, but certainly not least, the FBI's proposed file is significantly different in both conception and content from the state-held files contemplated by Project SEARCH. The basic underlying concept of Project SEARCH is that no new national data banks or criminal history files should be created because of the inherent threats to individual privacy and the security of records. The Project SEARCH operating concept is state-held files with a national index or directory of offenders. . . . The FBI file, on the other hand, would contain as much detailed data on offenders as the FBI was willing and able to collect. It is not a true index but rather a federal data bank on offenders.

The FBI countered that expanding SEARCH as a state-dominated system would increase the over-all costs and would duplicate the NCIC system. More importantly, a system subject to the control of 50 state executives could be abused too easily. As Jerome Daunt put it: "If the governor controlled the system, he could control who gets elected."

The protests by the states and by Jerris Leonard were to no avail. The FBI took control of the SEARCH index in December 1970. The decision was John Mitchell's. In November 1971 the bureau notified the press that:

The Federal Bureau of Investigation has begun operation of a computerized criminal history data bank that eventually will give police almost instantaneous access to an individual's criminal arrest record from all 50 states and some federal investigative agencies and the courts. . . . The system . . . will make available by 1975 on a nationwide computer network most of the information now handled through the FBI's vast criminal record and fingerprint files. . . . It replaces a pilot effort, called Project SEARCH, in which only a computerized index was maintained, capable of telling police if a suspect had a record.¹⁹

Although the November 1971 announcement signaled the end of LEAA control of the system, the agency has continued to be involved in the development and expansion of information systems. Project SEARCH has been given discretionary and research grants for developing related technology, such as satellite transmission of information, automatic fingerprint identification/verification and additional work on transaction-based criminal justice statistics. And LEAA block grants have continued to serve as the primary source of funding for the state information systems that will be the major components of the NCIC criminal history information system. Despite LEAA's expressed concern for privacy considerations in the operation of information systems, it has not sought to precondition the use of its funds for such systems on the development by the states of adequate statutory or regulatory safeguards.

¹⁸ By altering the basic system design for SEARCH, FBI requirements could increase the cost by 30 to 40 percent, apart from the possible duplication involved. Interview with Jerry Emmer, LEAA official.

¹⁹ Justice Department news release, November 1971.

It is difficult to obtain reliable information concerning the present or projected scope, cost or structure of the new FBI data bank. At the federal level a variety of agencies are scheduled to participate in the system, most of which have been previously active in the NCIC system. Among others, the system will receive data and answer inquiries from the Secret Service, the Internal Revenue Service, the Alcohol and Tax Division of the Treasury Department, the Bureau of Customs, the Immigration and Naturalization Service, the Bureau of Prisons, the U.S. Courts, U.S. Attorneys and U.S. Marshals. As far as the states are concerned, at the time of the FBI's November 1971 press release, only one state—Florida—was actually contributing information to the file. The next two states—New York and California—were not scheduled to participate until July 1972. (As Chapter IV shows, California will probably not be ready for full participation until 1973.) In most instances, the states do not have their own systems operational—or even designed.

Official estimates of the total number of individuals who will eventually be included in the national file range from five million (the FBI estimate) to 20 million or more (the LEAA estimate). The number of files in the total system including all the state files will, of course, be much greater. Neither LEAA nor the FBI will provide information on the total costs involved.

Nor is it clear whether the FBI's file will be comprehensive, or simply a summary index that refers inquirers to the state files. The FBI has stated that it plans to maintain complete files only on offenders who have been arrested in more than one state, maintaining "summary files" on offenders who have been arrested within a single state only. State control centers will be able to add or remove information from the national file. However, for those states that have not yet built a central computerized information file, the FBI is presently maintaining complete offender files in both situations. The fact that the agency is presently maintaining complete files for all states makes it doubtful that they will subsequently abandon those files.²⁰

The kinds of information to be stored in the data file and the conditions of participation in the system are not defined by statute or by formal regulations. The only standards regulating the system are those set forth in the NCIC Advisory Board policy paper.²¹ Each state seeking to participate in the system must sign a contract with the director of the FBI, agreeing to abide by the terms of the policy paper and by any "rules, policies and procedures hereinafter adopted by NCIC." The contracting state must also agree to indemnify the federal agency against any legal claims arising out of the operation of the information system. The FBI claims that the majority of the states—"all but three or four," according to Daunt, "and those have technical not substantive problems with the system"—have signed the contract and thereby accepted the terms of the policy paper.

The NCIC standards are substantially less rigorous than those developed by LEAA's Project SEARCH, and in many instances their adoption was met by vigorous objections from LEAA, the SPAs and the Project SEARCH participants.

Under the NCIC policies, the national file is restricted to data on "serious and other significant violations." This is defined by exclusion:

Excluded from the national index will be juvenile offenders as defined by state law (unless the juvenile is tried in court as an adult); charges of drunkenness and/or vagrancy; certain public order offenses, i.e., disturbing the peace, curfew violations, loitering, false fire alarm; traffic violations (except data will be stored on arrests for manslaughter, driving under the influence of drugs or alcohol, and 'hit and run'); and nonspecific charges of suspicion or investigation.²²

²⁰ The basic policies developed for the FBI system by the NCIC Advisory Policy Board state:

"In the developed system, single state records will become an abbreviated criminal history record in the national index with switching capability for the states to obtain the detailed record. Such an abbreviated record should contain sufficient data to satisfy most inquiry needs, i.e., identification segment, originating agency, charge data, disposition of each criterion offense and current status. This will substantially reduce storage costs and eliminate additional duplication."

²¹ The NCIC Policy Paper, *supra* n. 13. The board is appointed by and serves at the discretion of the director of the FBI. Its members are individuals responsible for the administration on state information systems or state or local terminals on the NCIC system. Recently, procedures were introduced for electing board members from among participating state officials. It does not include constitutional lawyers, computer experts or other nonlaw enforcement representatives.

²² NCIC Policy Paper, *supra* n. 13, p. 11.

Narcotic or mental commitment records will be maintained if they are part of the criminal justice process. Domestic crimes such as nonsupport or adultery and victimless crimes such as homosexuality, gambling and others are considered "serious" in some jurisdictions.²³ Moreover, any state or locality may store additional information in its own files, which can be disseminated upon requests referred to the state or local police department by the central index.²⁴ Besides the criminal record data on serious offenders, the Justice Department has asserted an absolute right to keep records on persons who are "violence prone" and other "persons of interest" for national security reasons.

Contributions to each individual file depend on participating state and local agencies. According to the NCIC policy paper, each file is supposed to show arrests, charges, the disposition of each case, sentencing details and custody and supervision status, but experience indicates that agencies contributing to the files rarely remove arrests records that do not lead to convictions²⁵ and often include damaging extenuating information. Personal identification information such as name, age, sex and physical description are included as well as FBI numbers, state numbers, social security numbers, date and place of birth and other miscellaneous numbers. At least one criminal fingerprint card is filed in the FBI identification division "to support the computerized criminal history record in the national index."²⁶

No federal law or regulation calls for deletion of out-dated records. The NCIC policy paper states: "Each control terminal agency shall follow the law or practice of the state . . . with respect to purging/expunging of data entered by that agency in the nationally stored data" (p. 12). Most states have no purging requirements at present. The policy paper endorses the concept of state and federal penalties for misuse of the data,²⁷ and suggests that the individual be given the right to see and correct his file, but makes no specific recommendations. Experience at the state and local levels indicates that it is extremely difficult for an individual to correct an erroneous or incomplete file without resorting to lengthy court proceedings.

The major deficiency in the guidelines and the system as a whole is the absence of proper controls on access to the data contained in the files. The policy paper states that access will be provided primarily to criminal justice agencies in the discharge of their official responsibilities. In addition, "agencies at all governmental levels which have as a principal function the collection and provision of fingerprint identification information" will have access, as will all those agencies that presently use NCIC. This means that the files will still be used for clearing federal employees and the employees of federal contractors,²⁸ and the information

²³ HR 1, the welfare reform proposal which was extensively revised by the Senate Finance Committee before the 92nd Congress adjourned, would make nonsupport a federal crime and place a special assistant U.S. attorney in every judicial district to prosecute violators whose desertion caused their families to go on welfare. This new crime would assure that personal data files on welfare recipients will be mingled with the files on criminal offenders.

²⁴ A number of jurisdictions maintain harmful, irrelevant data. The Kansas City, Mo., ALERT System, for example, includes the following categories of information in its computerized Warrant/Want Real Time Files: "local and national intelligence on parole status; active adult and juvenile arrest records with abstract data; area dignitaries; persons with a history of mental disturbance; persons known to have confronted or opposed law enforcement personnel in the performance of their duty; college students known to have participated in disturbances primarily on college campus areas." (Statement of Sen. Charles Mathias, March 9, 1971, *Senate Constitutional Rights Subcommittee Hearings*, p. 576.)

²⁵ The inclusion of arrest records that do not lead to conviction is particularly onerous. In 20 to 30 percent of arrests, the police do not bring charges for a variety of reasons including mistaken identification, lack of evidence, etc. Yet only eight states have statutes providing for expungement of such records. And of the eight, only one allows expungement of arrest records for an individual who has had a previous conviction.

²⁶ NCIC Policy Paper, *supra* n. 13.

²⁷ At present the only penalty for misuse of data maintained in the NCIC system is the provision in 28 USC § 534 allowing the FBI to withdraw the privilege of participating in the exchange system from an agency that fails to abide by NCIC standards. As the exercise of that sanction means that the agency would also cease contributing data to NCIC, the provision has been invoked rarely. 18 USC § 1905 provides weak criminal sanctions for the disclosure of confidential financial information by federal officials. It would not extend to the state participants in the NCIC system, and it protects only white-collar criminals whose offenses involve financial misdealings.

²⁸ Federal contractors such as Lockheed Aircraft have in the past obtained such records from the federal departments with which they do business.

will be shared with federally insured banks, hospitals, insurance companies, etc.²⁹

At the state level, the NYIS experience suggests that a wide range of state agencies and some private firms will have access to the files for clearing potential employees or licensees.³⁰ The guidelines provide that state agencies (except for criminal justice agencies) cannot use the data in connection with licensing or state and local employment, unless "legislative action at the state and federal level or Attorney General Regulations" provide otherwise. But, as the New York experience shows, a number of states already have clearance authorization laws, and, since Congress has authorized the sharing of identification information with such states—with the approval of the Attorney General—the exclusion promises to be of limited value. (The Attorney General has never withheld approval from a state agency seeking access.) Even if approval or clearance should be denied, local policy will inevitably determine the terms of access because the NCIC system lacks adequate sanctions to apply to nonconforming states. At least one state, Iowa, is considering making the information available to anyone willing to pay for it.³¹

The looseness of the access provisions becomes more ominous in view of the parallel rapid growth of law enforcement intelligence files containing sensitive and unsubstantiated information.³² In addition, the provisions virtually invite linkages with information files maintained by public and private agencies. LEAA is presently cooperating with HUD and several other federal agencies to fund experimental programs in six cities³³ that will provide city managers or mayors with "integrated municipal information systems" (IMIS) for management purposes. The IMIS is being promoted by the National League of Cities as a "significantly new approach to the process of local government itself," one "that will require a degree of commitment and level of expenditure by municipalities which has never before been associated with computer-based systems." The new systems will eventually include data from all urban service departments—police, welfare, schools, etc.—as well as underlying demographic and other facts that could be useful in making urban management decisions. The enlarged, organized data base supposedly will point to new relationships among urban problems, and consequently will improve policy-making.

The IMIS could present serious problems; total recall of statistics could be extremely harmful to the individual citizen. As Robert Knisely, the director of the program has written:

*If vital statistics, and school, employment and criminal justice records can be pulled together on a named individual at will, a child's teachers may find out he is illegitimate, his poor grades may keep him from getting a job, his lack of a job may lead to crime and his criminal justice records may keep him permanently unemployed.*³⁴

Although Knisely sees certain potential benefits in the program, he concludes that they are overbalanced by the likelihood that neither the courts nor the legislatures will exert adequate control over the emerging technology. In any event, the possibility that criminal information files will become a part of a larger city-wide integrated information system is a real one. In California, Iowa and other

²⁹ On Dec. 3, 1971, Congress approved, as part of the fiscal 1972 FBI appropriation, the following blanket authorization for the distribution of FBI data:

"The funds provided in the Department of Justice Appropriations Act, 1972, for Salaries and Expenses, Federal Bureau of Investigation, may be used, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by state statute and approved by the Attorney General, to officials of state and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned Act." (*Congressional Record*, Dec. 3, 1971, S 20461.)

In 1972 a proposal was submitted to Congress to reverse the 1971 action. At the time of this report that proposal, an amendment to the pending Justice Department appropriations bill, was before a House-Senate Conference Committee. In the meantime the Justice Department (through Sen. Hruska) introduced S. 3834 (HR 15929) to assure the broad availability of FBI records.

³⁰ See letter from Aryeh Neier, executive director of the American Civil Liberties Union, to Sen. Sam J. Ervin (D N.C.), March 23, 1971 (copy on file with the Senate Subcommittee on Constitutional Rights), listing state agencies with access to NYIS files.

³¹ *Des Moines Sunday Register*, July 2, 1972, p. 3A.

³² We have already pointed out that LEAA is funding regional and state intelligence networks for the collection and analysis of data on organized crime, as well as state and local intelligence-gathering systems on civil disorders and militants and other nonconformers. Because of the difficulty of standardizing intelligence information, it is unlikely that interstate computer exchange of such data will be realized, at least for some time. However, once the data are centralized at the state level under the auspices of the agency responsible for operating the central criminal information files, it becomes accessible to other state or federal agencies who will be directed to the state of record through the NCIC system. And the Attorney General has the power under the present statutory scheme to combine federal investigative and intelligence files with the NCIC criminal offender files.

³³ The IMIS cities are: Dayton, St. Paul, Long Beach, Calif., Reading, Pa., Charlotte, N.C., and Wichita Falls, Tex. Other jurisdictions are combining criminal justice computer data with information from other public agencies on their own.

³⁴ Knisely, Robert A., "The Fruit of the Tree of Knowledge—Privacy Problems in Integrated Municipal Information Systems," Dec. 7, 1971, p. 7.

jurisdictions, data from a variety of social service agencies are already being combined in a single administrative unit that is also responsible for criminal justice data.³⁵

Beyond IMIS, which is a deliberate, small-scale experiment, it is likely that private and public decisionmakers will step up their generalized demands for whatever data are available on the individuals with whom they are concerned.³⁶ Senator Sam Ervin (D-N.C.) has described the problem this way:

"Interrelationship" is the key word here. Once the correlating process begins on individual personal data in the many files of government, all the weaknesses and limitations of the computer as a machine will be operating on a grand scale to make possible a massive invasion of the privacy of millions, and it raises the specter of a possible program of routine denial of due process. Interagency, inter-business networks are being established of computers that talk only to each other. Decisions affecting a person's job, retirement benefits, security clearance, credit rating or many other rights may be made without benefit of a hearing or confrontation of the evidence.

*The computer reduces his opportunity to talk back to the bureaucrats. It removes his chances to produce documents, photographs or other evidence to alter a decision.*³⁷

The problem of potential linkages between criminal justice system and other governmental files on individuals has been centered in a debate that has plagued the new system since its inception. The NCIC guidelines initially required participating states to utilize computers "dedicated" to law enforcement uses only and managed by law enforcement personnel. Many of the states have opposed this policy on the grounds that dedicated computers cost more and, in some cases, that state law requires that all computer systems be centralized under the control of the governor.³⁸ According to Donald Roderick, Jerome Daunt's successor, the FBI will now permit each state to set its own rules in accordance with existing provisions for statewide computer administration. If a decision is reached to use a nondedicated computer, however, that state must make a showing that the criminal justice data are under the control of law enforcement officials.

The Need for New Legislation

Neither the FBI nor LEAA, the two agencies of the Justice Department with the resources or powers to impose regulatory controls, has developed adequate safeguards for the fast-growing computer files on criminal offenders. The NCIC guidelines are inadequate. As we have indicated, most of them are nonspecific, relying on state statutes to spell out specific protections. Since most of the states have no regulatory legislation on the books and the few laws that have been passed are inadequate, the system affords little protection against abuse. Further, the enforcement of the few NCIC standards that are binding depends exclusively on the FBI's willingness to exclude a noncomplying state from the system. This ultimate sanction has never been invoked.

Project SEARCH developed more comprehensive privacy and operational guidelines,³⁹ but these guidelines are advisory only, and not legally binding on the states. LEAA has been unwilling to impose the SEARCH standards as a condition of its grants. It has simply suggested that states contemplating the purchase of information systems with LEAA money "ensure that adequate provisions are made for system security, for protection of individual privacy and the insurance of the integrity and accuracy of the data collection."

³⁵ Iowa's TRACIS (Traffic Records and Criminal Justice Information System), for example, will connect with the state's Department of Public Instruction, the Department of Social Services and others. And the California CLETS system (see Chapter IV) will be able to relate to records from the public schools.

³⁶ In recognition of this growing tendency and the immense data files available through his department, particularly those tied into social security numbers (as is the NCIC system), HEW Secretary Elliot L. Richardson has appointed an Advisory Committee on Automated Personnel Data Systems to develop safeguards to "protect against potentially harmful consequences to privacy and due process." (See "Charter of the Secretary's Advisory Committee on Automated Personnel Data Systems," Feb. 27, 1972.)

³⁷ "The Computer and Individual Privacy," address of Sen. Sam J. Ervin (D N.C.) to the American Management Association, March 6, 1967.

³⁸ Jerris Leonard sided with the states, saying, "As long as I am here, we are going to carry out the philosophy of this administration and that is the states will decide what they need . . . If the FBI doesn't want to provide the service, we'll find someone else." (Washington *Evening Star*, Jan. 22, 1972.) In addition the National Association for State Information Systems formally protested the dedication requirement to Attorney General Mitchell.

³⁹ See Technical Report No. 2, July 1970, "Security and Privacy Considerations in Criminal History Information Systems," prepared by the Project SEARCH Committee on Security and Privacy. The committee has also prepared a model state statute and model regulations for the governance of state information systems. These have been introduced but not acted upon in several state legislatures.

Congress anticipated the need for regulation of the growing law enforcement information network in 1970 and added an amendment to the Safe Streets Act requiring LEAA to submit legislation by May 1, 1971, to ensure:

The integrity and accuracy of criminal justice data collection, processing and dissemination systems funded in whole or in part by the federal government, and protecting the constitutional rights of all persons covered or affected by such systems.

On Sept. 29, 1971, Senator Roman Hruska (R-Neb.) introduced S. 2546, "The Criminal Justice Information Systems Security and Privacy Act of 1971," on behalf of the Administration. The bill essentially would codify the standards established by the NCIC policy board and give the Attorney General the authority to alter the scope of the national system as he deems necessary. The bill, which has been severely criticized for failing to provide adequate protection against misuse of data, was never assigned to an appropriate subcommittee for hearings.

In addition in 1970 Congress mandated the creation of a National Commission on Individual Rights to study, among other things, the impact "of the accumulation of data on individuals by federal agencies as authorized by law or required by executive action" and to determine which practices "are effective, and whether they infringe upon the individual rights of the people of the United States." (Section 12, The Organized Crime Bill of 1970.) This provision has never been implemented.

There are serious questions whether the state and national computerized files are necessary, whether they are worth their cost, both social and financial, and whether they work. Perhaps with more experience the FBI or LEAA will develop a convincing case concerning the manner in which the computerized information systems have developed. However, the Justice Department has not yet confronted the very real problems that the new NCIC system is creating, particularly in regard to governmental overreaching, invasions of privacy and infringement of basic constitutional rights.

Underlying the deficiencies of the new NCIC criminal offender records system is the vagueness of the legislation under which it operates. 28 USC § 534 enables the Attorney General to set up (and alter) a system to "acquire, collect, classify and preserve identification, criminal identification, crime and other records," and to "exchange these records with, and for the official use of, authorized officials of the federal government, the states, cities and penal and other institutions." (Emphasis added.) The statute contains no standards; and despite the fact that the Attorney General has full power to do so, no regulations have ever been issued to govern the information system except to delegate the Attorney General's administrative authority to the FBI (28 CFR § 0.85).

In addition to the question of the Justice Department's statutory power, several aspects of the system as it is presently administered raise important constitutional questions. To include information unrelated to criminal convictions in the state files (and by automatic referral in the national file) may well violate the First Amendment and the due process and equal protection clauses of the United States Constitution.

For example, on numerous occasions the Supreme Court has held or indicated that the Fifth and Fourteenth Amendments' guarantee of due process protects individuals from injury caused by public bodies acting without giving the individual the opportunity to challenge or clarify the factual assumptions on which the agency is operating.⁴⁰ The protection against arbitrary action and the right to be heard apply even when the activities involved do not entail direct civil or criminal penalties, and extend to the circulation by the government of prejudicial information.

In *Joint Anti-Fascist Refugee Committee v. McGrath*,⁴¹ the Supreme Court confronted a situation remarkably similar to that posed by certain aspects of the present-day Justice Department data distribution program. Ruling that the Attorney General must provide an opportunity for a hearing before including an organization on his subversive list, Justice Felix Frankfurter stated:

⁴⁰ See, e.g., *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951); *Greene v. McElroy*, 360 U.S. 474 (1959).

⁴¹ *Supra*, n. 40. Although the Attorney General was ordered to institute proper procedures before adding an organization to the subversive list, the majority of the Court did not join any one opinion. Justice Frankfurter's constitutional reasoning has become the most noted of the opinions entered in that case. In *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Supreme Court held unconstitutional a Wisconsin statute authorizing local authorities to post public notices prohibiting the sale of liquor to persons who drink excessively, without affording the interdicted individual a right to challenge the determination.

The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret one-sided determination of facts decisive of rights. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. . . . The Attorney General is certainly not immune from the historic requirements of fairness merely because he acts, however conscientiously, in the name of security. 341 U.S. at 170-174.

Under the new NCIC system the federal and state agencies which disseminate background intelligence information or data pertaining to arrests not followed by conviction, without giving the subject the chance to clarify or correct his record, could be found in violation of the due process clauses of the Fifth and Fourteenth Amendments.

It is also quite possible that the NCIC criminal history file violates the equal protection clause, by magnifying the consequences of present discriminatory police practices. Because the data it collects focus on street crimes and offenses that tend to be committed by the disadvantaged and minorities, and because of its indiscriminate inclusion of data on arrests for ill-defined crimes (such as arrests for suspicion) and arrests not followed by charges or convictions, the NCIC file reinforces the existing class and racial bias of the criminal justice system. Arrests for "suspicion" or "investigation," for vagrancy and other vague crimes, constitute a major form of police discrimination against blacks and Chicanos. Keeping permanent computerized files of such arrests (and in some cases convictions) adds another layer of discrimination to the criminal justice system, encouraging surveillance, the imposition of stiffer penalties, etc., on minorities. When such records are made available to employers, discrimination in the hiring process is compounded. (See *Gregory v. Littlon Systems*.)⁴²

CONCLUSIONS AND RECOMMENDATIONS. *LEAA is investing substantially in the creation of a national computerized criminal offender information file serving state and local contributors and users. The files at present contain too much information and are accessible to too many agencies, including private business concerns. Few safeguards protect legitimate rights of personal privacy or prevent use of the information in a discriminatory manner. Standing alone, the new information systems require immediate and comprehensive regulations and controls. The potential harm that they could inflict, however, is made even more critical by (a) the coincident development of new state-level intelligence files on civil disorders and dangerous persons that are maintained by the same agencies that administer the information files and that are accessible to participants in the national system, and (b) the rapid expansion of computerized records on individuals maintained by welfare, health, education and other public and private agencies that can be (and have been) readily interfaced with the criminal offender files. To ensure integrity and fairness of such systems:*

No further federal funds should be distributed for the operation, expansion or development of state and/or national information systems prior to the completion of a study by a neutral and reputable scientific body—such as the National Academy of Sciences or the National Commission on Individual Rights—setting forth the policy options facing the nation in regard to such systems. In particular, the study should examine: the necessity for various possible kinds of information (and intelligence) systems to effective law enforcement; the most appropriate structure(s) for such systems (centralized, decentralized, state controlled, law enforcement controlled, etc.); the kinds of safeguards that can and should be built into such systems; the relationship of the data banks developed under such systems to other data banks; and the proper forms for public regulation of such systems.

If a national or multi-state criminal justice information system is found to be justified after the full report by the independent body, federal legislation should be passed creating an affirmative right to privacy, which would require the government to justify in advance any activity that would conflict with that right. In addition, regulatory laws should be passed to control all information systems (1) developed and maintained by agencies of the federal government, (2) operated by state or local agencies but supported wholly or partly by federal funds and (3) interfacing with federal systems or

⁴² 316 F. Supp. 401 (C.D. Calif. 1970). The President's Commission on Federal Statistics, Vol. III (1971), p. 546, reported: "An applicant who lists a previous arrest faces at best a 'second trial' in which, without procedural safeguards, he must prove his innocence; at worst the listing of the arrest disqualifies him per se. The arrest record is the first of a series of status degradation ceremonies in the criminal law process." The commission pointed to the fact that in a recent survey of 39 counties, not one lists arrests that have not led to convictions. "The 'criminal record' in these 39 counties includes only convictions, and often only those for serious crimes" (p. 548). For a detailed treatment of the problems inherent in the broad dissemination of arrest records, see *Security and Privacy of Criminal Arrest Records*. Hearings before Subcommittee No. 4 of the House Committee on the Judiciary, 92nd Congress, 2nd Session (April 1972).

federally supported systems. (If such legislation is not passed, the Attorney General should issue formal regulations under his present powers.) Among the kinds of safeguards that should be considered for inclusion in the legislation are the following:

● The legislation should spell out with specificity (rather than defining by exclusion) the scope of the criminal history offender files and the matter to be included therein. Only serious crimes that pose actual danger to the public and are likely to involve interstate mobility should be included.⁴³ The national file should contain only identifying data, records of active arrests, convictions and sentencing and an identification of the state agency maintaining the full records. Records of arrests not followed by indictment or information within one year, or conviction within two years, should be deleted from the files. When a criminal law is repealed, the record of prior violations of it should be deleted from the computer. An affirmative obligation should be placed on all participating states to delete such information from their own files as well as the FBI files. Failure to do so should result in termination of participation in the system and imposition of financial penalties.

● Specific congressional approval should be required for any expansion or modification of the initial system, such as a decision to interface with other data banks within the Justice Department or other federal agencies.

● The legislation should provide for operation and/or monitoring of the national system by an independent agency or commission that would conduct audits and spot-checks on both the operating agency and the contributing agencies, and would report annually (and periodically, as requested) to Congress. The commission, which should include constitutional lawyers, representatives of citizen's groups and other civilians, would share responsibility with the operating agencies for the development of detailed guidelines to govern the operation of the system. No state should be allowed to participate in the federal system until such time as it has passed its own statute reflecting the national standards, creating a state monitoring body and providing for the protection of individuals whose records are included in the system.

● Each individual should be granted the right of access, notice and challenge to all information pertaining to him. A person should receive notification when his file is opened, and upon each entry he should be informed of his right to access and challenge. During a challenge, to protect the individual from incomplete and inaccurate information, an embargo should be placed on use of the information.

● The legislation itself should establish general standards for the operation of the system and should require the Attorney General to issue more specific, mandatory regulations to govern dissemination of the information to criminal justice agencies, the courts and corrections institutions and other public agencies. The information should be graded so that only the summary computer record (not access to supplementary state investigative files) will be available to certain recipients, such as federal and state employers, or courts seeking to determine sentences.⁴⁴

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Before responding to the request of Senator Mathias that I comment on the conclusions and recommendations contained at the end of Chapter II of the publication "Law and Disorder III," I would like to remind the Committee that there has been furnished for the record a paper dated September 20, 1972, captioned "National Crime Information Center (NCIC), Computerized Criminal History Program, Background, Concept and Policy as approved by the NCIC Advisory Policy Board." A close analysis of this paper, I think, will show that we in law enforcement have recognized not only the need for applying computer technology to law enforcement's needs but also the absolute necessity for stringent safeguards to protect privacy rights.

Further, I believe it pertinent to point out that the FBI operates only the one computerized information system and that is NCIC. We are not associated with any other systems that are operating or under development at the Federal level.

⁴³ This would remove most victimless crimes from the file as well as the other petty offenses that are most subject to enforcement patterns that are socially discriminatory.

⁴⁴ The legislation should probably also waive sovereign immunity on behalf of the United States and make them jointly liable with any individual who disseminates information to an unauthorized recipient, on a strict liability basis. The law should include minimum damage penalties, attorneys' fees, and a provision for treble damages; the individual defendant and the governmental employer shall have the burden of proving a good-faith effort to make sure that the recipient did have authority to request and receive the information, in order to escape punitive and treble damages. The same sanctions should apply for dissemination of erroneous information. U.S. district courts should be given jurisdiction without regard to the amount in controversy.

We do not plan to become a part of any such systems. Please bear in mind that the only computerized data in the NCIC system is information on wanted persons, stolen articles, and criminal histories.

We have studied Chapter II and disagree with many of the observations and inferences expressed. The authors have based their recommendations and conclusions on many of these questionable statements. I will address myself to the areas wherein we disagree by commenting specifically on each of the recommendations and conclusions. I must confine my remarks primarily to the NCIC system because we do not possess any detailed knowledge of other systems alluded to in Lawyers' Committee for Civil Rights Under Law report.

The first conclusion of the report is that too much information is being placed into a computerized form; too many agencies, including private business concerns, have access to this computerized data; and few safeguards exist to protect the right of personal privacy.

All of the information in NCIC is needed by law enforcement agencies and other criminal justice agencies on a daily basis and enables them to carry out their responsibilities in a much more efficient manner.

I frankly do not believe the authors have any sincere argument that a computerized file on wanted persons and stolen articles threatens any rights of an individual.

The authors make the statement that the NCIC Criminal History File possibly violates "the equal protection clause." I cannot agree with this contention. In simple terms, what we have set out to do, with respect to the criminal history file, is to put into a digital form for computer storage information concerning the stages of a criminal offender's formal contacts with the criminal justice agencies, i.e., information to identify him, data on arrest and charge, what the court action was, and custody or supervision status. All of this information is a matter of public record. It is the same information already on hand in a manual format in the FBI Identification Division. The program we have underway is to computerize the information so that it can readily be obtained in a much more rapid manner. The file will contain no other information. In fact, the NCIC policy paper clearly states that "Data included in the system must be limited to that with the characteristics of public record."

We have provided safeguards designed to control the dissemination of criminal history data and to restrict its availability. Briefly stated, criminal history data is available outside the Federal Government only to criminal justice agencies for criminal justice purposes, unless other dissemination is specifically provided for by Federal or state statutes. I believe it worthwhile to quote the following excerpt from the NCIC policy: "This precludes the dissemination of such data for use in connection with licensing or local or state employment, other than with a criminal justice agency, or for other uses unless such dissemination is pursuant to state and Federal statutes. There are no exceptions."

We require each state control terminal having the ability to accept the criminal history file of NCIC to sign an agreement to abide by the NCIC policy. The agreement specifically provides that service will be immediately suspended if security or dissemination requirements as detailed in the NCIC policy paper are violated. I can assure the Committee the FBI most certainly will cause immediate termination of service to any agency guilty of unauthorized dissemination of data. The state people know this. They need the NCIC service and I do not foresee a problem. In this respect, I would like to point out that since 1924 the FBI has been exchanging arrest data, in the form of identification records (so-called "rap sheets"), with local and state agencies. There have been only a very few instances where an agency has been found to have allowed unauthorized use of such information and in those cases we have taken action, including the discontinuance of the identification service.

By reason of the well-defined safeguards under which the NCIC system operates, I just cannot accept the assertion that private business concerns have access to criminal history data.

The Law and Disorder III report states that comprehensive controls are needed because the states are developing systems that have "intelligence files on civil disorders and dangerous persons" which are accessible to participants in the national system. Further, it is alleged that computerized data maintained by welfare, health, education and other public and private agencies can and has been interfaced with the criminal offender files.

We are not in a position to comment on whether the states are creating computerized intelligence files because any such files would not be a part of the NCIC

system. I can make the positive statement that the FBI has no such intelligence files in NCIC nor do we have any plan to develop such files. I can also assure you that the NCIC system as designed and operating makes it absolutely impossible for the NCIC computer to obtain information from a state intelligence file. Further, it is likewise impossible for any particular state or Federal computer or terminal to direct a message through the NCIC computer for the purpose of inquiring into another state intelligence file.

The validity of the statement in the report to the effect that computers of public and private agencies (I presume the authors are not making reference to criminal justice agencies) can and have been interfaced with computers containing criminal offender files is highly questionable. We know of no such situation as alluded to by the authors and honestly doubt that any criminal justice agency would permit this kind of access.

The NCIC policy paper specifically delineates who can access criminal history data, i.e., police departments, prosecutive agencies, courts, correctional departments, parole commissions, identification agencies, and state agencies which by statute have as their sole function the operation of a criminal justice information system. In addition, NCIC requires that any and all equipment capable of directly interfacing with the NCIC computer be under the management control of a criminal justice agency.

Another requirement in the NCIC policy is that criminal history records will not be centrally stored or controlled in "data bank" systems containing noncriminal justice-related information such as welfare, hospital, education, revenue, voter registration, and other noncriminal files.

The Lawyers' Committee recommends no further Federal funding of state and/or national information systems until an independent study has been made to establish:

1. "Necessity for various kinds of information (and intelligence) systems to effective law enforcement,"
2. "The most appropriate structure(s) for such systems (centralized, decentralized, state controlled, law enforcement controlled, etc.),"
3. "The kinds of safeguards that can and should be built into systems,"
4. "The relationships of the data banks developed under such systems to other data banks,"
5. "The proper forms for public regulations of such systems."

In 1967, The President's Crime Commission asserted there was a need for "... an integrated national information system to serve the combined needs at the national, state, regional and metropolitan or county levels of the police, courts, and correction agencies, and of the public and research community" (Page 267, Chapter 11, Science and Technology, "The Challenge of Crime in a Free Society"). The NCIC system was designed and implemented to fill this need. The system is fulfilling the need as evidenced by the enthusiastic and extensive use being made of it. There are now nearly 4,000,000 records on file. Approximately 109,000 transactions per day are being made and the file is averaging approximately 800 "hits" per day.

The system concept and limitations as to type of data filed in NCIC (no intelligence or unverified information) have been carefully and minutely documented in the NCIC policy paper to which all participants must adhere. Security safeguards are carefully delineated in this document to insure individual privacy rights are protected. Sanctions are prescribed and will be imposed in the event of violations.

The Lawyers' Committee recommends that legislation be enacted that will limit criminal history files to "only serious crimes that pose actual danger to the public and are likely to involve interstate mobility..." Present NCIC policy has already taken cognizance of this problem. Only more serious offenses will be included in the CCH file. Specifically excluded are arrests for drunkenness, vagrancy, suspicion, traffic offenses (other than driving under the influence or "hit and run"), juvenile offenses (unless tried as an adult) and other similar minor offenses. The record will include no more than identifying data, arresting agency, charge, disposition and custody or other postsentence information. Legislation, if believed necessary, would simply re-enforce the present NCIC policy and procedures now in effect.

The authors assert that arrests not followed by indictment or information within one year or conviction within two years should be deleted from the computerized file. This recommendation should realistically be considered in light of present court backlogs and trial delays brought about by pretrial maneuvering. An arrest record might well be expunged before the case came to trial.

The recommendation does highlight the problem of obtaining arrest disposition data in a system wherein input derives from voluntary submissions by the participants. The problem is not peculiar to the computerized record but rather has been with us a long time in relation to manual files. Some states have laws mandating the entry of arrest disposition data by the arresting agencies, many have not. We would support and encourage any reasonable measures, including Federal legislation, that will help deal with this problem.

It should be noted that it is a "fact of life" that arrest information, with or without disposition or conviction data shown, is valuable to police agencies in the discharge of their obligations.

The Lawyers' Committee recommends that specific congressional approval be required for any expansion or modification of the system "... such as a decision to interface with other data banks within the Justice Department or other federal agencies."

This recommendation seems to imply a possible expansion of the NCIC system for interchange of intelligence or personal history information among various agencies. The point is moot. The NCIC system, as stated earlier, just does not nor will not contain other than documented information on stolen property, wanted persons and criminal histories. The NCIC does not nor will not access any other data banks.

The Lawyers' Committee recommends creation of a "watch dog" commission to operate or monitor the NCIC system. We believe that our present self-policing procedures in which the user agencies fully participate, will insure against misuse of the system while providing maximum service to the criminal justice community. It is our view that legal remedies presently available in event of system abuse are adequate.

The recommendation is made that each individual be granted right of access, notice and challenge to all information concerning him, should be notified when his file is opened and on each entry should be informed of his right to challenge.

The only file in NCIC on a person is (1) a record of his status as a wanted person with warrant outstanding (the problem of advising him of this record of his fugitive status is obvious) and (2) criminal history record resulting from his arrests. (It would seem the fact of his arrest and being fingerprinted would to him create a presumption and thus notification that a record entry had been made.) NCIC policy supports the individual's right to see and challenge the contents of his criminal history record.

Finally, the Lawyers' Committee suggests that legislation should "... establish general standards for operation of the system..." and require the Attorney General to "... issue more specific, mandatory regulations to govern dissemination of the information..."

As to need for legislation to establish operating standards for the system—the NCIC policy paper has been furnished to the Justice Department, various congressional committees and members of the Congress and has been disseminated elsewhere—including the Lawyers' Committee for Civil Rights Under Law. We believe the procedures and standards set forth in this document are well conceived, logical and properly balance security and privacy safeguards with the practical needs of the criminal justice community. Any need to modify or redefine the present policies or to reinforce them by legislative enactment is not apparent to us.

The Lawyers' Committee recommends there be legislation to limit dissemination to the "summary computer record" and not supplementary data in state files. This recommendation seems to acknowledge that the data in NCIC is properly subject to dissemination and that supplementary information in state files (presumably intelligence and investigative information) is not. That is the present NCIC policy, hence the only question here is whether the policy should be reaffirmed by federal law. We defer to the Congress as to necessity for any such reaffirmation.

In conclusion, it is our view that Chapter II of the Lawyers' Committee report should certainly be considered in the light of the four basic premises which the authors admit may color their conclusions and recommendations. These are:

"A strengthened criminal justice system alone cannot begin to solve the 'crime problem.'"

"In a democratic society all available alternatives should be explored before the role of the police is expanded."

"The agencies of the criminal justice system should be subjected to broad public review and participation."

"The criminal justice system as a whole is presently characterized by widespread discrimination against the poor and minorities."

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

Thank you, Mr. Gray.

Mr. GRAY. Thank you, Senator.

Senator BAYH. Mr. Gray, the hour is late, and you are very kind to respond to my request.

I would like to get your thoughts on a couple of items that we have already gone over somewhat, but I would like to find out exactly where we are and, more important, where you may be.

We talked about the Cleveland speech. That is past. The Cleveland speech has been given. You do not think it had any political ramifications. I happen to think it does. There is not much we can do about that difference of opinion, except to try to define where we go from here.

Now, I am sensitive to this because of the involvement we had earlier with a Supreme Court nominee. Some people felt there was impropriety involved. I did not, and do not today, feel that there was intentional impropriety. But my concern reached the point where I felt duty bound to oppose that nominee when he replied specifically that he thought that the standard that was questioned would be the standard that he would set in the future as a Supreme Court Justice. I felt that as an ethical standard, it was a significant retreat from what Supreme Court Justices had followed, and should follow, in avoiding the appearances of impropriety.

I am concerned about your future standard more than about our difference of opinion about a past speech which we have discussed.

This memorandum that went out—as I understand, there were a couple of memoranda. Did you see more than one or are we talking about—

Mr. GRAY. I hope, Senator, that we are talking about only one. I have seen enough of those memoranda, and I am talking about only one in this particular field.

Senator BAYH. All right. Can you tell us if it went to 20 or 30 people?

Mr. GRAY. I was told that by—Patrick O'Donnell reported that to my executive assistant, David Kinley.

Senator BAYH. Did he mention who else had received them?

Mr. GRAY. The heads of executive departments and agencies.

Senator BAYH. Do you suppose that you may be in a little different category from them, as far as political activity?

Mr. GRAY. No question about it, Senator, and obviously, Mr. O'Donnell did not get the same word that I got from the President. I think it was a gross mistake to send that memorandum to me. I do not make any bones about that, but if I may have your permission, Senator, I would like to say this just in the hope that I can persuade you. When I accepted the speech, no conventions were held and there were no nominees. I did not know any scheduling and I really did not have any political intent in going there. I really mean that. However, I can see your point and I understand it. If I have learned nothing else from these hearings, I have learned that Gray has got to be a whale of a lot more careful about his speechmaking, and I understand that very clearly.

Senator BAYH. I appreciate your expression and I think you are sincere about that. I do not think that Mr. O'Donnell was being fair

either to you or to the President, if I may say so, in light of the admonition that you say the President gave you not to participate in politics. Even to ask you to go, to make a speech which he himself described——

Mr. GRAY. No.

Senator BAYH (continuing). If you read that:

With Ohio being crucially vital to our hopes in November we hope that you will assign this forum some priority in your schedule.

That was done for one reason, and one reason only.

Mr. GRAY. That is right. It is the only natural probable conclusion to draw, and I drew it, and that is why I asked for that memorandum from the Crime Records Division as it was then called.

Senator BAYH. Do you think that if you have to make that assessment 4 years, or three and a half years, from now you might come down on a different side of that question?

Mr. GRAY. No question about it. The fact remains that I have learned a lesson from these hearings. I must be most careful regarding any speeches that I make and where I make them, even in regard to the sponsoring group. No question about that. I thought I was adhering to that standard throughout these speeches, believe me. Senator Bayh. I had no other intention.

Senator BAYH. Perhaps it would help to define that standard a little more specifically now, and maybe it will be of benefit for all of us.

Mr. GRAY. No question about that.

Senator BAYH. I was impressed with your answer to some of the questions yesterday that if you had a confrontation with your superior, who would be the Commander-in-Chief and captain of the team, you would resign and go back to your law practice. So that we may have a bit more grist for that particular mill, you referred, as I recall, to a confrontation involving a civil case in which you almost resigned. Are you free to give us some information about that so we can judge your determination to stand on your own two feet?

Mr. GRAY. I prefer not to. But if the committee really would like to have that information, I am here at the committee's beck and call, but my preference is not to give it. The case is contained in my brochure, and I took a severe tongue lashing as a result of the case from a Federal district judge. So I would prefer not to go any further unless the committee—unless you, Senator Bayh—feel you really want me to go into it. But it is right there. I spelled it all out in the personal data questionnaire that I delivered to each Senator.

Senator BAYH. The details of that case are in the personal data which you furnished?

Mr. GRAY. Yes, sir; the incident of my court appearance and the incident of my tongue lashing, it is all there. But the fact that I——

Senator BAYH. Has that personal data been made public?

Mr. GRAY. There are some newspapermen who have seen it and who have asked for it. I sent this to the Senators, and I have previously given it to some newspapermen, too. They have asked for it, and I have told them it was available.

Senator BAYH. Let me think about it, and perhaps we can talk about it in private.

Mr. GRAY. Sure, I will tell you exactly what it was.

Senator BAYH. It could be helpful. I am not familiar with the case now. I am not familiar with the issue involved. Just getting a tongue lashing from a judge is not the kind of thing I think a person would resign for.

Mr. GRAY. No, I did not desire that at all.

Senator BAYH. I thought you did say that you almost resigned because of a disagreement.

Mr. GRAY. That is right. Yes, sir; that is correct.

Senator BAYH. Why do we not discuss that in private?

Mr. GRAY. Yes, sir; I would be happy to.

Senator BAYH. Now, I understand from talking to the chairman that if you have no objection—let me just say this, one of the serious questions I want to propound, so that you will have an opportunity to defend yourself against some of the things that have been said or explain your side of the case, involves the Whitten-Anderson affair brought up by Senator Cook.

Mr. GRAY. Yes, sir.

Senator BAYH. Mr. Anderson and Mr. Whitten, I understand, are going to testify after you. Now, I brought it up with the chairman, and he suggested that if they did make charges directed at you, perhaps you would want to come back afterwards. If you want to come back afterward, I do not want to raise those particular issues now—

Mr. GRAY. No, whatever the committee desires as a whole, that is going to be what I am going to do, to the best of my ability.

Senator BAYH. If these questions—

Mr. GRAY. I think one of the questions that is going to come up, and I am going to answer it right now, is: "Did anybody in the White House tell you to go after these particular individuals?" The answer to that is categorically no. And: "Did the Attorney General tell me to go after these particular individuals?" The answer to that is categorically no.

Senator BAYH. If these questions are raised, or other things alleged about the information you may have had prior to the arrest, you would have no objection to coming back up and putting this issue to rest or giving your thoughts about it?

Mr. GRAY. No, sir; I am at the command of the committee. Whatever the committee desires and votes, why, you know, I am going to do it.

Senator BAYH. Why do we not wait to handle that series of questions. I do not know the facts about all these things. I have read about them and you have read about them. To put the record completely straight, we ought to have your side of the matter.

Let me deal with a couple of things that have already been dealt with somewhat in Senator Kennedy's line of questioning. You talked about Watergate and you described the scope of the investigation as being a full court press. If I might just touch on the specifics, you were concerned about the implications that the Liddys and Hunts and McCords were also involved with others. I assumed you pursued this and felt that part of your mandate was to find out who ordered this thing, and who else might be implicated, who ultimately supported the operation, its financing, this kind of thing?

Mr. GRAY. That is right; who aided and abetted, counseled, guided, financed, participated.

Senator BAYH. We have gone down a number of names. Did you submit that list of all of those that were interviewed? I think you said yesterday you would.

Mr. GRAY. Oh, yes, sir; I would. But then we had a modification, you know, we had 48 hours after the receipt of the transcript to submit the data, and my people are at work cranking up on it.

Senator BAYH. Fine. You did say, as I recall, Mr. Stans was interviewed what, four times?

Mr. GRAY. I think three or four, Senator.

Senator BAYH. Anyhow, he was interviewed more than once?

Mr. GRAY. Yes, sir.

Senator BAYH. Did you ever, did anyone at the Bureau interview former Attorney General John Mitchell?

Mr. GRAY. Yes, sir.

Senator BAYH. When was this?

Mr. GRAY. He was interviewed on July 5, 1972, and Mr. Stans was interviewed, my record here shows, on July 5, 1972 and July 28, 1972.

Senator BAYH. I have heard some things floating around and I would just as soon put this to rest, did you ever interview Mrs. Mitchell?

Mr. GRAY. We endeavored to interview Mrs. Mitchell, but Mr. Mitchell said that Mrs. Mitchell's stories and the things that were in the press were not so and we were not going to interview Mrs. Mitchell. There was no need to interview Mrs. Mitchell and that was that.

Senator BAYH. Why did you want to interview Mrs. Mitchell?

Mr. GRAY. As I recall it now, and I may have to correct this, there was that article in the paper that said she was going to do a blockbuster of a book that was going to reveal and tell all, and I am sure it related to that.

Senator BAYH. Had any of the agents, Mr. Kunkel, Mr. Bates, any of those requested that she be brought into the scope of the interviewing?

Mr. GRAY. Have they requested this? No, they did not. It would have probably initiated at the case agent level but I do not know where it initiated. I will have to check that out.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the record, I find that the proposed interview of Mrs. Mitchell arose following a UPI release dated September 27, 1972, which indicated that Mrs. Mitchell told a reporter she had thrown out many hints about the bugging matter and indicated that she knew something about the matter. This release was discussed between the Supervisors of the Accounting and Fraud Section and based on the fact that the UPI release indicated she knew something about the matter, a memorandum was prepared dated September 27, 1972, recommending that Mr. Mitchell be contacted to arrange for an interview of Mrs. Mitchell. I approved a recommendation that the interview with Mrs. Mitchell be cleared through the Department of Justice. This was done and the interview was approved.

Senator BAYH. Is it——

Mr. GRAY. But I did not say, "Boys, let us go get her and see what she has to say." I did not do that. That is not the way it originated up the chain to me.

Senator BAYH. Is it standard operating procedure—let's first say that I am amused by some of the things that Mrs. Mitchell says and I think that she is quite a lady, and I do not ask this to embarrass her or anybody else—but is it customary in the process of the investigation of a matter involving a violation of the criminal law for a husband to be able to say that the FBI cannot interview his wife?

Mr. GRAY. I do not know if that would be customary, but one of the things I have found in the FBI, Senator, is that the men and women of the FBI have an innate sense of courtesy, decency, and dignity, and I think that under these circumstances this was appropriate. This man was a former Attorney General of the United States and I think we would have accorded that courtesy to any officer of the Government regardless of administration. It was just a matter of courtesy and I do not think, I cannot classify it as a normal procedure except for individuals of that type. But generally, we advise Senators and Members of Congress when we are going into any area where they are going to have a particular interest, so it is partly that innate sense of dignity, decency, and courtesy.

Senator BAYH. Let me say that is a sort of double standard. I think you are sort of asking for trouble. If I may make an observation—well, I will not proceed with it.

Mr. GRAY. Well, I may be giving you the wrong answer. Maybe the Federal Bureau of Investigation, before it interviews a man's wife, does ask him. I do not know. I think this is more a kind of procedure that we would just go right ahead and interview. I had better check to be specific. But this is my immediate visceral reaction as to the reason why we proceeded in this manner.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking this matter, Senator Bayh, I have learned that each situation depends on the circumstances of the individual case and the person involved in the potential interview. We do not have any rule that a husband is or is not contacted when an interview of his wife is desired. It is strictly up to the Special Agent and his supervisor to decide whether a husband would be contacted if we wanted to interview his wife. In this particular instance, our contact with Mr. Mitchell was for two purposes. First, we contacted him as a courtesy because he was the former Attorney General of the United States and secondly because we did not know Mrs. Mitchell's location at that time and would, of necessity, have to go to someone who probably would know her location, such as her husband, Mr. Mitchell.

Senator BAYH. There is no husband and wife privilege there, I suppose—

Mr. GRAY. No, the recommendation came up to me in a memorandum from Mr. Bolz to Mr. Bates, this is the way things are done in the Bureau, September 27, 1972, "Recommend that former Attorney General Mitchell be contacted to arrange for interview of Mrs. Mitchell. If this is approved it is believed that contact with Mrs. Mitchell should be made by special agents who have had previous contact with her while Mr. Mitchell and his family were afforded protective services by the FBI as those agents have an established rapport with her."

Senator, frankly, I read that recommendation as being a recommendation grounded on courtesy and nothing more than that.

Senator BAYH. That does not recommend that she not be interviewed by anybody, does it?

Mr. GRAY. No, no.

Senator BAYH. But she was not?

Mr. GRAY. No, that is right. That former Attorney General Mitchell be contacted to arrange for interview with Mrs. Mitchell. I approved this.

Senator BAYH. Then when he was contacted——

Mr. GRAY. I did not say no.

Senator BAYH. When you interviewed Mr. Stans and Mr. Mitchell, did they give you, or any of the agents, any information about some of these financial contributions that ended up in Mr. Stans' safe?

For example, I picked up a paper yesterday morning and there was a disclosure about Mr. Vesco. Did any of the agents uncover that kind of information when they were asking questions of Mr. Stans or Mr. Mitchell or anybody else?

Mr. GRAY. On Vesco?

Senator BAYH. The funds, all of that cash that was utilized to support the operation.

Mr. GRAY. The only thing that would be close and similar to it, but perhaps not on all fours, would be the Ogarrio checks totaling \$89,000 from the drafts in Mexico City.

Senator BAYH. The disclosure made yesterday by Mr. Sears, I think, was from New Jersey.

Mr. GRAY. Vesco? That is on Vesco?

Senator BAYH. Yes.

It is fair to say that this is probably pertinent because you were after not only who did it, but who supported it, financed it, who put the gasoline in the tank? Either Mr. Sears was not telling the truth yesterday or Mr. Stans or Mr. Mitchell were not telling the truth, or they were not asked the right questions.

Mr. GRAY. Well, as I understand right now, although I have not followed Vesco, I asked if we were involved in Vesco, that is, in the SEC investigation, and we are not in Vesco at the moment. We have not been asked to get into Vesco.

Senator BAYH. Did anybody in the process of investigating, in asking these questions, ever ask where did the money come from to pay the salaries of those characters over at the Watergate?

Mr. GRAY. Yes, we tried to find that information out, Senator, sure.

Senator BAYH. And——

Mr. GRAY. We found, the most that we could find, were the authorizations for these so-called secret funds that Jeb Magruder is alleged to have authorized in the sum of \$250,000 that he kept in the safe. We did not go into the contributions aspect of it, that is, under the election laws. We do not go into that without the specific authorization and direction of the Department of Justice under a Department of Justice order that is some 15 years old with regard to election laws.

Senator BAYH. But as far as part of the——

Mr. GRAY. I think, and maybe I am not really understanding you, you are asking me did we check to see about contributions, who was making contributions.

Senator BAYH. You felt that your mandate was the violation of that communications statute?

Mr. GRAY. That is right, sir.

Senator BAYH. It would seem to me that part of this interrogation would be to find out not only who did it but where the money came from to make it possible to do it.

Mr. GRAY. I do not entirely agree, Senator Bayh. I think we had to find out where the money came from and I think we found out where the money came from. The \$250,000 basically was a basic nut in the Committee to Re-Elect the President, the fund authorized by Jeb Magruder initially when this operation, this intelligence-type operation, was set up.

Senator BAYH. What sort of committee rule are we operating under here?

I have about another 5 minutes of questioning. I do not want to take that if it is going to come out of your time.

Senator TUNNEY. The chairman indicated to Senator Kennedy that the hearing would continue until 4:15.

Senator BAYH. I see the clock up there says 4 o'clock.

I will yield to the Senator from California with the understanding that unless our witness gets tired and unless that clock speeds up I am going to continue this line of questioning for about another 5 minutes.

Senator TUNNEY. I cannot go into all my questions and so I will take just 5 minutes of the time and then, Senator Bayh, you continue. Later on, if next week Mr. Gray is back, I will have an opportunity to ask him some other questions with regard to procedures.

Mr. GRAY, there were allegations that files of the Democratic Presidential candidates were turned over by the FBI to the White House last year. Do you have any information on that?

Mr. GRAY. No, sir, and if any such action was taken it was done totally, completely without my permission, behind my back, under the table, and I doubt very, very much that that was done. I would be very, very surprised.

Senator TUNNEY. But you were aware of the allegations?

Mr. GRAY. Oh, yes, I was aware of the allegations and, of course, I am aware, Senator Tunney, of a lot more allegations regarding a whole lot of other things that have been done between the FBI and the White House, not necessarily just in this administration but in prior administrations.

Senator TUNNEY. And you looked into that matter, I assume, and you found, to your satisfaction, that it was not done by anyone?

Mr. GRAY. I cannot say specifically that I looked into that matter. But I have given enough admonitions and have expressed myself strongly enough in the matter of telling the truth and giving me all the facts, and laying it out, "Do not hide anything from me, it will go harder for you and I will come down just as hard as I can." In operating in my position, I have to have the absolute virgin truth because that is the only thing that is going to stand up. So I would be very surprised. I think everybody in the FBI has gotten that message now.

Senator TUNNEY. You did not do it yourself and you did not authorize it and you know nothing about it?

Mr. GRAY. Absolutely not, sir, and I will once again state, sir, that I would be very surprised if this occurred.

Senator TUNNEY. If it did occur it would have occurred at a lower echelon in the FBI?

Mr. GRAY. Senator, I do not even like to think that it occurred, but I will answer your question by saying if it is possible, because I do not—you know, I cannot say I have that kind of dictatorial—

Senator TUNNEY. Yes, I do not know what happened either.

Mr. GRAY. The men and women of the FBI, I just feel I know them too well that they would do this kind of thing.

Senator TUNNEY. What about the investigation that was done on Daniel Schorr for a job that he did not even know that he was going to be appointed to?

Mr. GRAY. I do not know anything about that other than what I have read in the paper, sir.

Senator TUNNEY. Was there an investigation?

Mr. GRAY. I do not know. I have not checked it. I will have to check it for you.

Senator TUNNEY. Would you check it?

Mr. GRAY. Yes, I will. I have not even looked.

Senator TUNNEY. And would you also check to see if there was a turning over of files of Presidential candidates to the White House?

Mr. GRAY. Yes, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. No files or other information concerning Presidential candidates were furnished to The White House last year.

Senator TUNNEY. Do you know whether there was any request of any kind, by the White House, for files on the Presidential candidates?

Mr. GRAY. Not one single request was made to me and, if it were, I think it is well known that I would have said no.

Senator TUNNEY. Was there any request for an FBI investigation of Daniel Schorr?

Mr. GRAY. That I do not know. I would have to check that record to see if an applicant-type investigation was requested, and I am going to have to see if there was paper on it.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. An investigation of Daniel Louis Schorr was requested on August 19, 1971, by a member of The White House staff authorized to request Federal personnel background investigations. The investigation was requested as a routine background investigation for possible Federal appointment in which inquiries are made regarding a person's character, loyalty, general standing, and ability. The investigation was referred to our field offices but no inquiries were conducted until the morning of August 20, 1971. Mr. Schorr was contacted at approximately 8:30 a.m. on August 20, 1971, to obtain appropriate background data. He was informed of the investigation and later that morning made background data available to us. At approximately 3:00 p.m. on the same day, we learned from officials of the Columbia Broadcasting System that Mr. Schorr desired the investigation to be discontinued. The investigation was discontinued that hour pursuant to instructions from The White House. Prior to the discontinuance of our investigation, twenty-five persons were interviewed concerning Mr. Schorr.

Senator TUNNEY. Would you know about it if there had been such?

Mr. GRAY. During my tenure in office?

Senator TUNNEY. Yes.

Mr. GRAY. Absolutely, sure, that is one of the things that the men and women in the Bureau would probably bring to my attention and when it was completed I would have to sign out for it and send it over to the White House. I think, Senator Tunney, you are aware this occurred before I came to the FBI.

Senator TUNNEY. I am glad you brought that out.

Mr. GRAY. Yes.

Senator TUNNEY. I was not aware of it.

Mr. GRAY. Oh, it did. I was not in the FBI at the time.

Senator TUNNEY. Just one final point. When these files are sent to the White House, investigative files are sent to the White House, at a request of a White House counselor, is there any restriction on the use of these files? Is there any restriction as to which White House counselors can see them?

Mr. GRAY. Yes, sir. I would like to clarify a point I made earlier. We cannot really use the term "files." We have to talk in terms of exactly what we send: is it a summary memorandum, a letterhead memorandum, an FD-302, teletype, or do we bundle the whole investigative file together, consisting of every single piece of paper that has been generated, and send it over? The latter we do not do. In fact I sent, in this case, first a letterhead memorandum and I would limit this information to the counsel to the President for a specific reason. I did in this case when he was charged with a specific responsibility by the President, or to Mr. Ehrlichman or to Mr. Haldeman, not everybody in the White House. Nobody beyond those three will ever be able to call me and request anything from me because they will not get it from the Federal Bureau of Investigation.

Senator TUNNEY. Is it for their eyes only or is it for the eyes of all three?

Mr. GRAY. No, I usually give it to the individual for his information and the President's information.

Senator TUNNEY. For his information only?

Mr. GRAY. Because he is, Senator, specifically assigned the task by the President and that is why I send it to him.

Senator TUNNEY. Do you know whether the President ever sees it?

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

Senator TUNNEY. You do not?

Mr. GRAY. I know in the case of the Watergate that John Dean made personal reports direct to the President because he told me he did.

Senator TUNNEY. Mr. Gray, I have no reason in any way to doubt your integrity. I think that you have handled yourself here as a person who is speaking the truth.

But one of the reasons that I feel strongly that we ought to have Mr. Dean come down and testify to the committee, and perhaps Mr. Colson, is that I am shocked, quite frankly, at the possibility that something that you, as Director of the FBI, send to the White House could be used by White House counselors to disseminate to a man like Segretti, or possibly to someone like Dita Beard or to the ITT. It seems to me that in any procedures in which these classified documents in the FBI are sent to a White House staffer for the purposes of briefing the President, they should remain completely confidential, and the situation in which there is a possibility that they are disseminated widely within the White House staff or disseminated to third parties outside the White House is terrible.

Mr. GRAY. I have no reason to believe that occurred, because in my initial discussions with Mr. Dean he and I agreed these would be safeguarded with the greatest care that he could afford them. This was discussed between us. I think we have got to realize, too, Senator

Tunney, what was delivered. The principle you are stating is a sound one. I agree with it. But I think in this specific case what were delivered were FD-302's and teletypes as a part of the serials that I have in my possession, and actually, if a disclosure was made to Mr. Segretti, according to this newspaper article, it was a disclosure of what Mr. Segretti had already said to us. But I agree with your principle 100 percent.

Senator TUNNEY. I am glad to hear that. I think that one reason for having Mr. Dean, and perhaps Mr. Colson, be here is to indicate just what they do with documents that you send, or any other FBI Director sends, to the White House.

Mr. GRAY. I have not ever sent any to Mr. Colson.

Senator TUNNEY. Yes, but I think it is an outrage that these secret documents get into other hands, and we have had enough allegations that they did get into other hands that there is real doubt in my mind as to whether or not they did.

I am convinced, from your testimony, that you did not do it, but I am very deeply concerned about the dangers that exist.

You report to the President and you report to the Attorney General, and I can understand your giving them anything they want that you have in your files. But what I do not understand is a procedure at the White House level that is so sloppy that this is a possibility that these documents could be made available to third parties and, although you say you do not know whether they were or they were not, you would have to accept Mr. Dean's word. I do not think as a U.S. Senator, that I necessarily would have to take their word as it was expressed to you.

Mr. GRAY. No, I think your point there is well taken and all I can tell you, Senator, is in the discussions with Mr. Dean both of us agreed heartily that these have to be safeguarded with the tightest security that we could give to them. I made this very, very clear and he was in complete accord. I have no reason to believe that he did not do just that.

Senator TUNNEY. If you found yourself in a position, if you are confirmed, in a position where you would be compromised would you be prepared to resign?

Mr. GRAY. Senator, I came out of the Navy with a good reputation, and I have tried to maintain that good reputation. When I was a boy growing up my mother said, "Pat, the world can take everything from you but your reputation and your education", and if I thought that was being tarnished I would return to southeastern Connecticut and go back into my law firm and I really mean that.

Senator TUNNEY. You indicated that once you almost resigned from the Justice Department?

Mr. GRAY. Yes, that is correct. I came close to it.

Senator TUNNEY. Would you go into it?

Mr. GRAY. Senator Bayh and I got into it and we will discuss it and I will lay it all out for you.

Senator TUNNEY. I am sorry.

Senator BAYH. I have three or four more questions.

Senator Gurney, do you have anything that you would like to ask here?

Senator GURNEY. I just have a surveillance role here. [Laughter.]

Senator BAYH. I thought that was Mr. Gray's work.

Mr. GRAY. I thought that was a role that nobody wants and that—

Senator BAYH. That is the role you have.

Mr. GRAY. Yes.

Senator BAYH. As I recall the Vesco business, and I don't want to put words in your mouth, but did you reach the conclusion in your investigation that in that safe there was \$250,000, the intelligence kitty that had been authorized by Mr. Magruder, and once you reached that point that you felt you had no responsibility for determining how that money got there?

Mr. GRAY. No, sir, we didn't. We tried to find out how it got there, through the channels within the Committee to Re-Elect the President and who authorized it, where did it come from, what kind of money was it, but we didn't get to who gave it except in the case of the \$89,000 and the \$25,000.

It was \$114,000 involved—\$89,000 in the Ogarrio checks and the Dahlberg \$25,000 check. But what we really nailed down were the bills found on the Watergate subjects, and my men came to me and said, "We can't trace all these bills." I said, "You go to every single bank and talk to every single teller," and we did that all through that Pennsylvania area. I told them every bank, and every teller, try to lay it out, find where those dollars were and who they gave them to that those tellers can identify, but we didn't get to who contributed it.

Senator BAYH. Did the agents ask Mr. Mitchell or Mr. Stans where it came from?

Mr. GRAY. I don't know that they asked them where it came from. I will have to ask that question and provide that answer for the record, and I will.

Senator BAYH. I wish you would.

Mr. GRAY. Yes, sir.

Senator BAYH. Also what the answer was.

Mr. GRAY. My recollection is that Mr. Mitchell's statements to our agents were that he had no knowledge whatever of the financial arrangements, that this was Mr. Stans' responsibility, and in talking—I will provide it for the record—but in talking with Mr. Stans, as I am trying to remember those interview reports, I don't believe that we asked him for specific contributors and names of contributors, but I am going to have to check the FD-302's, reports of interviews, and provide that information, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the FD-302 setting forth Mr. Mitchell's interview, I find my recollection mentioned above was accurate and that Mr. Mitchell told our Agents he had nothing to do with the financial aspects of the Committee to Reelect the President and this was handled completely by Mr. Maurice Stans. On July 14, 1972, Mr. Stans was contacted specifically regarding the \$100,000 contribution to the Committee which was in the form of four bank drafts payable to Mr. Manuel Ogarrio, totaling \$89,000 plus \$11,000 in cash. Mr. Stans said that he had been advised by Mr. Sloan of the receipt of the \$100,000 on April 6, 1972, and that the amount was accounted for as cash on hand as of April 7, 1972. He said he believed the \$89,000 in bank drafts had been given by Mr. Sloan to Gordon Liddy and the cash was later deposited by the Committee. He was also asked about the \$25,000 cashier's check from Kenneth Dahlberg and he said he believed Liddy had cashed this check and the Committee had received the funds and he

thought the \$25,000 was included in a deposit to the Committee account made May 30 or 31, 1972. He was asked if there were any written records concerning the \$25,000 cashier's check or \$89,000 in bank drafts and Mr. Stans said he had seen none but had been advised by Mr. Sloan the Committee had actually received the cash for these. All information pertaining to the contribution of funds was furnished to him orally by Mr. Sloan and Mr. Stans had received no receipts or memoranda from Mr. Sloan documenting either the \$25,000 or \$89,000 bank drafts. Mr. Stans was asked who Mr. Sloan had to account to for the funds and Mr. Stans replied he accounted to no one. Mr. Stans was again questioned concerning funds on July 28, 1972. At that time he said he was aware there was a considerable amount of cash on hand maintained in the office, that he never had occasion to draw from this cash and Mr. Sloan was in full charge of the cash on hand. He said the cash varied from \$200,000 to \$350,000 and he believed the cash was ultimately deposited in the bank about May 30, 1972, and he believed that the deposit was for approximately \$350,000.

Senator BAYH. In listening to the discussion relative to why Mr. Haldeman was not asked, not interviewed, not questioned, and Mr. Ehrlichman was, I came away a little bit confused. As I have studied the White House pecking order in the organizational charts down there—and you are much more familiar with them than I am—Mr. Chapin, Mr. Magruder, Mr. Colson, Mr. Strachan, even Segretti and Hunt were all in the line of command directly responsible or ultimately responsible to Mr. Haldeman, not Mr. Ehrlichman. It would seem if we were trying to find out just how far this thing had gone, who had the ultimate authority, that maybe that man should have been questioned.

Mr. GRAY. That is a good question, and it is one that I asked in preparation for these hearings. It is one that I did not ask during the conduct of the investigation because at no time were there any leads developed that would lead us to him. It just wasn't set out. Don't think there are not an awful lot of people in the Federal Bureau of Investigation who are frustrated that we have not been able to really find out what we hoped we would be able to find out.

Senator BAYH. Did anybody at any level of government suggest to you that you shouldn't call—you shouldn't interrogate Mr. Haldeman?

Mr. GRAY. No, sir; that was not done. Mr. Kinley reminds me that Mr. Hunt and Mr. Liddy worked on Mr. Ehrlichman's side and not Mr. Haldeman's. But that is a small point. The principle you state is what is important here. We just, Senator, did not have the leads or evidentiary pattern that pointed to any involvement whatsoever of Mr. Haldeman, and no one told me that I could not interview him at all. I had no restrictions placed on me.

Senator BAYH. I won't pursue that further, but you have Ehrlichman and Haldeman, whatever their responsibilities are. In a Senator's office, if you found two or three guys working in my office who have their hands in the cookie jar, or part of a conspiratorial thing as this one was, someone would want to know who was the boss.

Mr. GRAY. That is correct. We engaged in a lot of theories throughout this case. There were a lot of discussions about it, and there were many theories.

Senator BAYH. But nobody ever thought to ask if the Chief of Staff of the White House had any information?

Mr. GRAY. No, sir. No, sir. It was never suggested and never came up; and in the conferences that we have had to review the entire Watergate investigation, this is the explanation that we arrived at.

I believe it to be a genuine and sincere explanation. At no time did I, reading the teletypes and the interview reports, think that anything pointed to Mr. Haldeman.

Senator BAYH. You referred to the FD-302's and the teletypes. Could I ask a couple of questions about what Mr. Baldwin was doing? He was interviewed? I understand he was questioned?

Mr. GRAY. Alfred Baldwin?

Senator BAYH. Yes, who was across the street.

Mr. GRAY. Yes, sir.

Senator BAYH. Was this type of information among the information that was passed on to Mr. Dean prior—

Mr. GRAY. Sir?

Senator BAYH. Was the type of information that Mr. Baldwin would have supplied, was that the type of information that would then subsequently have been passed on to Mr. Dean?

Mr. GRAY. That I don't know, sir. We don't know where that information went. You are talking about the information that he received through his monitoring activities?

Senator BAYH. Yes.

Mr. GRAY. And that was passed along to Mr. McCord who is alleged to have typed memorandums for delivery to some individuals.

Senator BAYH. No, sir; I am not talking about that.

Mr. GRAY. No?

Senator BAYH. I suppose that when Mr. Baldwin was interviewed by agents of the FBI, he was asked what he was doing and what kind of conversations he overheard; is that an accurate assumption?

Mr. GRAY. Alfred Baldwin was asked those questions; yes, sir.

Senator BAYH. Now, in the FD-302's and the teletypes that were sent along to Mr. Dean, was the type of information contained in any interview of Mr. Baldwin passed on to Mr. Dean?

Mr. GRAY. I will have to take a look at the information that was passed out. I have it in a safe in my office. I will have to take a look at it, and look at the FD-302 and see what was sent out from Baldwin, and give you a precise and accurate answer and supply the information.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I find that Baldwin informed us as to the nature of the overheard conversations. Mr. Dean was furnished the following: An FD-302 setting forth an effort to interview Mr. Baldwin on June 21, 1972, when he declined to be interviewed on the advice of his attorney; an FD-302 which set forth an interview on July 5, 1972, with Mr. Baldwin at which time photographs were displayed to him; two FD-302s containing results of interview of Mr. Baldwin on July 10, 1972; and a summary teletype dated July 10, 1972, containing a resume of Mr. Baldwin's interview. The July 21, 1972, summary letterhead memorandum which was furnished to the Attorney General contained a synopsis version of Mr. Baldwin's July 10, 1972, interview and I believe that the Attorney General gave Mr. Dean a copy of that memorandum.

Senator BAYH. All right, I appreciate that very much.

Mr. GRAY. You know, Senator Bayh, we don't have in our 302 the exact type of information, I am sure of that, but I will check it. I am trying to rack my memory to be sure, but I will check it and give you what we have.

Senator BAYH. The reason I asked is that I am convinced, as Senator Tunney has said and as I think I said earlier, that you are giving

us a straight story as you see it, although we may differ as we look at the facts.

Mr. GRAY. That is natural. You know this is one of the neatest cases to have when you come right into the FBI, a real great thrill to have this Watergate case. [Laughter.]

Senator BAYH. That probably won't be the last one you have.

Mr. GRAY. No; I don't think I will ever have another one like this, believe me.

Senator BAYH. At least not for 4 more years. [Laughter.]

Mr. GRAY. I would hope for 400 more.

Senator BAYH. Let the record show that the Senator from Indiana laughed when he said that.

Mr. GRAY. Smiled.

Senator BAYH. Just to follow this through one last time—I don't want to beat it to death, because you said you will submit this. I have had a chance to look at you, and a chance to meet you on a couple of occasions, and frankly I wouldn't know Mr. Dean if he walked into the room. I am inclined to feel, as Senator Tunney says, there could be a very weak link there, that information that was given to him, we have a lot of stories that other people got it. I would, just sitting here and knowing everything I know, which is not nearly as much as I ought to know, I would think Mr. Dean leaked it rather than somebody down at the FBI. I would say that is where the leak was rather than somebody down at the FBI, but we don't know that.

Mr. GRAY. We don't know. But what I am saying, Senator, and what I am betting on, is the probability it didn't occur.

Senator BAYH. You see the reason I would really like to know what was in that type of information you gave. July 17 was the first memo, was it?

Mr. GRAY. No, July 21.

Senator BAYH. July 21.

Mr. GRAY. It was a letterhead memorandum that went to the Attorney General. As I said, I don't know as a fact, but I believe that letterhead memorandum also was sent over to John Dean.

Senator BAYH. Now, you mentioned, I think, that continuing information was given Mr. Dean and the Attorney General as the investigation proceeded?

Mr. GRAY. That is right. Not in the early beginning information wasn't given to Mr. Dean.

Senator BAYH. No, after the 21st.

Mr. GRAY. Oh, yes, after that.

Senator BAYH. The first memorandum was the 21st, and then how often was followup information given?

Mr. GRAY. In the form of the 302's and the teletypes as I would read them, and be sure exactly what we were giving, I would transmit them to him and get them back. He didn't keep them for long periods of time, you know. This was not a thing where I sent them off and he kept them and held on to them.

Senator BAYH. This could have been done on a daily basis?

Mr. GRAY. No, it was not done on a daily basis because it took some time to read those. You know they are thick—they are thick files like these, Senator.

Senator BAYH. What really concerns me, again—and is not concerned directly with you—is what happened, where the weak link might be. If that information in there contained the substance of Mr. Baldwin's monitored conversations, that was political information, conversations of political officials the other side heard. To be disseminated in the midst of a campaign would be a tough thing, particularly if that information was the result of an illegal wiretap. It should not be disseminated at all.

Mr. GRAY. But, you see, Senator, this had all been acquired, as we understand it, from our interview reports these fellows had monitored from about the 29th of May, as I recall the interview reports, until some time in the middle of June.

Senator BAYH. So the White House already had this information?

Mr. GRAY. I don't know that. I don't know who had that. We have not been able to establish that, but what I am saying is there was a procedure being pursued there, Senator. So this was not something that we were throwing into the domain, so to speak, for the first time. Somebody had received that information earlier, and I don't know who. All I know is that we did send these over to Mr. Dean, as I testified. We tried to find out what happened with that information.

Senator BAYH. Let me ask as a lawyer—I don't know the answer to this question, but I am going to find out—there is a statute that we are both familiar with which prohibits disclosing communications that are received as a result of an illegal wiretap. Does that statute provide that these provisions are waived if there has been espionage in which you have reason to believe this information has already been disclosed?

Mr. GRAY. No; I wouldn't say that, not with reference to that statute, Senator, I wouldn't say that, but I would have to research it. That would be my instantaneous reaction.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have had the matter researched, Senator Bayh, and have been informed that the statute, Title 18, U.S. Code, Section 2511, provides no waiver of the prohibition against disclosure when there is an espionage charge involved. In fact, the statute (Title 18, U.S. Code, Section 2515) specifically prohibits the use of intercepted wire or oral communications as evidence before any court, grand jury, Department officer, agencies, regulatory body, legislative committees, or other authority of the United States. Therefore, if an espionage charge is involved and criminal prosecution is contemplated, the statute would prohibit use in the prosecution of evidence obtained through unlawful intercepts.

Senator BAYH. Mr. Gray, you have been very kind.

As I said, I will not proceed with questions on the Whitten-Anderson matter because I would suppose, after talking to the chairman, that you would be given the opportunity to come up and rebut any of the allegations that are made.

Mr. GRAY. If the committee specifically desires me to come, I will come, Senator.

Senator BAYH. I would not raise that if we had not been down this pike before, that unless we get a majority of the committee to have witnesses come back, they would not come back.

Mr. GRAY. No. What I am saying is I am at the call of the committee. You know this is a committee of the U.S. Senate. If they want me to come up, I will jolly well be here.

Mr. BAYH (presiding). I understand that my authority now is to recess the hearing until 10:30 on Tuesday morning.

I appreciate your courtesy.

I understand you are still the witness. Is that the way you interpret it.

Mr. GRAY. Yes, sir; I am.

Senator BAYH. Thank you for your courtesy.

Mr. GRAY. Thank you, Senator Bayh.

(Whereupon, at 4:45 p.m., the committee recessed, to reconvene at 10:30 a.m., Tuesday, March 6, 1973.)

NOMINATION OF LOUIS PATRICK GRAY III

TUESDAY, MARCH 6, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 11:05 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Kennedy, Hruska, and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

Senator EASTLAND. The Chair and each member of the Judiciary Committee has received a letter from the American Civil Liberties Union. I will read it into the record.

(The letter referred to follows:)

WASHINGTON NATIONAL OFFICE,
AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., March 6, 1973.

HON. JAMES O. EASTLAND,
*Chairman, Senate Judiciary Committee,
New Senate Office Building, Washington, D.C.*

DEAR SENATOR EASTLAND: Following the course of the Senate Judiciary Committee's hearings on the confirmation of L. Patrick Gray, we have become concerned over certain developments which may affect the rights of individuals to their privacy and to procedural fairness during this legislative investigation.

Our concern has been triggered by the fact that no one has publicly questioned the offer by Mr. Gray to turn over all of the FBI files on the Watergate case to members of the Senate. These files undoubtedly contain information about individuals which should not be disclosed without careful consideration of their rights. Questions about such information, and request for documents, should be narrowly drawn. Procedures for the handling of such information should also be carefully constructed.

The ACLU has for many years opposed legislative investigations which ignored the rights of individuals to privacy and to procedural fairness. We have developed the enclosed set of guidelines which we believe should govern the disclosure of information about individuals in the course of such investigations. The most important of these guidelines include:

No mandate, however specific, may authorize a congressional committee to investigate merely for the sake of exposing unorthodox views or criminal activity. Congress has no power to expose individuals, but only to conduct legislative investigations pursuant to its constitutional powers.

Before airing defamatory, prejudicial, or adverse information, a committee should screen such material in executive session to determine whether or not it is reliable. The individual whom the information tends to prejudice should be properly notified and given an opportunity to appear before the committee in executive session with other witnesses if he so requests, or with other evidence rebutting the information. The same requirement of fair notice pertaining to witnesses at public hearings should apply here, and should include a ban on disclosure of the

names of witnesses in advance of their appearance. There should be an absolute prohibition on the publication of information discussed at the session, prior to a determination of whether to hold a public session at which the defamatory information will be presented. An investigating committee should not recall for a public hearing a witness who has claimed his privilege against self-incrimination in executive session in response to certain questions put to him, merely in order to ask him the same questions publicly.

If adverse testimony is given in public session after the committee has determined in executive session that it is appropriate to the investigation, any person about whom such testimony is offered should be afforded an opportunity to:

(a) Testify or offer sworn statements in his behalf;

(b) Subject the witness offering prejudicial testimony to cross-examination; and

(c) Obtain the assistance of the investigation committee in compelling the attendance of witnesses and the production of documents reasonably necessary to rebut the charges against him.

Implementing these safeguards, which relate to the public use of material in FBI documents, would be impossible if raw FBI data were simply handed over to your Committee without clear restrictions on its dissemination within the Senate prior to any public disclosure. For example, we would hope that you would require that only a single copy of any document be transmitted, with the understanding that it may be examined but not copied and that no disclosure will take place prior to compliance with the safeguards outlined above.

We do not offer these suggestions to impede either the search for the truth or the effort to determine whether L. Patrick Gray should be confirmed as Director of the FBI. However, we believe that those inquiring into the way in which the FBI has conducted an investigation should themselves act with the utmost fairness—that same fairness which, we trust, members of the Senate would exercise if the files in question were those which Mr. Gray has testified exist on members of the Congress.

We, therefore, request that you take steps to insure that safeguards along the lines we have suggested be established to protect individuals who may be mentioned in any FBI documents prior to the transmittal to Congress of any additional FBI information.

We are also concerned about the possible disclosure of the contents of the illegally overheard conversations. We represent those individuals whose telephones were tapped and who participated in a majority of those conversations which were illegally intercepted in the Watergate incident. As you know, the United States Court of Appeals for the District of Columbia Circuit issued the attached orders during the Watergate trial suppressing the contents of the illegally intercepted telephone conversations and preventing their disclosure.

Further disclosure of the contents of the conversations to members of the Senate and to anyone else would be a clear violation of the federal wiretapping law, is in no way relevant to your inquiry into the qualification of Mr. Gray, and would, in the words of the Court of Appeals, "frustrate the purpose of Congress in making wire-tapping a crime."

To insure that the contents of these conversations are not illegally disclosed, we ask that you take steps to make it clear to the FBI that under no circumstances are the contents of the conversations to be contained in any information transmitted to the Senate in the course of this investigation.

We look forward to hearing from you on these matters.

Sincerely,

CHARLES MORGAN, Jr., *Director*.

Senator EASTLAND. Of course, that is a decision the committee would make.

Senator HRUSKA. Would the chairman yield for a couple of questions of Mr. Gray?

Mr. Gray, you have heard the letter read, and also have a personal copy which was sent to you by Mr. Morgan.

I would like you to develop further the extent of your offer for availability of the FBI files to which reference is made. My recollection is that you said they would be available to members of this committee and to Members of the entire Senate, to the exclusion of staff members and assistants; is that correct?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. Yes, Senator Hruska, that is correct.

The only thing I added was that they would be in the custody of two knowledgeable agents, special agents of the Federal Bureau of Investigation, who would answer any questions that a Senator would want answered. We are very proud of this investigation and feel that we carried it through in accordance with the standards and customary procedures of the Federal Bureau of Investigation. We pushed it aggressively and vigorously.

Senator HRUSKA. Was it contemplated by you and is it contemplated by you now that those files remain in the custody of the FBI during this examination?

Mr. GRAY. Yes, sir; that was a clear contemplation.

Senator EASTLAND. Of course, that is always true?

Mr. GRAY. That is correct, Mr. Chairman.

Senator HRUSKA. Would the files be brought to the Capitol for the purpose of examination or would the Members of the Senate have to go to FBI headquarters?

Mr. GRAY. Senator, it was my intention in making that offer that the agents would bring those files to the Senator.

Senator HRUSKA. But they would not be "transmitted" in the sense that the letter repeatedly suggests by the use of words like this: "to turn over all of the FBI files to Members of the Senate * * * to deliver the reports to the Senate?"

It would not be a delivery since custody would be retained by the FBI at all times and without interruption; is that correct?

Mr. GRAY. That is correct. When the Senator had concluded his examination for that particular period, the special agent would pick up the files and return them to the FBI.

Senator HRUSKA. And the FBI agents would be present in the room to answer questions?

Mr. GRAY. Yes, sir; they would be present to answer any questions.

Senator EASTLAND. I know that every file I have ever seen, and that is normally several times a week, I see that file in the presence of an official of the Justice Department.

Mr. GRAY. That is correct, Mr. Chairman. That is our procedure.

Mr. Chairman, if it is appropriate at this time, I do have a statement that I would like to address to the chairman and members of the committee, sir.

Mr. Chairman, I believe the record will show that I have attempted to answer every question that has been put to me by this committee. When I have not been absolutely certain of the facts, I have promised to supply them and I have supplied them.

I accept and I welcome this probing inquiry. It is a mark of the importance you very rightly attach to the high office to which I have been nominated.

In particular, you now have before you in the testimony given to date a thorough record of the manner in which the FBI conducted the Watergate investigation—as aggressive and as exhaustive an investigation as the FBI has ever conducted or is capable of conducting within the four walls of its jurisdiction.

I placed no restrictions on our agents in the conduct of this investigation. In fact, I ordered an all-out effort and we turned in just that kind of performance.

The complete substantive record has also been made available to the committee members. I agreed to provide this record in the custody of two experienced agents and promised that the agents would answer any questions a Senator might have as the Senator went over the record.

At some point, however, it seems to me that a critically important distinction must be drawn, Mr. Chairman.

Every procedural detail of the Watergate investigation is fair game for this committee. So is every detail of FBI organization and procedure across the board. To develop that record is to develop the record of my conduct and performance as Acting Director of the FBI since May 3, 1972. That, of course, is what these confirmation hearings are all about.

The substantive record of the Watergate investigation, on the other hand, raises very different questions. The Senate, by formal resolution, has constituted a select committee to pursue that inquiry down every possible avenue. I feel certain we all would agree that, under the chairmanship of Senator Ervin, that resolution will be fully and ably discharged, and under such procedural safeguards as will protect innocent persons who were simply bystanders.

It is my further understanding that under these safeguards the select committee will have access even to the grand jury proceedings.

I am also concerned, Mr. Chairman, that I may be impacting upon national security, constitutional due process, and the right to privacy as I respond to questions from the Senators of this committee. I know that I am reaching the point where I may be publicizing FBI investigative techniques and tactics. I also know that I run the clear risk of making inadvertent disclosure of grand jury testimony that has been utilized in our investigation.

I believe that guidance from the committee is required in order that matters of national security are not discussed in the public forum, that I do not in any way affect any motions or appeals that may grow out of the convictions in the Watergate trial, and that I do not breach the right to privacy of those persons whose names and activities are contained in our raw interview reports.

Let me also say, Mr. Chairman, that people will talk to the FBI. The proof is here in this investigation: they will and they did furnish information one-on-one with our agents. But they will not continue to do so if we continue to spread this information on the public record.

I submit, Mr. Chairman, that a critical distinction must be drawn between FBI procedures, on the one hand, and the substance of its investigative findings on the other. Within the context of these confirmation hearings, and with deference to the will of this distinguished committee, I believe the time has come to draw that distinction.

Senator KENNEDY. Do you think in response, Mr. Gray, that we ought to put the hearings over until after the investigation or after the trial?

Mr. GRAY. Senator Kennedy, I think this committee has a very difficult choice. On the one hand—

Senator KENNEDY. What is your preference?

Mr. GRAY. Senator Kennedy, may I please answer your question.

On the one hand, you have the responsibility to look into this matter procedurally and to see that Gray did the job that the Senate and every person in our Nation has the right to expect.

On the other, you are concerned about the substance. You have the select committee to look into that.

Now, in the middle stands your humble and obedient servant, Pat Gray, and I will admit that you have a tough decision.

Do you want to buy a pig in a poke?

But I submit I have sat here, I have answered every question, I have promised to provide information.

I have done my level best to convince every member of this committee that he is not buying a pig in a poke.

And I think that each Senator's examination of our files, including my own written notations on those files, will support and justify a report to vote out my nomination. So obviously, I do not think that this committee should wait for the results of the Ervin select committee.

This is asking a lot of you and I appreciate that.

Senator KENNEDY. What is the reluctance, then, given the very legitimate concerns you have expressed here this morning? I believe them to be legitimate although I do not have that information in the files at the present time, and have not even had any access to the files at the present time, the files which have been made available to the committee, as I understand it.

I am just wondering whether you would have any reservation about requesting that we put off the hearing until after the appeals have been exhausted by those that have been involved in the Watergate, and until Senator Ervin has an opportunity to explore this?

Mr. GRAY. Yes, Senator Kennedy. I do have reservations and, of course, they are personal reservations. But those must be subjugated to considerations of national institutions.

The FBI needs a leader. The FBI needs to know that there is a leader. The FBI needs to know that the individual nominated came up here and responded to the best of his ability to the questions asked by the Senators. I think we have reached a point, really, where Senators can make a judgment as to whether or not this fellow sitting here is trying to give you every last bit of information you are seeking, or whether he is sweeping some of it under the rug.

I could not sweep anything under the rug and exist within the FBI. The FBI would not let me, even if I were so inclined. I am working with a task force of approximately 100 of the FBI's top executives, and if there were any manipulation going on, I would be blown out of the water. Those men wouldn't stand for it.

I do have substantial reservations, therefore, with regard to the interests of a national institution and to the men and women who serve in that institution. My personal reservations must be subjugated to that, and they are.

Senator KENNEDY. Those arguments could have been used when you were first appointed Acting Director, could they not, about the importance of having a leader? I suppose the committee could have been asked to consider your nomination when you originally took charge. It was not the choice of a Senate committee that you were not nominated at the time you were first selected by the administration.

We are faced with the particular dilemma not because of our request. As a matter of fact the timing was through the administration. When you were first appointed, I imagine they could have convened these hearings before the Watergate incident ever occurred.

Mr. GRAY. That is correct. Your point is well taken. I think, looking back on it, the President was wise. One, he sought to keep this nomination out of politics; and, two, he had a nominee who had had a lot of leadership capabilities in his past history. I have worked very hard for 10 months to learn the FBI and to come before this committee and tell you about the FBI and to work with this committee in the future.

So, looking back on it, even though I didn't ask for it, I think the President was very wise not to politicize the nomination. I think he made a wise decision. That was his decision, and yet I have to admit your point is very well taken. I cannot argue against it.

Senator KENNEDY. It would have been less political then, than it is the way it is now?

Mr. GRAY. Looking back on it, I have to say that I think whenever the nomination was made, it would have been a political type of thing, because this is the first—there has been such a paucity of information. The legislators at the national level, both in the Senate and the House, I think, have felt they know very little about the FBI, and no matter when this occurred, I think we would be going through what we are going through now.

But I think really you have asked an awful lot of questions, and I have tried to respond straightaway. I have tried to establish some kind of rapport with this committee, to convince you what type of guy I am. But you have a tough decision.

Senator KENNEDY. Would it have been any different if it were the CIA? I don't know why you think there is more sensitivity necessarily to the political issue involving the FBI than there might be in the CIA. Do you think it is because of your association, political association, with the President?

Mr. GRAY. No, I don't, Senator Kennedy. I think it is because of the fact that the FBI is so close to the people of the United States and the CIA is not.

The CIA operates outside the United States, but we, the FBI, are within the United States. We are close to the people. We are well known to the people of the United States. That is why I make the answer that I do, Senator Kennedy.

Senator KENNEDY. Just to move on. On the question of the knowledge of the material, I think all of us are familiar with having men appointed by the President to important positions, who have not necessarily been familiar with the particular operations of the special department and yet are able to act on these.

Mr. Brennan, Mr. Weinberger, or others. Don't you think we could have done the same with you if we had that opportunity?

Mr. GRAY. No, sir; I don't think so. Because the FBI's operation is so completely different. It moves into our life so completely and so thoroughly. I think if you had had me up here in May or in June, after only 6 weeks in the operation, I would still have been pretty close to being a babe in toyland, even though I was working 18 to 20 hours a day, and driving these assistant directors right up the wall with the questions I continually bombarded them with.

Senator KENNEDY. Mr. Chairman, I want to go into some other areas. I will be glad to proceed now, or in whatever order you would like to proceed.

Senator EASTLAND. Well, if you want to change and go into something else, Senator Hruska had some questions.

Senator KENNEDY. Just on this point?

Senator HRUSKA. Yes.

Senator KENNEDY. OK.

Senator HRUSKA. May I first defer to Senator Gurney?

Senator KENNEDY. Was I yielding?

Senator HRUSKA. On this point?

Senator GURNEY. Yes.

I would like to make an observation on this point. The appointing of a new Director of the FBI is an act of the President appointing one of his executive officers, and the completion of this act is the approval or disapproval of the President's appointment by the U.S. Senate acting initially through this committee.

We may have differences of opinion in the committee as to whether we should wait and confirm the nomination after the Watergate hearing has been finished, or whether we should proceed now. On that score, it seems to me it would be a very poor exercise of judgment to wait until the Watergate Committee is finished, because the final report of that committee is not due until February of 1974, next year.

Obviously, for proper attendance to the affairs of the country, we need to have a Director of the FBI during that interim. But regardless of all that—that is just my opinion, and others may differ on it—it is a decision the committee will have to make, not Mr. Gray.

Senator HRUSKA. Mr. Gray, from your statement and from some of the answers you have given so far this morning, I gather your position is that there are two facets to this proceeding currently before the Senate. One is the consideration of your qualifications to serve as Director of the FBI, and, of course, the other, which is intertwined with it, and inevitably so, has to do with the substance and the merit and the nature of the investigation into certain acts generally referred to as the Watergate incident.

Now, as to the first part, isn't it true that we are concerned with your history as a military man and as a public official in various capacities and with your experience and conduct since you were appointed as Acting Director? We might also inquire of your ideas and principles, since they, too, relate to future operations of the FBI.

However, in connection with the first facet of this inquiry, is it not true that the methods of the Bureau in investigating the Watergate incident have been amply demonstrated during the collection of the report that you have made and the files that you have compiled, and that in those files we see disclosed the nature and the scope and thrust of the instructions that you gave to your men?

Now, would not a consideration of the actual operation of your Department as set forth in those files, be sufficient to enable the Senate to say, yes, he did a good job; he should be confirmed; or to say, no, he did not do a good job; he should not be confirmed.

Is this an accurate summary of the position you have tried to delineate in your statement and in the answers that you have given thus far?

Mr. GRAY. Yes, it is, Senator Hruska.

Senator HRUSKA. Will it matter too much in regard to your qualifications and your conduct as Director, Acting Director of the FBI,

will it matter too much what the final disclosures are in—that is, who did what—that is, what Senator Ervin and his committee have been delegated and instructed and authorized by the Senate to examine the substance of the Watergate investigation.

Will it matter too much what the result of that study is, insofar as your operation of the FBI is concerned?

Mr. GRAY. No, sir; because I operated the FBI in accordance with the FBI standard operating procedures, and we worked very closely with the assistant U.S. attorneys in conducting the grand jury, and with the Criminal Division of the Department of Justice. We have proceeded as we would have proceeded in any major special case, and also proceeded probably with a little bit more vigor because of the fact that this was a unique case.

We must accept that fact, I believe—at least I accept the fact that it was a very unique case.

Senator HRUSKA. You made an offer, Mr. Gray, that every Member of the Senate have availability to the raw files that you have compiled in your Department. I want to say to you that I suffered quite a setback in my thinking and felt that you made a very dramatic and radical decision in making these available.

Proof of the misgiving on my part are now demonstrated quite conclusively in the thoughts contained in the letter from the American Civil Liberties Union. I don't know just what the final appraisal will be as to the wisdom of your decision. I do feel quite certain, however, that had you said "These files will not be available to the Senate," that there would have been many howls and many angry cries of protestation. Thus, perhaps your decision was correct, but it remains the farthest reaching decision as to FBI files that I have personally observed in my 20 years in the Congress of the United States. I hope it will not serve as a precedent for other similar forays into the files of the FBI.

Mr. GRAY. Senator Hruska, I realized from the very first week that I was going to face this decision. I resolved at that time that these files were going to be made available, because it was the only way that the credibility of this national institution, the FBI, could be preserved. There was no other way.

I am sure there are a lot of people within the FBI who differ with this decision of mine. I know, from my own experience within the FBI, that if these files are not handled most carefully, we are going to dry up one of the most valuable weapons the FBI possesses, and that is the willingness of people to talk to us because we maintain the information they give us, or at least we do everything we can to maintain that information, in confidence.

As a lawyer, I knew I was shattering all kinds of precedents. But I felt this case was so different that it could not be used later as a precedent or stare decisis matter to provide to other investigating bodies other files of the Federal Bureau of Investigation. I took that risk.

Senator HRUSKA. I would expect you to be deliberate in your judgment and decisions. It is my hope that all Members of the Senate who will avail themselves of the opportunity to examine these files will honor the spirit in which the offer was made and that they will take into consideration the fact that they are raw files and that they should be read only for the limited purpose for which they are offered.

It would seem to me to be very desirable to avoid what we witnessed last summer when we had extended hearings on the appointment and confirmation of the Attorney General. For weeks on end, we sat in this room, but heard scarcely a reference to the name of Richard Kleindienst and scarcely a reference to the nomination and confirmation hearing. The concentration and almost exclusive attention was paid to the ITT and related matters.

This Senator from time to time suggested that the ITT had not been nominated to be Attorney General of this Nation. But it did not do much good to make that suggestion, because we went on and on and on and on, for weeks on end.

Now, it is my hope, and I express it with all the good faith that I did last summer in connection with the other nomination, that we get into our minds the understanding that the people involved in the Watergate investigation have not been nominated to be FBI Director; Louis Patrick Gray III has. We ought to talk about Mr. Louis Patrick Gray III, his accomplishments, his integrity, his record, and what he has done since he has been Acting Director. We ought to leave other inquiries for other occasions, other committees, and other authorities.

It is my hope that this will happen. Only the events of the next few days will determine whether or not we are embarked upon another experience such as we had last summer, which did not reflect great credit upon this committee or on the Senate of the United States, in my considered judgment.

Senator KENNEDY. Mr. Gray, what you said about the availability of material this morning is not different from what you have said earlier?

Mr. GRAY. I hope it isn't. I have tried to be as accurate as I can, Senator Kennedy.

Senator KENNEDY. It is the same offer?

I was not here for your opening statement today, but what you are saying this morning about the availability of material, how you describe it, is the same?

Mr. GRAY. I hope it is, and I believe it is, and I intend it to be.

Senator KENNEDY. Recognizing part of the dilemma we are going to be in, I think on the first day in response I believe to a question from Senator Ervin, you pointed out:

I would hope, of course, we would not get into the Watergate substantively, but I can readily see that the members of this committee have got to be assured that I went at this with the FBI standard procedure, with its accustomed vigor, and I will do my very best to respond to any of your questions. . . . If we are going to take two bites of that apple, why so be it, let's get with it.

Mr. GRAY. Oh, yes, I remember that, because I was concerned even then about the problems of procedure and substance.

I was in no position on that first day to make the statement I have made today, Senator Kennedy, because I had no way of knowing how the questions were going to go. The inquiries have developed very rigorously. The Senators have asked some very, very tough questions, hard questions, probing questions.

I knew they were going to come. I also knew the only thing that was going to stand up under this kind of questioning was the truth. That is why I have tried to hold fast to this approach throughout this investigation.

Senator KENNEDY. It is really unlike any other investigation by the Department. You can understand why there would be interest by the members of the committee about the procedures which are being followed, because this isn't like a kidnap case. Obviously, it affects the President, and that has involved various aspects of the White House personnel. So there is interest in at least the procedures that were followed in that case.

Mr. GRAY. Yes, sir; I think procedurally, I think so.

Senator KENNEDY. So if we could go into that, I would like, this morning, to probe into a few areas.

Could I ask the Chair, just for my own information, will we have an opportunity to talk with the witness after the examination of the files themselves?

Senator EASTLAND. Sure.

Senator KENNEDY. Have we been offered memorandums of just what will be in those files or how many there are?

Mr. GRAY. No, Senator, we haven't offered that, only the summary of July 21, which we have given to you.

No Senator has asked me for the files yet.

Senator KENNEDY. But they are available as of when you came up here?

Mr. GRAY. Yes, sir; right from the start.

Senator KENNEDY. And how are we supposed to know which memorandums are in there, or which aren't? Are we going to get any kind of index as to which—

Mr. GRAY. We could give you an index, but usually they have only case captions on them.

Senator KENNEDY. I see. How big are we talking about?

Mr. GRAY. You mean memorandums?

Senator KENNEDY. The files.

Mr. GRAY. Oh, the files—I would say—there are 186 investigative reports, Senator Kennedy.

There are any number of memorandums submitted in response to the questions—little notes that I made on these matters—and those are all there.

We intend to make all that available, This has nothing to do with Watergate, but with reference to my Cleveland speech, I found on the memorandum, in my own handwriting, to my speech writers, I said, "Conceptually, let's try a speech responding factually to criticisms of the Princeton conference"—that was *res gestae* at that time. That is what I was thinking about at that time.

You will see critical notes of mine, where I say, "Go get it, move," and so forth.

We will make available all that we have written on this.

In our language, there are probably going to be about 2,000 serials that constitute this file.

Senator KENNEDY. Is it possible that you make available at least some kind of a roster, a catalog or index as to what is in that, so at least—

Mr. GRAY. Yes, we could do that.

One of the things is the summary of the Watergate testimony, corroborative with the investigative files. Here it all is, what the witness told us and what they said in court.

Senator KENNEDY. Have you read the whole file?

Mr. GRAY. The entire file? No, sir. I have read approximately 82 of the 186 investigative reports. But I have read all the memorandums and all of the summary books that I directed be prepared, these kinds of things, so I knew what we were getting and what was coming out in the trial.

The only thing I don't have full access to, Senator Kennedy, is the minutes of the grand jury in toto.

I have some bits and pieces and they are contained in our reports.

An assistant U.S. attorney would brief one of our case agents and say, "Here I want you to follow this through."

We do have that. But you won't see the full minutes of the Federal grand jury.

Senator KENNEDY. You have read 182 out of the 186?

Mr. GRAY. Eighty-two.

Senator KENNEDY. Out of the 186?

Mr. GRAY. These are investigative reports. They consist of an administrative page and a synopsis, as we call it, and one FD-302 report of interview, or there could be six or seven of them. These are all put together in serial form as we call them. That is the way they are reported.

Senator KENNEDY. How long did it take you to read 82 of the 186?

Mr. GRAY. Quite a bit of time. I didn't devote all of my time to reading them. I tried to do it on the evenings and weekends. I was working during the day.

Senator KENNEDY. What would you estimate?

How long do you think it would take a Member of the Senate to read through those?

Mr. GRAY. If a Member of the Senate is going to read all those—of course, it would also depend on how fast he reads—but if he sits there with my agent and goes over it, I think that probably he ought to be able to do it—I am trying to base it on some of the dates and times that I have got—he ought to be able to do it certainly in a week's time, I would think.

Senator KENNEDY. You mean full time over a week?

Mr. GRAY. He would have to spend at least that; yes, sir, an 8-hour day.

We would like to hit the highlights for you.

Ask the agents, but we will make the complete file available.

We have a lot of stuff in there we are very proud of and I personally am very proud of.

Senator KENNEDY. May I direct your attention to your response to some questions about the June 19 memorandums?

Mr. GRAY. Yes, sir.

Senator KENNEDY. As I understand it, you felt that you could not send that over to the White House? Is that correct?

Mr. GRAY. Yes, sir, Senator. That came up to me. It was a letterhead memorandum—first it was a particular memorandum in Bureau format, telling me what this was all about. Then enclosed was a letterhead memorandum; then a letter to Mr. Haldeman, and the LHM was addressed to the Attorney General.

Then the enclosure consisted of facts and circumstances that told us where we were on June 19, 1972.

I had already made the earlier decision in one of my telephone calls with Mr. Felt, we would make no dissemination. We would pass that along to the Attorney General, and he concurred in that.

When this came up in the regular way, it was stopped. It was **not** sent.

Senator KENNEDY. Why did you stop that?

Mr. GRAY. I didn't know exactly what we had hold of in the beginning. We had people with obviously Spanish surname names. I didn't know whether it was a CIA operation. I didn't know exactly what we had, and I thought before we go talking about it we ought to be pretty certain of what we are dealing with. That was my thought.

Senator KENNEDY. Had the White House requested the memorandums?

Mr. GRAY. No, sir, they had not. This is the point I am trying to make, Senator Kennedy. This was a standard Bureau operating procedure.

Senator KENNEDY. In the memorandums, appear the words, "to determine whether a violation of the interception of communication statutes or any other Federal statutes." That is a direct quote, "or any other Federal statutes." What does this mean?

Mr. GRAY. That I think is the thing that covers—it is standard FBI language and standard lawyer language. We don't know what we will run into. We make sure we have put it down there so we have covered ourselves.

I didn't write this, Senator. This was prepared in the General Investigative Division, I believe.

Senator KENNEDY. On the last part of the memorandum, you have indicated its contents will not be distributed outside the recipient's agency. Is that a special warning on that particular memo, or is that a standard feature?

Mr. GRAY. Pretty much a standard feature. The FBI is pretty jumpy about this, as they have been since I came in. I have been looking into this intensively. There was a time I denied FBI reports to various branches of the Government, where I said, I am going to give you only one and don't you dare duplicate it. That created quite an uproar in the executive branch of the Government. It is a part of the continuing action I have taken to preserve these files.

Senator KENNEDY. On June 19, you felt the White House should not get the investigative material?

Mr. GRAY. Right.

Senator KENNEDY. And on July 21, you apparently changed your mind?

Mr. GRAY. Yes, sir. I had a direct request then and I checked with my legal counsel. I also knew that we would have had our maximum shock effect as far as the investigation was concerned. The dates of all the interviews will indicate that, and this was a pretty safe thing to do then.

Senator KENNEDY. Whom did you get the directive from, do you remember?

Mr. GRAY. I had a request from Mr. Dean as to whether we could have a letterhead memorandum prepared in this manner.

Senator KENNEDY. Did Mr. Dean—

Mr. GRAY. Yes, he called me.

Senator KENNEDY. And he asked for that?

Mr. GRAY. Yes, he did, Senator. He asked whether or not we could have the letterhead memorandum prepared.

Senator KENNEDY. And do you remember what he had requested of you?

Mr. GRAY. Yes, whether we could have the letterhead memorandum prepared summarizing the status of the investigation to date.

Senator KENNEDY. The whole investigation?

Mr. GRAY. The status of the investigation to date.

Senator KENNEDY. It was not in any way limited to the White House staff involvement?

Mr. GRAY. No, sir.

Senator KENNEDY. Was there a cover letter on the memo?

Mr. GRAY. On my letterhead memorandum, the one prepared July 21?

Senator KENNEDY. Yes.

Mr. GRAY. I will have to look. I know I sent it to the Attorney General. I don't know whether we have it here or not.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Senator, I have checked the record and determined that my memorandum of July 21, 1972, had a cover letter attached. The cover letter was addressed to the Attorney General.

Senator KENNEDY. You sent it to whom?

Mr. GRAY. The Attorney General. I remember writing LPG, from Acting Director to the Attorney General.

Senator KENNEDY. Who requested it?

Mr. GRAY. Mr. Dean.

Senator KENNEDY. Whom did you send it to?

Mr. GRAY. The Attorney General.

Senator KENNEDY. Is that standard procedure?

Mr. GRAY. That is standard procedure, yes.

Senator KENNEDY. Is it also standard procedure when you get a request from the White House on particular information you send it to the Attorney General?

Mr. GRAY. Sometimes they go direct. Sometimes they have gone direct in the past.

What I was trying to do was lay a foundation for running these things through the Cabinet officer who is the head of the Department in which we find ourselves. It doesn't always work that way and it hasn't always worked that way in the past. It is an objective to be sought.

Senator KENNEDY. Well, what makes you decide whether you are going to send it over to the Attorney General or not? Did Mr. Dean request that?

Mr. GRAY. No, I tried to do it in accordance with the standard FBI procedures. That is what I tried to do, but in the past I know sometimes that has gone through the Attorney General. Sometimes these things have gone direct. A lot of things we send direct right now, Senator.

Senator KENNEDY. That is what I am trying to find out. If he had requested it, and if you believe that, as you testified on other occasions, that he is entitled to it, why couldn't it have gone directly to Mr. Dean rather than being routed through the Attorney General?

Mr. GRAY. I made the decision that it go through the Cabinet officer concerned.

Senator KENNEDY. And was it addressed to Mr. Dean?

Mr. GRAY. My recollection is that it was addressed to the Attorney General. It was a memorandum from the Acting Director to the Attorney General.

We can check that. I will check it, Senator, and make certain my testimony is accurate, but that is my recollection. I asked for a legal opinion on this, you know, from my own office of legal counsel.

(Mr. Gray subsequently submitted the following document for the record:)

Senator, upon checking the record further, I find the memorandum and cover letter dated July 21, 1972, were addressed to the Attorney General with copies of both the memorandum and cover letter to the Deputy Attorney General and the Assistant Attorney General.

Senator KENNEDY. Would that be part of the file?

Mr. GRAY. We have already made it part of the record. I am certain of that. If we haven't, I would do it.

(Mr. Gray subsequently submitted the following document for the record:)

I have checked my records and find that the opinion of my Legal Counsel has not previously been made a part of the record. I am submitting herewith for the record a memorandum dated July 20, 1972, captioned "Dissemination of Information, The White House, Criminal Cases," setting forth that opinion,

JULY 20, 1972.

Memorandum to: Mr. Felt.

From: D. J. Dalbey.

Subject: Dissemination of information, the White House, criminal cases.

You advised me that the Acting Director desires an opinion on the legal basis for dissemination by the FBI to the White House of information concerning a criminal case being investigated. More specifically, if I understand the situation, he means a case being investigated as a *criminal* case for prosecution involving a violation of Title 18, United States Code, and which does, or may, implicate Federal employees as subjects. Our reply is limited to such a situation.

For reasons shown below, we conclude that the FBI has no authority, or duty, to initiate dissemination of information to the White House concerning the criminal investigation in progress. Note that we use the word "initiate." We did not consider the matter of disseminating such information to the White House on specific White House request. In this latter situation we assume that since the President is the top boss of the Executive Branch he can obtain from that branch any information that he wishes. This is a different matter, legally and otherwise, from the one in which we would on our own decision initiate dissemination of the information.

We find no authority or duty for the FBI to initiate the referenced dissemination. So far as we can find, such dissemination is not required by the Constitution, or by any statute or Executive Order. Moreover, we are unaware of any existing instructions of any kind by which the White House has notified the FBI that it should be kept advised generally in matters of this kind.

There is authority, legal and otherwise, for taking a position that we are authorized and required only to report such matters to the Attorney General or to such other persons as he designates, such as the United States Attorney. By order of the Department, all information in the possession of the Department of Justice, including the FBI, is in the custody of the Attorney General and, technically, may not be released from the Department without his consent. This prohibition technically covers the White House and does no damage to White House interests because the Attorney General serves the White House and can either release to that office such information as he sees fit or as he is requested to provide. For purposes of the case under discussion, a strict interpretation of the departmental order would prohibit our dissemination of the information to the White House without the Attorney General's permission. Equally pertinent is

Title 28, United States Code, Section 535, entitled "Investigation of Crimes Involving Government Officers and Employees; Limitations," which provides, in pertinent part, that "Any information, allegation, or complaint received in a department or agency of the executive branch of the Government relating to violations of Title 18 involving government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency. . . ." This statute seems to clearly state that when the FBI, as in the type of case described earlier, investigates a matter indicating that a Government officer or employee may be involved in any violation of Title 18, the FBI must expeditiously report the matter to the Attorney General. Our legal responsibility and duty is to keep the Attorney General fully informed and there it ends. Whether, and to what extent, the White House should be informed is a matter for the Attorney General.

The requirements of the administrative chain of command in Government leads to the same results. The requirements are that we follow the chain and not bypass any link in it. This means that we advise the White House, if at all, through the Attorney General and not around him. The Attorney General can, of course, permit us to advise the White House directly, but we do not understand that such permission has been either expressly or impliedly granted in this case.

This discussion raises the question of legality of dissemination to the White House in the past. It is my understanding under Mr. Hoover we disseminated information on criminal cases to the White House when, as, and if Mr. Hoover directed that we do so, and this was done on Mr. Hoover's instructions without reference to the matter of whether we did or did not have the authority. The practice apparently had the sanction, grudgingly or otherwise, of the Attorney General and apparently was at least condoned by the White House. This is not to say either that it was right or it was wrong. Our only position is that from a strict legal standpoint, there was no specific authority for it. The authority and the obligation of the FBI are to keep the Attorney General fully informed and to leave the rest to him.¹

Recommendation.—For information.

¹ Do so in this particular case and in all future cases.

Senator KENNEDY. To your information it went to Mr. Kleindienst? Did you ever hear again as to whether it was actually received by Mr. Dean?

Mr. GRAY. No; I did not. I believe it was. I have got to say that. That was the purpose of it, and I believe it occurred. That I will have to check, and I will check.

Senator KENNEDY. You will check whether—

Mr. GRAY. Whether it went to Mr. Dean.

(Mr. Gray subsequently submitted the following document for the record:)

I have checked and the memorandum was actually received by Mr. Dean.

Senator KENNEDY. I am just wondering, Mr. Dean from the White House makes a request of the Department, and then I understand you sent the memorandum to Mr. Kleindienst, and you have no way of knowing whether Mr. Dean ever received it?

Mr. GRAY. It is not standard procedure in every case. That is what I am saying. There are various procedures in various cases. That was standard in this case.

I checked with the opinion from my own office of legal counsel, because I wanted to be sure I was doing it as correctly as it could be done.

Senator KENNEDY. Did you talk to Mr. Kleindienst about the memorandum at all?

Mr. GRAY. That I don't know. I may have talked with Mr. Erickson. I have a recollection of talking with Mr. Erickson about this.

Senator KENNEDY. Do you remember that conversation?

Mr. GRAY. No; I don't remember that conversation. It is one of those things that you have as a fleeting memory.

Senator KENNEDY. But there is no returned receipt or anything of that nature?

Mr. GRAY. No, it isn't that type of thing, Senator Kennedy.

Senator KENNEDY. Is there any way of knowing what happened to that memorandum after it was received by Mr. Kleindienst; you are not sure, at least as of this hearing, that it actually got into the hands of Mr. Dean?

Mr. GRAY. No, I can't testify under oath, but I must assume that it did.

Senator KENNEDY. Do you have any information that it might have gone to any other place besides Mr. Dean?

Mr. GRAY. No, sir.

Senator KENNEDY. That it may have gone to the Committee to Re-elect—

Mr. GRAY. No, sir.

Senator KENNEDY. Do you have information as to that?

Mr. GRAY. No, sir; I have no reason to believe that. That has never been turned up in anything that we have encountered.

Senator KENNEDY. Now, the final paragraph of the July 21 memorandum, unlike the June 19 memorandum, doesn't have a final paragraph about it being the property of the FBI?

Mr. GRAY. No, the final paragraph there is the dissemination—I think the designation or description of the investigation as I recall it—yes, the direction of the investigation.

Mr. Kinley reminds me that this went to the Attorney General. I don't know other than that it was prepared at some level within the Bureau. I didn't say: Do it this way and put that caveat on that. But this particular one, of course, was right within the Department to the Attorney General. The other one with the letter to Mr. Halde-man had a letter going outside the Department and it was a standard caveat. It is printed on a lot of our forms.

Senator KENNEDY. And it wasn't on—even the last paragraph didn't include it?

Mr. GRAY. In the July 21 memorandum?

Senator KENNEDY. Yes.

Mr. GRAY. No, sir. That last paragraph spoke of the direction of the investigation, but once again, that is an LHM going direct to the Attorney General.

Senator KENNEDY. Do you have any information about who else might have received copies of the July 21 memorandum?

Mr. GRAY. No, sir; I do not.

I have no reason to believe that—nothing has come to us indicating that this has occurred.

I am reminded, Senator, that copies did go to the Deputy Attorney General and the Assistant Attorney General in charge of the Criminal Division.

Senator KENNEDY. They got copies?

Mr. GRAY. Yes, sir, they normally are information addressees. There is the probability they did.

Senator KENNEDY. Is that a cover memorandum? We haven't got that? That wasn't part of the memorandum?

Mr. GRAY. No, the memorandums themselves went out.

Senator KENNEDY. Who else received copies of it?

Mr. GRAY. I would believe that the Deputy Attorney General and Assistant Attorney General in charge of the Criminal Division, and that would once again be standard operating procedures for us to do that.

Senator KENNEDY. They would get routinely copies of memorandums that were prepared for the White House?

Mr. GRAY. No, sir. That is not my testimony, Senator Kennedy.

In a major criminal case, like this, when we prepare an LHM summarizing the investigation at that point in time they would get it.

Senator KENNEDY. On page 3 of the memo, you indicated that Hunt and Liddy were traveling around the United States, contacting former CIA employees for the purpose of setting up a security organization of the Republican Party, dealing with political espionage.

Was that allegation fully investigated?

Mr. GRAY. Yes, sir. I hate to tell you the number of telephone calls we ran down, finding people being contacted along those lines, but we did.

Senator KENNEDY. Could you tell us what you found?

Mr. GRAY. I found out just that, that they were offering jobs to come to work for the Committee to Re-Elect the President in a security capacity.

Senator KENNEDY. Were any of these in connection with potential violations of any Federal law?

Mr. GRAY. No, sir; we didn't get that kind of information from them. They told us that the job offer was made and the job offer was in the nature of security work for the Committee to Re-Elect the President.

Senator KENNEDY. On several occasions the White House, and I think even the President, has alluded to the investigation which was conducted for the President by Mr. Dean.

Do you have any idea what that investigation consisted of?

Mr. GRAY. No, sir; I do not.

Senator KENNEDY. Well, did you ever talk to him about that, that phase of it?

Mr. GRAY. Not to the extent to which he was conducting it or anything like that.

I knew very definitely he was conducting an investigation and had been charged with the responsibility of conducting the investigation.

Senator KENNEDY. He was charged with the responsibility?

Mr. GRAY. For the President, to determine whether there was any involvement of White House staff members in this matter.

Senator KENNEDY. Did you ever talk to him about the result of his investigation?

Mr. GRAY. No, sir; I did not.

Senator KENNEDY. Why not?

Mr. GRAY. Several reasons.

We were proceeding along our own route and doing our own investigation in our own way and running down far more leads than he could possibly run down.

He doesn't have the kind of resources we have, and there was no reason to believe we should talk to him on the progress of his investigation.

Senator KENNEDY. You weren't interested in any of the things he might be able to uncover?

Mr. GRAY. No, sir; I want to be absolutely honest with you. We were going to do it ourselves and in our own way.

Senator KENNEDY. You were just talking about all the phone calls you had to track down to look into the allegations of espionage, political espionage, and all the work being done, and yet you didn't think you had to talk to Mr. Dean who was conducting an investigation, to get his results and his findings?

Mr. GRAY. Senator Kennedy, I said we ran down telephone leads regarding men being offered positions for security work. We didn't talk about political espionage or sabotage or anything like that, and they didn't raise it, none of these people raised that with us.

No, I felt we had to do our own investigation and this is what I am going to be accountable for, the FBI, not Mr. Dean's investigation.

Senator KENNEDY. According to the FBI summary, which is provided for the record, Mr. Dean was present during the FBI interviews at the White House?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. Is this normal procedure for the FBI?

Mr. GRAY. I would say that the honest answer to that question has got to be "No", this is not normal procedure in the normal average—

Senator KENNEDY. Well, is it ever permitted?

Mr. GRAY. Yes, it is indeed.

Senator KENNEDY. Where, in what circumstances do you permit other people to sit in during the course of an FBI investigation?

Mr. GRAY. We always have the option, Senator, as investigators, to interview an individual with his attorney present or not.

Senator KENNEDY. And what do they usually decide?

Mr. GRAY. Our preference is to interview individuals without the attorney present, but when the individual states that he wants his attorney to be present, or when an attorney is present, we have to make a decision as to whether to go ahead and interview with or without the attorney being present. This does happen, and with more frequency in today's world. When it occurred, I was advised that Mr. Dean was going to be sitting there in his official capacity as counsel to the President and as part of his responsibility to conduct an inquiry for the President.

I also asked if he interfered with questioning of our agents, and I was advised that at no time did he interfere with the questions.

Senator KENNEDY. [Reporter failed to record question.]

Mr. GRAY. The case agents, all the way up the line. Because I asked this question. I started down the chain, from me and my No. 2 down, and the answer came back up.

Senator KENNEDY. Well, your case agents were told that Mr. Dean could sit in—who told them?

Mr. GRAY. The Special Agent in Charge of the Washington field office. I believe that this—initially, I myself was contacting Mr. Dean as to how procedurally these White House interviews were going to be conducted. I think I made a couple of calls to him on that, and then I think the matter was passed direct to the Special Agent in Charge of the Washington field office, who then dealt direct with Mr. Dean.

The problem was one of the scheduling.

Senator KENNEDY. About Mr. Dean to attend these interviews?

Mr. GRAY. No, to get the witnesses, to question them—you know, they are moving around—and to really schedule these interviews. That was one of the problems we had.

Senator KENNEDY. But just as far as Mr. Dean sitting in on all of these interviews, that was handled at your regional level or local level?

Mr. GRAY. No; that was handled at my level.

If I had objected to that, I could have said as far as the FBI is concerned, we will not conduct any investigations of White House personnel.

I obviously couldn't make that decision. So I had to say: Jolly well, we will conduct the investigations with Mr. Dean sitting in. It is that kind of decision in every case.

Senator KENNEDY. Well, did you want Mr. Dean to sit in during these investigations?

Mr. GRAY. My preference, if I had had my preference, would have been "No."

Senator KENNEDY. Did you indicate that preference to Mr. Dean?

Mr. GRAY. I can't remember whether I did and it would be unfair to him to say that I did when I cannot testify definitively and positively under oath.

Senator KENNEDY. Why wouldn't you indicate that?

Mr. GRAY. The probability is that I did, but I cannot recall it with that sufficient degree of clarity to enable me to say that to you.

It was just an inner feeling, because I know what the preference of the FBI is, and I knew—it is always a situation which is reported to us, at FBI headquarters level, and we have to make a judgment either at the FBI supervisory level, the Assistant Director level, the Acting Associate Director level, or the Acting Director level as to whether or not the FBI is going to proceed with an interview under these conditions. If we want an interview bad enough, we proceed with the attorney present.

This is happening more frequently these days, but I don't want you to understand my testimony to be that it is normal.

Our preference is otherwise.

Senator KENNEDY. Was he there as an attorney for these people you were interviewing, or as counsel for the President, or as an investigator, or what?

Mr. GRAY. I asked that question in the beginning, and I was informed that he was there—

Senator KENNEDY. You asked it, of whom?

Mr. GRAY. My people, my people in the chain of command.

I fired the question down. The answer came back: No, he is here in his official capacity as counsel for the President of the United States and in the conduct of his investigation.

Senator KENNEDY. So he wasn't an attorney or lawyer?

Mr. GRAY. I am informed that he was not sitting there as counsel for the interviewees.

Senator EASTLAND. Let us recess now.

(Whereupon, at 12:15 p.m., the hearing was recessed to reconvene at the call of the Chair.)

NOMINATION OF LOUIS PATRICK GRAY III

WEDNESDAY, MARCH 7, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m. in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Ervin, Byrd of West Virginia, Tunney, Hruska, and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

Senator EASTLAND. The committee will come to order.

Senator ERVIN. Mr. Gray, there was a publication in the press of a statement that the California lawyer, Mr. Young, had given an affidavit to representatives of the Washington Post, stating in substance that Mr. Segretti communicated with Mr. Young and told him that he had been subpoenaed to testify in the Watergate criminal prosecution, that he had been interviewed by the FBI, and that 2 days before the convening of the Republican National Convention he was in Miami, and that a White House aide showed him statements which he said had been made to the FBI, and was told about giving some kind of suggestions from the White House aide as to how he should testify in case he were called as a witness in the criminal prosecution.

What steps, if any, did the FBI take to ascertain the correctness or accuracy or inaccuracy of any statements made to him by Mr. Segretti?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. As far as Mr. Segretti is concerned, Senator Ervin, we interviewed him the 26th, the 28th, and the 30th of June, and later he was subsequently contacted on the 18th of August 1972, when he was served with a summons ordering him to appear before the Federal Grand Jury in Washington on the 22d of August 1972. He was not interviewed at this time.

Senator ERVIN. Was he ever interviewed with a view to finding out whether a White House aide did present to him statements he had made to the FBI, and the identity of that White House aide?

Mr. GRAY. No, he was not. The only thing that was ever done was the call that I made to Mr. Dean when I saw this article in the newspaper. Because, the only individual who had these from me was Mr.

Dean, and in point of fact, you know, Mr. Segretti would have been entitled to look at these had he asked to look at them. This is the law of the case.

Senator ERVIN. Yes, but he would have the right to look at them while in the custody of an employee of the FBI.

Mr. GRAY. That is correct.

No other investigation was made other than what I have just testified, Senator.

Senator ERVIN. Looking back at the incident, with hindsight, which gives us superior advantages over foresight, don't you think it would have been the part of wisdom to have interviewed Mr. Segretti specifically about this, and also Mr. Young specifically about it, with a view, irrespective of whether Mr. Segretti was violating any law, to determine whether or not there is some kind of leak of FBI information when a person is not entitled to it?

Mr. GRAY. No, I didn't, and I will tell you why. All through this period, there were items constantly appearing in the newspaper, and we were interviewing and reinterviewing, and we would never have been finished.

There had to be a point of finality. I made the check, the call. I put the question and, I believe, the demand. I let it rest right there. I was satisfied.

Senator ERVIN. You believed Mr. Dean when he said he did not divulge or permit the divulging of FBI reports, but it certainly seems to me that there is an obligation resting upon the FBI to investigate any alleged breach of FBI information or the delivering or the custody of FBI reports by people who are not authorized to receive them.

Mr. GRAY. Some of them we do and some we don't. It is a matter of judgment. I previously testified to this point, that I don't seek to run down every single one of those allegations that appear constantly in the newspapers. We just cannot do it, and I don't do it.

Senator ERVIN. Now, here you have a case of a criminal action that is pending—I believe the indictment was found a little later; that is, in September—and here is a statement broadcast to the American people by the Washington Post, indicating that a White House aide had gone to Miami and given suggestions to a prospective witness who was to testify in that case as to how he was to testify. It seems to me that is a very serious matter.

Mr. GRAY. I looked at it that way. As I looked at the article, it said three affidavits were taken from this man, and Mr. Segretti was shown an interview that occurred 2 days before. That is obviously false. I know when he was interviewed. I don't place too much credence in that, to start with.

Senator ERVIN. When did the Republican National Convention meet? I don't remember the exact date.

Mr. GRAY. It was in August. It had to be in August sometime, I know. I am not sure. I don't know whether it was July or August, but I think it was August.

Senator EASTLAND. August 20, wasn't it?

Mr. GRAY. I think it was August. I am not sure. I will have to check. But the statement right there was 2 days before, with regard to an interview that had been conducted of him, and I knew this was false on its face, patently and horrendously false.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Upon checking, I have been informed that the Republican National Convention was held from August 21-23, 1972.

Senator ERVIN. It could have been false as to the time of the taking by the FBI of a statement which Mr. Young said Segretti told him had been exhibited to Mr. Segretti by a White House aide, but it might have been true in other respects, might it not?

Mr. GRAY. This is a possibility.

Senator ERVIN. I believe, with all due respect—and of course it was your responsibility and somebody who doesn't have the responsibility can always tell him who does how to discharge that responsibility better than the man who has it—but it seems to me that that was a very serious question, and since you had the identity of two of the men mentioned, namely, Mr. Young and Mr. Segretti, I don't believe that the investigation of that matter ought to stop with just asking Mr. Dean a question.

Mr. GRAY. Well, Senator, I made the judgment that it should because of the fact we were constantly besieged throughout this investigation by all kinds of allegations. If we were going to take our time to run down every one of those, we never would have been able to do our primary job. I just absolutely refused to respond to some of those, particularly when we looked into them. There will be some notes on some of the teletypes where I said, "No, we are simply not going to run this down; we have investigated it; we are not going to look into it, and I am not going to be badgered." I made my written comments on some of these to that effect.

Senator ERVIN. We had a justice of the peace down in North Carolina, who had been newly appointed to office, and in his first case a defendant was brought before him on a criminal charge.

And the justice of the peace said, "Are you guilty or not guilty?"

The defendant said, "I am not guilty."

The justice of the peace said, "Go on about your business. If you are not guilty, you have no business being here."

And the constable said to the justice of the peace, "You ought to hear the witnesses for the prosecution before you tell the man to go."

And the justice of the peace said, "He says he is not guilty, and therefore I am not going to investigate this matter any further."

It seems to me that rather than stopping with Mr. Dean, when you had these other leads, that the FBI ought to have explored these other leads. That is just a matter of my judgment.

Mr. GRAY. With all due respect, my judgment differed at the time and my judgment still differs.

Senator ERVIN. That is all.

Senator EASTLAND. You testified yesterday, if I am correct, that when the people at the White House were questioned by the FBI, that Mr. Dean sat in?

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

Senator EASTLAND. As their attorney?

Mr. GRAY. No, sir, I don't believe, Mr. Chairman, I said that.

I believe I said, and I would incorporate by reference my prior testimony into this answer, but I think my testimony was to the

effect that he was there in his official capacity as counsel to the President in the conduct of his inquiry for the President.

Senator EASTLAND. Well, now did you question the people at the Democratic headquarters?

Mr. GRAY. Yes, sir, we did. We had occasion to do so in September, when there was an allegation and furor raised over another transmitting device being placed on the telephone of an official of the Democratic National Headquarters. We did go into that matter rather extensively. We knew from our search at the time that we swept the Democratic National Committee Headquarters that we left no stone unturned to examine physically and electronically and make certain that no devices were there, sir.

When this device turned up, you can believe, Mr. Chairman, that there was consternation in the Federal Bureau of Investigation, there was acute irritation.

But we did interview, I believe, almost 60 persons at the Democratic National Committee Headquarters.

Senator EASTLAND. Were they represented by counsel?

Mr. GRAY. Yes, sir; they were.

Their counsel sat in on every one of those interviews.

In fact, this was insisted on, just as it was in the prior case.

We have never been able to run down a red box that we tried to get hold of, and wanted to get hold of, and we still have not been able to get hold of that red box.

Senator EASTLAND. Well, the point is that they were represented by counsel?

Mr. GRAY. That is correct, Mr. Chairman.

Senator ERVIN. I have to go now to perform an unprecedented mission: to ask a committee not to give us in North Carolina another Federal judge. [Laughter.] Mr. Gray, I would like to ask one question before I leave.

As I understand it, the FBI has, when it is conducting an investigation, no way to compel anybody to give information; is that correct?

Mr. GRAY. That is correct, sir.

I have said on many occasions in newspapers we don't have the bastinado.

We have to talk to these folks and use persuasion. And, as one Federal judge commented, even the Mafia—I should not use that word—even members of organized crime will talk to us because of the inherent competence of the investigators.

One Federal judge wrote that into his opinion and stated that these members of organized crime would talk to the people of the FBI.

So we do have to rely on the superb training they receive as investigators.

Senator ERVIN. And when you started to interview people in the White House—as I understand it—Mr. Dean insisted on being present?

Mr. GRAY. That is correct.

Senator ERVIN. And when a person insists on his counsel being present, or when he makes an insistence like that, you have to comply to get any interviews at all; don't you?

Mr. GRAY. Yes, Senator. I said yesterday, we have two courses open to us, either interview the witness or not interview the witness.

Senator Ervin, in response to your question, I would like to add something as I have just had a note passed to me. I am advised that on March 5, 1973, our special agents did go over the Segretti matter again with Mr. Chapin, asking him whether or not he saw Segretti in Miami, and whether or not he showed Segretti any FBI documents. The answer to both questions was in the negative. So we did do something more, but I did not direct it.

Senator ERVIN. But you never did contact Mr. Segretti on this matter?

Mr. GRAY. No, sir. I want the record clearly to show that I did not direct it.

This is the FBI policy, digging without any pushing by the Director, or reining back from the Director, Senator.

Senator ERVIN. Thank you.

Senator EASTLAND. Senator BYRD.

Senator BYRD. Mr. Gray, on page 20, you stated—with reference to the invitation to go to Cleveland, Ohio, to make a speech—as follows:

The facts in that case are that a memorandum was sent to me and I was one of perhaps 20 to 30 people, I am told, inviting my attention to this particular speaking invitation engagement at the City Club in Cleveland, and stating in the last paragraph of that memorandum, I believe that Ohio was important to us and a nice thing to do.

On page 89, you said, and I quote: "That White House memo went to 20 some odd other people."

How do you know that it was sent to 20 or 30 other people if the memo was addressed to you by name?

Mr. GRAY. In preparation for these confirmation hearings, I was so advised by a member of my staff whose name I cannot remember, and whose name I will ascertain—David Kinley, my executive assistant, told me.

Senator BYRD. You say in preparation for these hearings. Why was the matter not inquired into at the time?

Mr. GRAY. Well, at that time it was a memorandum to me. I didn't really give it that much attention, as I previously testified.

I didn't go to Ohio because of that memorandum, Senator Byrd, as I have testified under oath. That memorandum did not propel me into Ohio.

Senator BYRD. You also testified under oath you had had previous invitations?

Mr. GRAY. That was in error. I also said at page 20: "and ask if I may have the permission to submit for the record the actual documentary information regarding this particular incident."

Senator Byrd, I respectfully submit that if I were trying to hide anything, I would not ask the permission of the committee to put the documentary evidence in the record.

I misspoke myself. Some people may say I lied. That is for them to judge. I made an error, but I did offer all the documentary evidence for the record, and there was no intent to withhold.

Senator BYRD. Do you have any idea as to who the other 20 to 30 people were?

Mr. GRAY. No, sir; I do not.

Senator BYRD. Could you supply those names for the record?

Mr. GRAY. I will ascertain those names and supply them for the record, Senator Byrd.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY, Mr. O'Donnell has advised us that he contacted the following individuals requesting that they speak before the Cleveland City Club: Senator Barry Goldwater, Herbert Stein, John Volpe, Peter Flanigan, Peter Peterson, Joseph Blatchford, George Romney, Senator Marlow Cook, Shirley Temple Black, John Eisenhower, Donald Rumsfeld, James Hodgson, George Shultz, George Bush, John Connally, William Ruckelshaus, John Scali, Earl Butz, L. Patrick Gray, III.

Senator BYRD. You stated on page 89, in response to Mr. Bayh's question, that you didn't go up there because of the White House memo. Is that accurate?

Mr. GRAY. Yes, sir; that is accurate.

In fact, I have introduced a document for the record which has some of my own handwriting on it, directions to some of the men in the FBI who prepare the first drafts of my speeches, to "conceptually deal with this" in a speech. I don't remember the exact words—and I will rely on the documentary evidence. It is a matter of record within this hearing.

But to deal with the problems raised by the Princeton Conference, to try to meet some of those issues in a positive manner.

Let me read it to you, Senator Byrd:

Conceptually let's try a speech responding factually to criticism of Princeton Conference without identifying, let's be positive.

That is what I said.

Senator BYRD. You indicated that you received a request directly from the Cleveland City Club?

Mr. GRAY. Yes, sir, and that statement is in error, Senator Byrd, and I apologize.

Senator BYRD. You indicated that in response to a question I believe from Mr. Eastland, Senator Bayh, and myself.

Do you care to explain why you seemed so sure that you had received that request from the Cleveland City Club before you received the memo from Mr. O'Donnell?

Mr. GRAY. I don't believe I was that sure because, on page 33, I asked to place into the record the documentary information. I have no other way of accounting for it.

My memory was not that good. I have tried consistently throughout these hearings to give the committee exact information, to be forthright, and to place material in the record and not rely so completely on my memory unless I am absolutely certain. Even then, you know, sometimes in the realm of human affairs, it is difficult to be absolutely certain, and I do not claim that I am perfect at all, Senator Byrd.

I wouldn't want the record to be misconstrued at that point. We did eventually receive an invitation from them, and that shows in the documentary evidence.

Senator BYRD. That was after you had indicated that you would go?

Mr. GRAY. That is correct, Senator Byrd. I have said that was an error, and I have tendered my apologies.

Senator BYRD. But you had not previously received a formal invitation?

Mr. GRAY. No, sir.

Senator BYRD. You also stated that the White House memo, as I have indicated, included 20-some-odd other people. You didn't attach any weight to that.

On page 23, in response to the chairman's question, you said:

I went to speak because I believe that I should go to speak to all Americans, but if you ask me under oath if I went because I got the memorandum from the White House, I would say No, sir, I did not go. I went for a particular reason.

I have a hard time understanding in my own mind that if the original invitation came to you in the O'Donnell memo from the White House, how you can say you didn't go up there because of the White House memo?

Mr. GRAY. Because I know what went on in my mind, Senator.

I made the judgment, and I made a notation on that memo, "OK, I will do it, let's push it far out," or something to that effect.

I said, "I will do it but push it out ahead, check with Mrs. Neenan"—who is my personal secretary—"for scheduling."

Senator BYRD. You also stated, in response to the chairman—

Mr. GRAY. Pardon me, Senator Byrd, if I may. That is on the memorandum dated June 16, 1972.

Senator BYRD (continuing). You also stated, in response to the chairman, on page 20:

The Club had been sending invitations to Mr. Hoover since 1968.

And in your additional responses to my request, you said:

Our file did show that the Cleveland City Club had previously requested the appearance of Director Hoover in 1968, and again in 1970.

You stated that Mr. Hoover had not been able to accept either commitments under the recommendations of the FBI staff to do so. Do you have any idea why Mr. Hoover might not have accepted their invitation?

Mr. GRAY. The only possible idea would be one of pure conjecture, and that would be that he didn't like to make speeches. That is the only idea I have, and it is pure conjecture, Senator. I don't really know.

Senator BYRD. Could it have been possible that he didn't like to make speeches during a campaign year and at least one of the invitations to him was in 1968?

Mr. GRAY. Senator, it would be pure conjecture. I don't know what went through his mind. I don't know whether Mr. Hoover was of that mind or not. I just cannot say.

Senator BYRD. In the letter you supplied to the committee, of July 7, 1972, addressed to you from Allen L. Davis, the executive director of the Cleveland City Club, Mr. Davis stated:

As you may know, this forum has brought many well-known people to Cleveland and raised many important issues in the past. Many of our speakers have used this opportunity for a major policy statement.

Is it possible, Mr. Gray, that because of such nature of the club, Mr. Hoover would have felt it an inappropriate forum for the Director of the FBI?

Mr. GRAY. I cannot testify as to what Mr. Hoover thought, Senator Byrd. I didn't consider it a forum for a major policy statement because we don't make any major policy statements in the FBI, and that was not my intent at all in going.

Senator BYRD. In reading the documents you have supplied to be inserted, on page 103 of the hearings, I ask you this:

In the memo to you from Mr. O'Donnell, could you tell me who underlined the sentence:

With Ohio being crucially vital to our hopes in November, we would hope you will assign this some priority in planning your schedule.

Mr. GRAY. No, sir; I cannot. We tried to determine that.

Once again, it is pure conjecture. This occurred within the Crime Records Division, but it is pure conjecture. We didn't even notice that at all until this later came up and we looked for those documents. I did not do it.

Senator BYRD. On the same document, there are vertical lines marking that sentence, and also the parts that read as follows:

The city Club has asked our assistance in attempting to secure your participation as a key speaker sometime during the period following July 1st, 1972. They meet every Friday at noon, and have a 300 maximum attendance. However, if you were inclined, they could go public and provide almost a crowd of any size you may desire.

Could you state who made those vertical marks on the documents?

Mr. GRAY. No, sir; I can not.

It is a normal procedure. People who read these materials first normally put lines either in the margin or underline something for my attention. This occurs as a matter of normal operating practice, and you will see that done.

Senator BYRD. In the memorandum to Mr. Bishop from Mr. Jones dated June 16, 1972, I find underlined the words, " * * * live on local radio stations," and, " * * * the Club is dominated by liberals and these are the type of people we should be contacting in an effort to convert them."

Do you have any idea who did the underlining of this document?

Mr. GRAY. No, sir; I do not. I can testify also on the prior document, the O'Donnell memo of June 19, 1972. When that document came to me, the original did not have that on there, the underlining, the horizontal underlining as distinguished from the vertical lining.

Somebody did that after the fact. We have been able to ascertain that.

Senator BYRD. After what fact?

Mr. GRAY. After I looked at it.

Senator BYRD. On the same document, I find the vertical lines marking the sentences, "The Club offers a prestigious meeting place for the open discussion of important social, political and economic problems," and, "The Club engages in discussions of controversial subjects, and it is entirely possible that some embarrassing questions could be put to Mr. Gray which might prove embarrassing to him and to the Bureau."

Do you have any idea who made these markings?

Mr. GRAY. No, I don't. This is standard language I ran into in the early days at the Bureau, that I would embarrass the Bureau. I would tell the Bureau that, "Your magnificent record of accomplishment speaks for itself. No one can embarrass the FBI."

That was immaterial and irrelevant, so far as I was concerned, Senator Byrd. I don't pay any attention to that kind of language.

Senator BYRD. On page 45, you indicate as follows:

I think it was the middle of July, about the 19th, I was asked by the White House, by John Dean, to provide them with a letterhead memorandum because he wanted to have what we had to date because the President specifically charged him to looking into any involvement on the part of White House staff members.

I asked my legal counsel to prepare me a memorandum regarding whether or not we had a duty to send any material to the White House.

Have you supplied the committee with this memorandum?

Mr. GRAY. Yes, sir, we did.

Senator BYRD. I am talking about the memorandum that was prepared by your legal counsel.

Mr. GRAY. I am sure we did. If we didn't, I intended for us to.

If we have not, that has been an oversight in the mechanical process. But I intended for that memorandum to be supplied.

Senator BYRD. You indicated the answer came back, "On your own initiative, no, in response to a directive from an individual acting for the President of the United States that is another matter, and we do"?

Mr. GRAY. That is correct.

Senator BYRD. Do you have the memorandum with you prepared by your legal counsel?

Mr. GRAY. Yes, sir, we do, and it was supplied for the record. If we have not—but it was my original intent to supply it—I repeat the offer.

Senator BYRD. If you have it there, would you read it, please?

Mr. GRAY. We don't have it here, Senator. We will have to provide it for you.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have checked my records and found that the memorandum prepared by my Legal Counsel was previously made a part of the record of the Morning Session, March 6, 1973, at page 389, line 3. The memorandum was dated July 20, 1972, and captioned "Dissemination of Information, The White House, Criminal Cases."

Senator BYRD. Who was the legal counsel who prepared the memorandum?

Mr. GRAY. Dwight Dalbey, Assistant Director in charge of Legal Counsel.

Senator BYRD. All right, if you will supply that, please, for the record?

You then went on to say that you prepared or had prepared or caused to be prepared a letterhead memorandum dated July 21, and that was submitted to the Attorney General. You said you had every reason to believe that that went over to Mr. Dean at the White House. What was the reason for—

Mr. GRAY. I am sorry, Senator Byrd; what page are you reading from, sir?

Senator BYRD. Page 45.

Mr. GRAY. I missed your question. I must apologize, Senator; I missed your question.

Senator BYRD. Yes. Well, you indicated that you caused to be prepared a letterhead memorandum dated July 21. You indicated it was submitted to the Attorney General, and you had every reason to believe that it went over to Mr. Dean at the White House. What

reason did you have for believing that it went over to Mr. Dean, and what indications do you have as to how it went to him and by whom it was transmitted?

Mr. GRAY. I am quite certain that the Office of the Attorney General would have transmitted that to Mr. Dean, but I cannot testify under oath as to a fact that it did go over there. I must assume that it did.

Senator BYRD. Other than the July 21 memorandum, Mr. Gray, did subsequent memorandums go to the White House, to Mr. Dean, reporting on the findings of the FBI?

Mr. GRAY. No, not subsequent memorandums, as we would term them in our vocabulary that we use in the Federal Bureau of Investigation. But I have testified that I sent over to him some S2 investigative reports and some teletypes consisting of the FD-302's, the reports of interviews of witnesses.

Senator BYRD. Why did you send those S2—are you saying that there were S2 additional reports?

Mr. GRAY. No, they were not memorandums. We have to distinguish between a memorandum or letterhead memorandum.

What I am talking about are the FD-302's, the reports of interviews of individuals, individual interviews conducted by an agent of the Federal Bureau of Investigation.

Senator BYRD. Were any subsequent memorandums at all, such as the July 21 memorandum, sent to Mr. Dean?

Mr. GRAY. To the best of my knowledge, recollection, and belief, no. But I will have to check before I can answer just so categorically. I believe not, but I will check.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, Senator Byrd, I find that there were no other memoranda of the type of the July 21, 1972, summary memorandum which were furnished to the White House or to Mr. Dean.

Senator BYRD. Please check, and if you find that any were sent, you will supply them for the record?

Mr. GRAY. I will have to respectfully decline to supply for the record, but once again—I am in enough trouble now with names and places and persons. We had a discourse yesterday before this committee, the chairman read a letter from the ACLU, and I had a statement prepared, and I will have to respectfully decline to submit to the committee on the grounds that these are official records of the Department of Justice. They reveal investigative techniques, and to publish them is contrary to our long-standing policy.

I have passed the point of no return in this respect, Senator Byrd.

Senator BYRD. Would you indicate for the record whether or not any such memorandums were supplied?

Mr. GRAY. I will check that.

I do point out that I have made a standing offer for each U.S. Senator who is a member of this committee to review the complete Watergate file in the company of two thoroughly experienced special agents of the FBI, who will respond to any questions that the Senator might have.

Senator BYRD. How voluminous are those files, Mr. Gray?

Mr. GRAY. Well, there are roughly 2,000 serials, and we made an estimate yesterday that it would take a 5-day workweek of 8 hours a day, depending, of course, on how rapidly a Senator reads, to go over them. But I made that offer, and that includes memorandums, in response to questions that I asked as the investigation progressed.

You know, these documents are going to show an awful lot: that we didn't sit up there with our thumb in our mouth and do nothing.

We were pushing. I was asking an awful lot of questions, and people were getting answers.

Senator BYRD. That sounds like a pretty big order. Are there enough copies of these to go around?

Mr. GRAY. We have got problems with this. This is an unprecedented offer that I have made.

I have been taken to task by the ACLU. They have written to the committee and each Senator.

Prof. John Elliff has written me a very scholarly letter on my unprecedented offer.

I will have to fall back into the regular position of the Federal Bureau of Investigation in regard to its investigation.

Senator BYRD. Would you indicate again just how voluminous this is?

Mr. GRAY. I think there are roughly 2,000 serials. They are not all in one, you know, one file. They are broken up into file packages.

Here is a sample file package. About 25 about this size. This is a sample file package.

Senator BYRD. And there would be 25 packages similar to this one?

Mr. GRAY. That's correct.

Senator BYRD. And are there copies enough of those to go to each member of the committee?

Mr. GRAY. No, sir. I won't make copies of them. As one Senator reads them, we pass them along.

We have problems with this. We have problems with the ACLU, and we are going to have problems with other people.

I made the unprecedented offer. I made it because of the fact I felt so strongly from the very beginning that the FBI's credibility as an institution was at stake and that we had to conduct this investigation so it would stand scrutiny from anyone.

When it came to pass that the Ervin Select Committee was set up, I felt it was the committee to erect the proper safeguards to handle this type of material.

I did not envision that this committee was going to go substantively into the Watergate investigation. I felt this committee would go procedurally into the Watergate investigation, and I think it should.

It should try to find out how the FBI conducted this investigation, and did Gray do anything to hinder, limit, restrict, alter the standard operating procedures of the Federal Bureau of Investigation in the conduct of a major special investigation.

Senator BYRD. Well, Mr. Gray, the question of your confirmation of nomination comes at a very unfortunate time. It is unfortunate for you. It is unfortunate for those of us who sit on this committee. It is unfortunate that the Senate itself has to make a decision on this nomination in the context of the Watergate incident.

It is unfortunate for the Nation. I don't see how the two can really be separated. I wish that it were possible to have the investigation of the Watergate behind us as we approach this nomination. I say this with all due respect to you, but I have to wrestle with it as a Senator who has to make a judgment on this.

You may feel that I have already reached a closed judgment. I have to some extent, but if the Watergate investigation were complete and if, in fact, as a result of that investigation, it was shown convincingly that the FBI had thoroughly conducted an investigation in depth, and that it did not in fact act in any way to protect higher-ups, then I think that I would be dutybound to review my own decision.

But apparently this is not going to be the case. So we are asked to separate one from the other—and also to separate procedure from substance.

I can't do that in this case. If we start with the premise, as I think I have to, that there is something about the Watergate that has not yet been brought to light, and then if we go to the next premise, that being that the investigative agency, the FBI, did not in fact investigate and probe in depth, and with absolute thoroughness and with absolute objectivity—which premise I have to accept at this moment—then when we consider that you were the Acting Director for 10 months during this investigation, I have no alternative but to vote against the confirmation.

I wish that it were possible for us to be able to delay this vote on the confirmation until we knew what really took place with respect to the Watergate incident and how well the FBI really conducted the investigation.

Mr. GRAY. May I respond, Senator?

Whenever you permit me, I would like to respond.

Senator BYRD. Certainly. I am just stating to you, Mr. Gray, that to ask that this committee divorce what happened substantively regarding the Watergate, is asking something that I think is impossible.

Mr. GRAY. I think I pointed out yesterday to Senator Kennedy that this is a problem of procedure and substance, with Gray right in the middle. It is a difficult question.

But I would submit, Senator, that procedurally we have submitted certainly, in my humble opinion, adequate information for the Senators to make a determination as to whether or not we went at it in accordance with the standard operating procedures of the FBI, and with our accustomed vigor and competence and professional skill.

Quite frankly, as I said to Senator Kennedy, I pushed the button of this superb investigative juggernaut that first day and told them no holds were barred. They were to conduct a full investigation and, furthermore, the men and women involved in the FBI would not tolerate an individual sitting at the top giving orders that were going to rein them in.

There is no executive of the Federal Bureau of Investigation who will testify now, next year, or 10 years from now, that any restrictions or limitations or handcuffs were placed on them by the Acting Director in their conduct of the investigation.

In fact, I asked an awful lot of questions. An awful lot of memoranda will show up in response to these questions, addressed to some of the newspaper allegations that Senator Ervin mentioned this

morning. I know that each Senator has a difficult time. I think that we in the Federal Bureau of Investigation and I personally have demonstrated our candor and our forthrightness. We have offered this record to you. We will be glad to begin working with you on this record. I have also the trust placed in my hands to observe Constitutional due process, to observe the right to privacy. These two are very serious questions. I am in a very difficult position and the question you raise is a very difficult one. It is a difficult task for each Senator, as it is for me, to sit here and not be able to go into all of this under the proper procedural safeguards. Believe me, Senator, my interest is in telling this committee about the men and women of the FBI, their dedication, their spirit and their competence, and the way they conduct an investigation. I could not have stopped them. No man could have stopped them, Senator.

Senator BYRD. Well, Mr. Gray, granted all that, there are inconsistencies in the record already. We have talked about one with respect to the Cleveland speech.

Mr. GRAY. I apologize for that one. I tried very hard to avoid those inconsistencies. I knew that I had to be able to testify with the greatest degree of accuracy. The U.S. Senate is entitled to that, and I knew this. This is a big responsibility and that is why I have tried to thoroughly prepare this case as though I am on trial, which I am.

Senator BYRD. You also indicated, Mr. Gray, in answer to a question of mine, that no agent had suggested a lead which had been rejected or not pursued, and as it later developed an agent had suggested that Mrs. Martha Mitchell should be questioned, but this was not done.

Mr. GRAY. I didn't reject that, Senator. I approved it.

Senator BYRD. That didn't proceed very far, as your testimony showed.

Mr. GRAY. I approved that, Senator. I didn't stop that at all. The agent called on Mr. Mitchell and that agent interviewed Mr. Mitchell in New York and Mr. Mitchell also called, and as it turned out, Mr. Mitchell later offered to have Mrs. Mitchell come to Washington for an interview if our case agent considered it necessary. Our case agent stated he did not. Those are the facts of reference.

Senator BYRD. According to the press, Mrs. Mitchell disputed your—

Mr. GRAY. She did my initial statement where I didn't have all of the facts at that time, and I got all of the facts after that.

Senator BYRD. Now, with reference to your unprecedented offer—and it is unprecedented, but this is also an unprecedented hearing—but if we presume that by virtue of the offer each Senator can ipso facto accept it and as a practical matter that he could go through these several odd volumes, it becomes a complete non-sequitur. We are just as effectively kept from seeing that material as if you had not made the offer. I have, for example, one staff member of this committee who can spend some time on this matter. I have no member of my personal staff who can do this. I obviously can't do much of it myself, even though I personally try to review the transcripts of the hearings, and I can hardly stay abreast of these.

But to say that a Senator on this committee can take this voluminous material and in the presence of two of your agents examine it

carefully, it is just impractical, and, while the offer is unprecedented, I don't think there is the slightest chance it will be accepted and I think you understand that. You have already indicated in answer to my question that you would not agree to let a couple of staff members of this committee go through the material for the committee.

Mr. GRAY. That is correct, Senator Byrd.

Senator BYRD. And yet we have staff members who have top security clearance. If this could be done, if some staff members of this committee—they could be agreed upon in advance by the Chairman and the ranking minority member—if two staff members could be selected who could look over this material then it might be of some benefit to the Senators who sit on this committee, otherwise, the “unprecedented offer” really doesn't amount to a hill of beans, and I say this with all due respect to you.

Senator EASTLAND. Let me say this. They never turn files over to me. I review files in the presence of an official of the Department of Justice who has them in his possession.

Senator BYRD. If I had the time I would be very glad to accept the offer.

Mr. GRAY. Senator Byrd, I would like to say to you that the basis of the denial certainly is not on the basis of trust or confidence or anything like this. It is on the basis of need to know and we enforce this kind of restriction even within the Federal Bureau of Investigation. Even though people are cleared for top secret they do not have the need to know. I made this offer to you as Senators and a possibility, you know, is to set up another little Ervin Select Committee within the Committee on the Judiciary and have three members of this committee meet for the committee. I realize you have this problem, but I say your problem lies in procedure—how did we conduct this—rather than in substance, because that is why the U.S. Senate has established the Ervin Select Committee.

Senator GURNEY. Would the Senator yield on that point?

Senator BYRD. Yes.

Senator GURNEY. It seems to me this is a matter not within the jurisdiction of Mr. Gray, but of this committee.

If I can recall and remind the distinguished majority whip of what we passed as a Senate resolution that set up a Watergate Committee—I wish I had the text before me—but I think it provides for our staff members to examine FBI files. Whether it does or not, if this committee deems it desirable to examine those files in any way we want to we certainly can either decide to do so on our own in executive session, or if we don't think we have enough authority to do so on our own, we can go to the full Senate. I am sure we could get a resolution passed the very day we presented it to the Senate, should we wish to set up a method of procedure to examine these files.

I would also say as far as the Watergate incident is concerned, I can think of no more illuminating case in which we could determine whether an FBI Director was doing his job or not. It is all there. All we have to do is decide how we are going to examine these files and get into them. And I think whether we confirm or do not confirm Mr. Gray after making such an examination, we may proceed with it. But I do think it is our responsibility to decide whether and how we want to do it. We should not put Mr. Gray in the position of saying what we

ought to do, because he is torn by a number of forces here, the American Civil Liberties Union, other constitutional lawyers, the committee, the press, the Senate, and just about everybody. It seems to me we have to decide what we will do about this.

Thank you.

Senator BYRD. Mr. Chairman, I agree with the Senator from Florida. I think he perhaps has made a very helpful suggestion here, one which we ought to explore further.

My comments at this point are meant merely to direct the attention of the committee and you, Mr. Gray, to the inability, as things are now, for members of the committee to accept your offer and make it really worthwhile. It would be meaningless as far as I am concerned under the present circumstances. Perhaps the committee could establish an ad hoc subcommittee to look into this.

Senator HRUSKA. Would the Senator yield, unless you are almost at the conclusion of your questions?

Senator BYRD. Yes.

Senator HRUSKA. I have a comment to make with reference to the files.

Senator BYRD. I prefer to yield at this point, Senator Hruska.

Senator HRUSKA. Very well.

Mr. Chairman, I would like to state that this Senator took 6 hours of his day yesterday to go through these files. There are 27 sections. They are on portfolio paper. Most of them are typewritten in single-spaced arrangement. In addition to the 27 sections there is a summary. There are indexes. There is a foreword. Yesterday, the Acting Director put into the record a copy of that foreword and its substance, and if one is available I would like to have it to read some of its statistics into the record.

(Senator Hruska subsequently requested unanimous consent to make the following documents a part of the record:)

FOREWORD

The FBI entered this case June 17, 1972, immediately upon being notified by the Metropolitan Police Department of the subjects arrests on burglary charges. When shortly thereafter, subjects were determined to be in possession of electronic listening devices the FBI assumed investigative responsibility at the request of the United States Attorney's office, Washington, D.C., and the concurrence of the Criminal Division, Department of Justice.

From the very beginning this matter received top priority with FBIHQ issuing instructions that all investigation was to be under the personal supervision of the Special Agent in Charge of each field office where investigation was to be conducted. These instructions included the fact that as many Special Agents were to be assigned as were needed to insure the investigation was absolute, thorough, immediate and imaginative. All leads were set out by telephone or teletype.

The investigation has involved 51 field offices in addition to investigation in Mexico, Canada, Venezuela, and Germany. Through September 8, 1972, 333 Agents worked on this case expending about 14,100 man-hours. In addition, about 2,000 clerical hours were expended in support of the Agents. Some 1,550 interviews were conducted during this period and 130 investigative reports totaling about 3,500 pages were submitted. Copies of these reports were furnished to the United States Attorney's office, Washington, D.C., and to the Criminal Division, Department of Justice. Further, the United States Attorney's office, in connection with its presentation of this matter to the Federal grand jury, was kept advised on a daily basis as to pertinent developments. Every assistance was afforded that office by the FBI in locating and serving subpoenas on witnesses to appear before the Federal grand jury as well as affording any leads developed by the grand jury inquiry expeditious attention.

It has been suggested that it is a lot easier to criticize a book than to write it. I suppose that would apply to newsstories and reports of this kind. I venture to say that one with a baleful look in his eye can go into that file and find voids and soft spots, but if they are there it wouldn't be due to the man in charge of ordering that investigation and seeing to it that it was pursued on an immediate basis. There were numerous telex issues.

Mr. GRAY. Teletype.

Senator HRUSKA. Teletype. And at the top of every one of those yellow sheets, which is on onionskin paper, so when a file is an inch or an inch and a half or two inches thick there is a lot of information in it—but at the top of every one there is the teletype and the word “immediate,” and that means get this information—day before yesterday, not next week. By the responses that were forthcoming, and I paid some attention to the responses, the information was pursued and it was reported promptly.

Now, repeatedly the Acting Director was asked was such and such a question asked. Did you ask such and such a question. He would say “No.” Well, why not?

I want to say, Mr. Chairman, that there were 333 agents that worked on this investigation. There were 14,100 man-hours involved, and it covered reports having 1,500 interviews or more, with 3,500 pages, and it occurred in some 15 or 18 States.

Then for any fairminded person to say, Mr. Gray, why didn't you ask that witness this or that or the other thing, I want to say that is a totally impossible situation—one which does not reflect a great deal of thought on the part of the man who asks such a question. Mr. Gray is not on the firing line. He is at the pinnacle. He is at the top of this pyramid and he has to flare out to the base that stretches out over the geographical expanse of this country or a large part of it.

Considering that fact and the fact that there has been followed in this case, as nearly as I can determine by interrogating these agents, the same format and the same method and the same thoroughness and the same detail that has been followed in other cases of this kind, it will be for each of us that will sit in judgment on this matter to say if it is as important as we say it is, if it is that important, if it is that far reaching, if it is that vital, then it is for each of us to say that one of our duties is not to see this through a soup strainer, not to see it through the eyes of another. It is for each of us to get in there and examine the record and say, “If I were in charge of this investigation would I have handled it any differently from Mr. Gray?”

The CHAIRMAN. Now, you saw the file. Do you think a staff man should look at that overall file?

Mr. HRUSKA. Mr. Chairman, I would very vigorously oppose any staff man looking into that file. There is raw material in there. Obviously, the motivations of some of these witnesses are based on vindictiveness or revenge or bitterness or disappointment. In certain instances somebody had to be lying, because they were talking about the same circumstances and they all could not be truthful. They just could not be accurate.

Mr. GRAY. That is true in the vast majority.

Mr. HRUSKA. In raw files that is always encountered and that is the essence of the danger of turning raw files over to anyone except in very exceptional cases.

Again I think a fair reading of the record will demonstrate that and will convince any reader and any student of the file that that is the fact.

If a partisan counsel goes through that file he can have us here until next Christmas on the basis of asking questions like: Didn't the agent do that, Why didn't you order that, Why did you stop here? and one thing or another.

That comes within Senator Ervin's bailiwick. The Senate has said so.

This file should be read and considered on the basis of trying to find out whether Mr. Gray did his duty as Acting Director. Did he do it promptly? Did he do it pursuant to those methods that we consider approved in situations of that kind? Did he do it objectively? Did he go right down the line?

I came across those instances referred to in the press yesterday and in other statements where some of the witnesses objected to having counsel present at the interviews. They got in touch with the FBI and let it be said to the credit of Mr. Gray and of his colleagues and associates that when that request was made, every effort was made, successfully, as far as we know, to establish contact with those witnesses in order to have a confidential interview at leisurely times and at proper circumstances where that interview could progress without interruption and with total freedom of expression.

When this is done—and I saw it done not once but several times in that file—I must say to myself, here is a man doing his job.

Now that means something to me. He could have concealed it; or, if he didn't conceal it, at least he could have failed to mention it. But he did mention it.

I say we ought to proceed with this matter in a businesslike way. I made that suggestion yesterday.

There are two aspects to these files. One is form. How was it built? How was it constructed? How did it actually come to its present state?

The other aspect, of course, involves the substance and the merit.

The record shows that this is a lawyer of many years' experience. I spent 25 years practicing law before I came into the Senate, and I did my fair share of investigatory work. Based on my background I would say that these files show enough structure for anyone who might want to proceed from that point on to perfect it and to strengthen any soft spots. It shows all the benefit of a very thorough scientific examination of the witnesses who are involved.

We ought to get hold of our common sense and direct our efforts to the task at hand. Is Louis Patrick Gray III possessed of those attributes as demonstrated in this investigation and other aspects of his experience to assume to the office of FBI Director?

Mr. Chairman, if we do otherwise we will be unfaithful to our cause. We cannot be put off by the idea of waiting to see who's convicted or who's hung or who's boiled in oil as a result of the substance of the Watergate investigation. We tried that once last year in the ITT case, although ITT was not nominated to be Attorney General. Had we pursued the idea suggested of some of our committee members, we would still be engaged in litigating ITT, conglomerates and political

contribution while the Attorney General's office would be run and operated by an Acting Attorney General.

I say let us get our sense of proportion together on this thing and not linger indefinitely on tidbits of information we are getting.

It would be unfair to the 300 operatives who worked on this case—and I am satisfied with their accuracy and zeal and enthusiasm and competence—to sit back in the quiet of our offices and pick the thing to pieces by saying why didn't you do this or the other thing.

Mr. Chairman, I think we ought to employ a little logic and plot our course toward an early and logical conclusion to these hearings with all our facts. We have more than enough facts now. We can move to a conclusion. I say the fabric is wearing very thin.

If we refrain from repetition by further questions in this committee and get into new realms and into new material here, we will be treading on dangerous ground from the standpoint of the morale of the FBI and the protection of their sources. I don't think we should take that risk. We can refrain from taking that risk while getting enough information upon which to base a decision for or against the confirmation of Mr. Gray.

I am grateful to the Senator for having yielded. This is the point in the record where I thought these comments should go.

Senator BYRD. Mr. Chairman, I am grateful to the Senator for his eloquent exposition of how impressed he was with the material which had been submitted to him by the FBI.

I must confess I am even more impressed by how much the Senator was impressed by that material. He indicated that 333 agents had spent 15,000 hours, or something to that effect, which when divided would amount to only about 50 man-hours per person.

He also referred to the ITT matter of last year. That was precisely the thing that bothered me at that time, which led to my vote against Mr. Kleindienst.

I did not vote against him because of any personal antagonism toward him. I felt that he was a very able man, a very charming man, but there were just too many inconsistencies in the record, too many questions that were never clearly answered. There was a lack of complete candor on the part of some of the witnesses, in my judgment, and we were hemmed in, as a committee, in the effort to secure the information we thought we ought to have to make a reasonable and fair judgment on the nomination and, as a consequence, I felt I had to vote against the nomination.

Mr. Gray, in that case, was the decision maker after Mr. Kleindienst stepped aside. He had the role of making decisions as to what information would be submitted to the Judiciary Committee and how much information.

We are faced with somewhat the same problems in this instance.

This is the first time, after all, that any committee other than an Appropriations Committee has had an opportunity, or at least has ever taken the opportunity, to question the FBI's record of performance.

If it were possible to review this confirmation every 4 years, we might be able to—at least, I might be able to—give Mr. Gray the benefit of the doubt and proceed on the theory that, 4 years from now, the committee would have another opportunity to look at the record, but we don't have the promise of that opportunity.

So it does rest, as Senator Hruska pointed out, on whether or not Mr. Gray did, in fact, fulfill his duties properly. I don't see how we can reach that conclusion with the restrictions that are placed upon us.

Senator GURNEY. Would the Senator yield briefly again?

Senator BYRD. Yes, sir.

I was going to say, so much for the unprecedented offer at this point. I yield to you.

Senator GURNEY. Thank you.

First of all, I certainly agree with the Senator that this is a matter that we have to resolve, and I commend him for bringing it up. I didn't want the Senator to think that I was at all critical in my comments earlier.

Senator BYRD. No, I didn't interpret them that way at all.

Senator GURNEY. Then the other thing is, I now have before me a copy of the Senate resolution that set up the Watergate investigating committee. It does give access to any agency and all of its material to any members of the Select Committee or any investigatorial or legal assistants designated by it, that is, by the committee, or its chairman or ranking minority member.

That is what we did a few days ago pertaining to this very Watergate matter. That was my suggestion, as the Senator will recall, a few minutes ago.

Senator BYRD. Mr. Gray, you stated in your insertion for the record, page 114, that Supervisor John Ruhl of the Washington field office:

Contacted Mr. Alexander P. Butterfield between six o'clock and seven p.m., June 17, 1972, to determine Mr. Hunt's affiliation with the White House and to inform the White House that Mr. Hunt may be involved in this matter which was being investigated by the FBI.

This was the first contact by the FBI with the White House concerning this matter.

You also stated in an insertion responding to a question on page 168 that as a routine matter, when the FBI receives an allegation of criminal nature against an employee in the executive branch, the White House is advised.

In your insertion for the record, on page 113, you advised that the FBI did not inform Mr. Ehrlichman that Mr. Hunt was involved; is that correct?

Mr. GRAY. Let me just get the inserts, Senator Byrd, if you will, please.

Yes, my insert for page 113:

On checking the record, I find that the FBI did not inform Mr. Ehrlichman that Mr. Hunt was involved.

However, late in the afternoon of June 17, 1972, Mr. Alexander P. Butterfield, Deputy Assistant to the President, was contacted by our Washington field office to ascertain what connection Mr. Hunt had with the White House.

Senator BYRD. I also noted in your response to my question, that you inserted for the record, on page 120, with respect to interviews with White House people, that Mr. Ehrlichman was interviewed on July 21, 1972.

I presume this resulted from your consultation with Assistant Attorney General Petersen, to which you referred on page 63, when you were discussing that before agents went that high, he wanted to make sure before they went on?

Mr. GRAY. I have to get the teletypes and get the insert.

My recollection is that the recommendation came up, and I said check with the Department, and approve it. Now, I have to check the record on that.

Is that an insert page?

Senator BYRD. On page 63, you said:

One of them, I think the matter of whether or not to interview John Ehrlichman came up, and of course this is getting pretty high and they felt they better get the boss' permission before they went that high, and I checked with Assistant Attorney General Petersen, and I said, "Go."

Mr. GRAY. Yes, I see the testimony and I will have to get the actual memorandum and give you the actual facts on that.

That is my recollection. There was no hesitancy in interviewing Mr. Ehrlichman and it may be that it will turn out that in the course of the grand jury, that the assistant U.S. attorney conducting the grand jury did it. But I will get the facts because I am not certain enough of them now to testify under oath.

We will have to dig it out of the summary or right out of the teletype.

Senator BYRD. And you will supply that for the record?

Mr. GRAY. Yes, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the records, Senator Byrd, I find that on July 17, 1972, Assistant United States Attorney Silbert requested Washington Field Office to interview Mr. Ehrlichman regarding the activities of Hunt and Liddy while they were under his employment at the White House and to obtain any documents pertaining to travel and expense accounts at the White House of Hunt and Liddy. Washington Field Office sent a teletype requesting authority for this interview and I told Assistant Director Bates to check with Assistant Attorney General Petersen to see if he thought there was any objection to our interview of Mr. Ehrlichman at the White House. Mr. Petersen said he certainly had no objection to such an interview. Mr. Bates told him their interview would be directed at specific matters. Mr. Petersen said this was certainly logical and he had no objection whatsoever. The results of the discussion between Mr. Bates and Mr. Petersen were furnished to me on July 20 and I approved the interview of Mr. Ehrlichman. Mr. Dean was contacted by our Washington Field Office to set up interview of Mr. Ehrlichman and he was interviewed on July 21 in Mr. Dean's presence.

Senator BYRD. On page 143, I asked whether you had ever discussed any matter relating to the investigation of the Watergate affair with anyone on the Committee to Re-Elect the President, and you said, "No, sir."

I asked the question about Mr. John Mitchell. You said, "No, sir."

Question: "Or with anyone from the White House?"

"Yes, sir."

Question: "Who?"

Your answer: John Wesley Dean, counsel to the President, and I think on maybe a half a dozen occasions with John Ehrlichman."

Would you tell the committee when those occasions were?

Mr. GRAY. I don't know that there were a half dozen. That was an estimate. My recollection is that early in the game, there were procedural questions with regard to interviews of White House personnel. That is my recollection of it.

Senator BYRD. Are you saying that your inquiry was of Mr. Ehrlichman as to what White House personnel you could interview?

Mr. GRAY. No, sir.

Senator BYRD. Or had interviewed?

Mr. GRAY. No, sir, not what White House personnel I could interview.

I never asked that permission of anybody.

Senator BYRD. What was the nature of the——

Mr. GRAY. Procedure. I told him we were going to conduct an aggressive, full investigation, and we had some indications that there were probably—this is my recollection of our conversation—that we probably were going to have to interview people over there, but we did not know.

I can remember two in that first week after I came back. I was in California that weekend and I came back—I think I was back on the 21st, Monday, Tuesday, Wednesday—I believe Wednesday was the first day in the office.

Senator BYRD. You can recall what?

Mr. GRAY. Two telephone calls that week.

Senator BYRD. To whom?

Mr. GRAY. To Mr. Ehrlichman, I believe.

Senator BYRD. By you?

Mr. GRAY. By me.

Senator BYRD. Do you have a memorandum as to what was said in those conversations?

Mr. GRAY. No, I do not.

Senator BYRD. What is your recollection?

Mr. GRAY. My recollection is that those were procedural questions that we were discussing. However, there was no question about whether I could or could not interview anyone, and I say this under oath, no one at the White House told me.

Senator BYRD. These were people, for example——

Mr. GRAY. When are you going to get with it; how are you going to get to the witnesses.

Senator BYRD. Get to what?

Mr. GRAY. The investigation, to go to the witnesses.

Senator BYRD. Why would you ask Mr. Ehrlichman that?

Mr. GRAY. Because this, after all—as you know—is the President's staff and we just don't barge in there, Senator. I wouldn't do that.

I would have no hesitancy in telling you that. I am just not going to go barging in there and start investigating all over the place. I am going to get some procedure and ground rules established and convey to them, as to the Attorney General, that the credibility of the FBI is at stake. And they agreed. I didn't have any problem there.

Senator BYRD. How did your conversations go?

Mr. GRAY. I have just been telling you how the conversation went, Senator Byrd.

Senator BYRD. Did you indicate whom you might want to investigate?

Mr. GRAY. At that point in time, we really didn't know.

Senator BYRD. Was any reference made to Mr. Hunt in those conversations?

Mr. GRAY. I don't think that I talked specific names at all with Mr. Ehrlichman.

Senator HRUSKA. Would the Senator yield?

Senator BYRD. Not just at that point—yes, I yield.

Senator HRUSKA. As a matter of fact, Mr. Gray, is that unusual? Before your agents went into the staff of the Democratic National Headquarters, did you not call Lawrence O'Brien out of common courtesy and say, this is what I propose to do, do you have any ground rules that you would like to have us observe?

Mr. GRAY. Absolutely. Positively; I did.

Senator BYRD. Mr. Hruska, he went into that in great thoroughness the other day and I don't see the point of that with respect to the questions I am trying to ask.

Now, Mr. Gray, what were the dates of those two calls?

Mr. GRAY. I don't remember the exact dates. They were early in the week—had to be 21st, 22d, or 23d of June.

Senator BYRD. Can you state for the record specifically?

Mr. GRAY. I would have to try to check my telephone records. I could do that by going to the FBI telephone logs. I could do that, certainly.

Senator BYRD. Very well, if you please.

Aside from the two telephonic inquiries to which you just referred, were there additional occasions when you discussed this matter with Mr. Ehrlichman?

Mr. GRAY. I think probably overall I can recall going over to the White House one evening to meet with him regarding procedural matters again. I would have to check, but I would estimate maybe 6, maybe 10 occasions throughout the investigation. My records would show that and I would be happy to give them to you, Senator.

Senator BYRD. You may have discussed these matters with Mr. Ehrlichman 6 to 10 times?

Mr. GRAY. I say that is an estimate right now. I will have to check and submit the facts for the record.

Senator BYRD. All right; if you would submit for the record the dates and times of those meetings.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. To the best of my recollection and upon checking my records, I find that my contacts with Mr. Ehrlichman regarding the Watergate investigation were as follows:

Date	Time	Appointment
June 28, 1972.....	6:30 p.m.....	Re safeguarding investigative procedures against leaks.
Oct. 19, 1972.....	2:35 p.m.....	Do.

Date	Time	Telephone calls
June 21, 1972....	9:35 a.m.....	(From John Ehrlichman) re safeguarding investigative procedures against leaks; advised we were handling the case as a major special with usual precautions for such a case and very restricted distribution of information.
June 28, 1972.....	11:17 a.m.....	To arrange an appointment with Mr. Ehrlichman.
Oct. 19, 1972.....	1:55 p.m.....	(From John Ehrlichman) to request that I meet with him that afternoon.

Senator BYRD. Now, was anyone present when you discussed this with Mr. Ehrlichman at the White House, anyone else present on any occasion?

Mr. GRAY. No, I believe not, but that would show on my appointments and I would certainly be happy to provide that.

Senator BYRD. What would be the necessity of continuing to meet and talk with Mr. Ehrlichman after you had had the initial discussion with him to proceed?

Mr. GRAY. I don't know, and I am not going to go down that path until I can review my appointment records and review my recollection. I won't say I met with him 6, 8, 12 times, until I know. It may be less. But I am talking from recollection.

Senator BYRD. Can you indicate also for the record the content of the discussions that took place in each of those meetings?

Mr. GRAY. To the best of my recollection, yes, I will.

Senator BYRD. The dates and whether or not anyone else was present, what you discussed in each instance?

Mr. GRAY. Whether it was by telephone, whether it was by meetings.

Senator BYRD. In the material that you supplied for the committee, page 53 there was included a letterhead memo dated July 21, 1972, that you prepared at the request of and sent to John Dean, counsel to the President. On page 10 of that memo, you state:

It was determined from Mr. John Dean that the personal effects of Everette Howard Hunt had been removed from Hunt's office in the Executive Office Building and brought to his, Dean's office. This material which was turned over to the FBI on June 27, 1972, included ancillary equipment for the transceivers and other equipment identical to items known to have been purchased by James Walter McCord, Jr.

What were the circumstances involved in Mr. Dean turning over the equipment in Mr. Hunt's office 10 days after the break in?

Mr. GRAY. This came up as a result of agents' desiring to find out whether or not Mr. Hunt had an office there. Mr. Dean said that he would have to check whether or not Mr. Hunt had an office there and would ascertain that.

Indeed, at this point in time, the White House records indicated that Howard Hunt had ceased his employment as of March 29, 1972.

We had previously ascertained that fact. Later we were delivered these materials and an inventory was made of these materials that were delivered to us. Included among those materials were a gun, electronic equipment tying in Hunt with the type of electronic equipment that was possessed by Mr. McCord, and top secret materials involving South Vietnam dispatches.

Senator BYRD. Did Mr. Dean volunteer this evidence?

Mr. GRAY. We really didn't ask him for it. We didn't ask for a search warrant because at that point in time, when we were talking with Mr. Dean, we really didn't know what we were looking for.

We didn't ask for a search warrant because we couldn't specify with particularity what we wanted. We didn't know.

Senator BYRD. I noted the FBI interviewed Mr. Dean on June 27; is this when the evidence was turned over?

Mr. GRAY. The evidence, as I recall, was turned over on June 26. Yes, this material was furnished to us on the morning of June 26, 1972.

Senator BYRD. You have indicated that there was electronic bugging equipment and there was a gun involved.

What other evidence was turned over to the FBI at this time by Mr. Dean?

Mr. GRAY. I would have to go to the inventory. There was a two-page inventory, as I recall. It is an exhibit to our summary, and I will produce that. It is a rather extensive inventory.

[Mr. Gray subsequently submitted the following document for the record:]

FEDERAL BUREAU OF INVESTIGATION,

July 3, 1972.

Mr. John Dean, Legal Counsel to Richard M. Nixon, President of the United States, Executive Office Building, 17th and Pennsylvania Avenue, N.W., Washington, D.C. (WDC), provided Special Agents Daniel C. Mahan and Michael J. King of the FBI, WDC, one cardboard box, which he stated was the effects of Mr. Everette Howard Hunt taken from Room 338 of the Executive Office Building. The effects contained in this box provided by Mr. Dean are listed as follows:

- One small metal box;
- One .25 caliber automatic Colt revolver, bearing Serial Number 321803;
- One clip for this revolver, containing live ammunition;
- One holster;
- One Rolodex file;
- One copy of the book "Pentagon Papers";
- Numerous sheets of carbon copy papers;
- Two White House pads;
- Numerous sheets of White House stationery;
- One desk calendar;
- A quantity of office supplies, three stamp pads, scissors, pens and pencils, scotch tape, staples, staple gun, glue, and a clipboard;
- Two folders (instructions of office operation);
- One blanket;
- One plastic carrying case.

Interviewed on June 27, 1972, at Washington, D.C. File No. WFO 139-166; by SAs Daniel C. Mahan and Michael J. King. Date dictated June 29, 1972.

FEDERAL BUREAU OF INVESTIGATION,

Date of transcription: July 3, 1972.

Mr. Fred Fielding, Assistant to the Legal Counsel to Richard M. Nixon, President of the United States, Executive Office Building, 17th and Pennsylvania Avenue, N.W., Washington, D.C. (WDC), furnished Special Agents Daniel C. Mahan and Michael J. King of the FBI, WDC, one large cardboard box sealed with tape and marked with pen "Top Secret".

An inventory of the contents of that box is listed as follows:

1. One brown envelope marked "Howard Hunt, Eyes Only, Personal, Unclassified".
2. Six brown envelopes containing classified material relating to the "Pentagon Papers".
3. One tan folder marked "Ellsberg" containing numerous papers concerning one Daniel Ellsberg.
4. One tan folder marked "Pentagon Papers" containing newspaper articles.
5. One tan folder marked "Time and Pay Records" containing verification of hours worked at the White House.
6. One tan folder marked "Correspondence" containing copies of letters.
7. One tan folder marked "Press Contacts" containing press contacts and newspaper articles.
8. One tan folder marked "John Paul Vann" containing a newspaper article.
9. One empty gray folder.
10. One black attache case containing the following list of items:
 - Four Kel-Com Transceivers Technical Manual and Operating Instruction—Bell and Howell 148-174MCS;
 - Two antennas—UG-447/U and numbered 74868;
 - RG-58A/U, Belden 8259 Antenna Lead Wire;
 - Four rechargeable model B1 nickel cadmium batteries—Bell and Howell;
 - One tear gas cannister/General MK VII, M/G. General Ordnance Equipment Corp., Pittsburgh, Pa;
 - Two microphones—simulated chapstick containers;
 - Three antenna leads;
 - Two carphones, numbered 8813, 9042;
 - Four antennas, bendable wire;
 - Six jack wires;

One shoulder harness with white lead wire and phone jack;
 Three shoulder harnesses;
 Three belt harnesses;
 Three operating instructions for Bell and Howell Portable Transmitter;
 One Mobil Oil Co. map of Delaware, Maryland, Virginia and West Virginia, with pencil circle around Warrenton, Virginia area and with pencil circle around Union Station area;
 Two lead wires with black end and pink end;

One Avis rental car map of the Baltimore, Md., and WDC area, with circles around junction of Route 695 and I95, circle in the area of junction with George Washington Memorial Parkway and I95, circled area of junction with George Washington Memorial Parkway and Route 166, circled area of junction of Capital Beltway and Maryland Route 190 (River Road), circled area of junction with I270 and I495, circled area of Campbell Corner, Maryland, circled area of 14th and K Streets, N.W., with a pencil route traced from the House of Representatives Office Buildings to the 14th and K Street areas.

Interviewed on June 27, 1972, at Washington, D.C. File No. WFO 139-166; by SAs Daniel C. Mahan and Michael J. King. Date dictated June 29, 1972.

Senator BYRD. Did the FBI believe Mr. Dean turned over everything that had been taken from Mr. Hunt's safe?

Mr. GRAY. I know allegations have been made that this did not occur. This came up in October, as I recall, when I think there was a motion to suppress evidence filed by Mr. Hunt, and his attorney. At that time we again went into this allegation, with the assistant U.S. attorney and with the Assistant Attorney General in the Criminal Division, regarding a pocket notebook and a Hermes notebook.

I think I am correct in saying that the agents went to stores here in Washington trying to identify a Hermes notebook or a Hermis notebook, whatever that is. But the allegations were made in that motion to suppress that this pocket notebook and this Hermes notebook were not turned over.

That was not found in any of the effects of Howard Hunt. This was looked into in the presence of the special agent, the assistant U.S. attorney—this was at the time we were preparing to respond to that motion—and the Assistant Attorney General in charge of the Criminal Division.

And there is no evidence at all that that pocket notebook and that Hermes notebook were there.

Senator BYRD. Was Mr. Dean subsequently questioned?

Mr. GRAY. He was questioned at that time, yes; he was. Yes, that is correct.

Senator BYRD. On what date was he questioned?

Mr. GRAY. I will have to get the date for you for the record.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Upon checking the records, Senator Byrd, I have learned that on January 4, 1973, in pretrial preparation, Mr. Dean, Mr. Kehrli and Mr. Fielding were all questioned by Assistant U.S. Attorney Silbert, in the presence of Assistant Attorney General Petersen of the Criminal Division and a Special Agent of our Washington Field Office in Mr. Petersen's office at the Justice Building.

Senator BYRD. Was he questioned subsequent to the first interrogation? Were there followups?

Mr. GRAY. No; I will have to look at the date of the list of interviews. I am talking now about when he was questioned regarding the motion to suppress and the fact that there were items missing from the material turned over to us.

Senator BYRD. Are you convinced that there was no effort to conceal anything?

Mr. GRAY. I am unalterably convinced of that fact.

Senator BYRD. What convinces you?

Mr. GRAY. The fact we looked into it and checked it all around and it was inquired into again when we were prepared to respond to the motion to suppress. Those people were probably going to be called as witnesses, you know, not by the Government and we had to know exactly what we were going to say.

Senator BYRD. What did Mr. Dean say about his acts?

Mr. GRAY. I don't know.

Senator BYRD. Did Mr. Dean make any written statements about his actions in the matter?

Mr. GRAY. I don't know. I will have to inquire into that, because that questioning was not done by us. That was in connection with the pretrial preparation and in connection with that motion to suppress.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have had the record checked, Senator, and I have been informed that Mr. Dean did not furnish a written statement to Assistant U.S. Attorney Silbert. In addition, he did not furnish any written statement to the FBI.

Senator BYRD. Did you ever seriously consider the possibility—or did any one of your agents—that Mr. Dean himself might have acted illegally or improperly by taking these effects for a week?

Mr. GRAY. I did not, particularly in view of what was turned over to us, when I saw the materials that were turned over to us. I felt they were incriminating enough that if anybody was going to remove anything, they would certainly have removed the gun and electronic equipment and the South Vietnam dispatches.

Senator BYRD. I also note that Mr. Dean sat in on all interviews conducted with White House personnel.

I believe you stated to Senator Kennedy he did so in his capacity as legal counsel to the President?

Mr. GRAY. I believe I repeated the statement, and I also incorporated by reference my previous testimony because I can't remember exactly what I said yesterday. But I believe I said he sat in in his official capacity as counsel to the President and in the conduct of his inquiry for the President, but not as counsel for the interviewees. That is my understanding of it.

Senator BYRD. How did you learn of this procedure?

Mr. GRAY. This procedure developed first with a telephone call with John Dean where we were discussing the procedure and he stated that he was going to do this and then I think the arrangement, the actual scheduling of the appearances before the agents with the White House witnesses, were made direct with Mr. Dean.

Senator BYRD. Did you question the propriety of his sitting in on the interviews?

Mr. GRAY. I can't remember with specificity and certainty whether or not I questioned it, and I know that my testimony has been reported in the paper.

I will have to refer back to that testimony yesterday and incorporate it, too, by reference.

I haven't seen it yet. But if that man, in his official capacity as counsel to the President, is charged with conducting an inquiry by the President, no, I certainly would not object.

I think I stated yesterday that our preference in the FBI is not to have an attorney present when we conduct an interview. But in today's world it is happening more and more that an attorney is present and we are meeting these situations.

But it is not, Senator Byrd, the norm and it is not our preference.

But this is also not just any case, either.

Senator BYRD. According to Mr. Warren, the White House Deputy Press Secretary, Mr. Dean's presence was initially requested by several staff members. Do you know if that was in the role of their attorney, rather than the investigation of the White House personnel that might be involved in the Watergate incident?

Mr. GRAY. No; I do not know the facts on that.

The CHAIRMAN. I understand that Senator Byrd wants to go at 1 o'clock.

We will go until 1 and reconvene at 2:30.

Senator BYRD. I thank you, Mr. Chairman.

Also, according to Mr. Warren, Mr. Dean decided to attend each session as a matter of uniform policy. Was this decision made unilaterally by Mr. Dean; do you know?

Mr. GRAY. I don't know how that was decided. I don't know the facts on that.

All I know is that I was telephoned, and I discussed——

The CHAIRMAN. Senator Hruska requests unanimous consent that there be inserted in a suitable place in his remarks the text of the foreward to the summary of the Watergate investigation file, plus the February 12, 1973, memo showing the extent of that investigation as of January 31, 1973.

Is there objection?

It will be admitted into the record.

[The documents referred to are printed above in Senator Hruska's remarks.]

Senator BYRD. Mr. Gray, yesterday, White House Press Secretary Warren stated that CRP attorneys were present during the interviews with CRP personnel at the insistence of the Committee to Re-Elect the President. Now, some CRP personnel complained about this procedure and asked to be interviewed privately.

Did Mr. Dean acknowledge this to you?

Mr. GRAY. No; I am not at all certain that I even discussed that with him or that these things existed. What complaints are we referring to, Senator Byrd?

Senator BYRD. The pressure on the CRP people by CRP attorneys.

Mr. GRAY. No; the only evidence that I would have of that would be the fact that there were individuals there who contacted the Federal Bureau of Investigation and asked to be interviewed separately, and we did interview them separately. But nobody made a direct complaint to me.

Senator BYRD. In your July 21 memorandum, it was indicated that numerous interviews were conducted with employees at the Committee to Re-Elect the President. At each interview, at the committee's insistence, an attorney of the committee was present.

Several persons subsequent to the interviews conducted at the committee contacted the FBI, Washington field office, and requested to be further interviewed away from committee headquarters and without the knowledge of the committee officials.

How many persons made such requests?

Mr. GRAY. Senator, I don't know whether I ought to give that information, because the more information you give the easier it will be to track those people down—but there were more than one.

Senator BYRD. I will not ask you for their identity at this time, therefore.

Were such followup interviews conducted?

Mr. GRAY. They were conducted exhaustively; yes.

Senator BYRD. Without any attorney present?

Mr. GRAY. That is correct, sir.

Senator BYRD. Were all persons who requested to be so interviewed, were they, in fact, interviewed subsequently without an attorney present?

Mr. GRAY. To the best of my knowledge, information, and belief. I placed no impediment in the way of that type of procedure, none whatsoever.

Senator BYRD. How did the subsequent testimony square with the testimony that was adduced prior thereto—

Mr. GRAY. Additional information was—

Senator BYRD. When an attorney was present?

Mr. GRAY. Additional information was provided, the type that "I saw this, I saw that, I think this was going on."

They were helpful, no question about it, they were helpful.

Senator BYRD. Can you supply the committee with memoranda that will indicate what new evidence was brought out when attorneys were not present?

Mr. GRAY. Senator Byrd, that is available in the file, and it would be pointed out by the two special agents with the file, but I would not supply any memoranda, sir.

Senator BYRD. Is there any information you can supply for the record which would indicate what additional information, if any, was adduced in the subsequent interviews of such persons?

Mr. GRAY. I would rather not, Senator Byrd, for reasons that I have previously given. They are available with the two agents and they will direct you right to those interviews, the first one as well as the second one.

Senator BYRD. I believe you stated to Senator Kennedy that you would have preferred not to have had Mr. Dean present; is that correct?

Mr. GRAY. I was stating that in context of the standard FBI preference. We don't prefer to have any attorney present, whether he be Mr. Dean, or Mr. Edward Bennett Williams, or Mr. Kenneth Parkinson, or Joseph Califano, or any attorney. That is a preference of the FBI.

Senator BYRD. Was any objection made at the time the CRP employees were being interrogated? Was any objection made to the presence of an attorney?

Mr. GRAY. By whom, sir?

Senator BYRD. By the FBI.

Mr. GRAY. My recollection is that that was handled right there at the Washington field office, but there was no objection made.

Senator BYRD. Why?

Mr. GRAY. I don't know why. We have a choice there, really. If the individual says he is going to be interviewed with the attorney

present, and if this is the only way we can get the interview, we have a choice of saying we are not going to take the interview or take it under those conditions.

Senator BYRD. The witness did not say that, though, did he?

Mr. GRAY. I don't know in detail what happened there.

Senator BYRD. They subjected themselves to such an interview and later contacted the FBI, asking to be interviewed further outside the presence of an attorney?

Mr. GRAY. That is right; they were people who felt they could discuss matters more freely without an attorney, and we gave them interviews and they were intensive, and covert, and confidential.

Senator BYRD. But you say there was no indication that the FBI objected to the presence of the attorney in the first instance?

Mr. GRAY. No, I tell you what our preference is. But we are going to take the interview in a case like this, however we can get it, because of its magnitude.

Senator BYRD. Can you indicate for the record whether or not objections were expressed by the FBI?

Mr. GRAY. I will have to check into that and determine whether or not there were.

Senator BYRD. Would you indicate so for the record?

Mr. GRAY. Yes, sir.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I have been informed that the Washington Field Office Agents told Assistant U.S. Attorney Silbert the FBI would prefer to conduct interviews of Committee to Reelect the President (CRP) people with no CRP attorney present. Mr. Silbert replied he was aware of the FBI's desire to conduct interviews under those circumstances, that he had discussed this with Mr. Parkinson and had told Mr. Parkinson that it would be agreeable for the CRP attorney to sit in on interviews of CRP people provided the attorney did not in any way impede the FBI's interview and investigation. On June 23, 1972, the Agents endeavored to conduct interviews of CRP people but were told by those people that they were under instructions to have any interview set up through CRP attorneys and they could not submit to an interview without the CRP attorney being present. The Agents contacted Mr. Silbert and told him of this. Mr. Silbert recontacted Mr. Parkinson and told him that the FBI wanted to conduct interviews without the presence of an attorney. Mr. Parkinson refused to allow interviews without an attorney being present and our interviews proceeded with one of the CRP attorneys being present.

Senator BYRD. Who was the attorney on the Committee to Reelect the President who was present at the interview?

Mr. GRAY. Several attorneys, but they all didn't sit in. Mr. Parkinson, O'Brien, Kissler, Mr. Jackson, Mr. Zean.

Senator BYRD. Did you make any attempt to dissuade Mr. Dean from sitting in on the interviews at the White House?

Mr. GRAY. I do not believe that I did. I believe that I told him what our preference was, but I also believed and I indicated in his capacity as counsel to the President and under these circumstances that this was the way the interviews would be conducted. I do not believe that I told him No, you cannot do this.

Senator BYRD. Why didn't you?

Mr. GRAY. Because I don't think I was in any position to tell him No, you cannot do this, when he tells me he is going to attend in his capacity as official counsel to the President.

If we want the interview, we take it the best way we can get it.

Senator BYRD. Did you consider interviewing the White House personnel without Mr. Dean being present?

Mr. GRAY. I don't think this thought entered our minds. It certainly didn't enter mine, and I am harkening back now to those early days, trying to recollect whether that thought entered my mind, whether I considered the possibility of being able to so conduct those interviews.

Senator BYRD. You said you were trying to harken back?

Mr. GRAY. I have no clear recollection as to whether or not—no, I don't remember whether or not I did.

Senator BYRD. So you apparently didn't object to various—

Mr. GRAY. No, I was not really in a position to object. I saw nothing wrong with it. If the counsel to the President of the United States tells me that he wants to attend interviews of individuals who are members of the President's staff—including some highly placed ones—and that he is charged with conducting an inquiry by the President to determine whether any of these fellows are involved, I am not going to question that, Senator.

Senator BYRD. What kind of answers to questions do you think you will get in that kind of situation?

Mr. GRAY. I have no idea.

Senator BYRD. Do you not think the White House personnel are going to be intimidated by the presence of Mr. Dean?

Mr. GRAY. If they had any involvement, I would say perhaps they would be intimidated. That really depends upon their involvement. It goes to the mens rea—of whether you have a guilty mind or something to hide.

Senator BYRD. This is what you are trying to get at, and with Mr. Dean present.

Mr. GRAY. Sure, but we have lots of ways to get at it.

Senator BYRD. What ways did you use in this situation?

Mr. GRAY. This was a pretty big investigation, you know. We pursued an awful lot of leads. When you do this sort of thing, you put together a broad mosaic and evidentiary pattern.

Senator BYRD. What other leads did you receive?

Mr. GRAY. There were over 2,300 of them.

Senator BYRD. Specifically what other leads were pursued in trying to get the information from the White House personnel?

Mr. GRAY. We interviewed the White House personnel. We took what they had to say and if there were any leads, we followed them out and we conducted our standard investigation and put together a total mosaic, a total evidentiary pattern.

Senator BYRD. But all of your interviews of White House personnel were in the presence of Mr. Dean?

Mr. GRAY. Senator, you have asked me that question several times, and I have answered it and that is my testimony of record.

Senator BYRD. But you have indicated you have other ways of securing information. What other leads—you have indicated there were leads that were followed in making up this mosaic—what other leads were followed?

Mr. GRAY. From every bit of evidence that we had and that we pursued. This put together the sum total investigative report, and

I feel quite certain that if any of those individual members of the White House staff had asked for an interview with us, we would interview quietly and away from the White House.

Senator BYRD. So no one asked for such subsequent interviews?

Mr. GRAY. To the best of my knowledge and recollection, no, sir.

Senator BYRD. But you indicated that—I take it that there were leads that developed as a result of the interviews which were conducted in the presence of Mr. Dean?

Mr. GRAY. I was talking in the sum total of the investigation, the over 2,300 leads that enable you to put together a total pattern.

Senator BYRD. So there were no leads whatsoever—

Mr. GRAY. Oh, I won't make that statement without looking at the interviews of these individuals.

Senator BYRD. Perhaps you could do that, would you, for the record, and indicate what followups resulted from the interviews?

Mr. GRAY. I can look at the FD-302's, and see what leads were generated as a result of those interviews.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. But, I believe I must again decline, Senator Byrd, to provide the information for the public record. It is information of great confidentiality and, of course, will be available for your inspection.

Senator BYRD. Did you ask advice of your legal counsel as to the procedure, having Mr. Dean sit in or interviews?

Mr. GRAY. No, because I was acquainted with the standard FBI policy.

Senator BYRD. What is that standard FBI policy?

Mr. GRAY. Senator, I gave you that earlier when I said it is our preference to interview not in the presence of anybody's counsel, whether Williams, Califano, Mr. Parkinson, any attorney, anywhere in the United States. That is our preference. But we are not always able to indulge our preference, because today more and more people are asking to be interviewed in the presence of their attorneys. It is not our normal practice, and I don't want the record to be clouded or obfuscated on this at all. It is not our normal practice. It is not our preference with regard to any attorney.

Senator BYRD. Several persons who were interviewed were employed at the Committee To Re-Elect the President and indicated that they would prefer to be interrogated subsequent thereto and outside the presence of an attorney. Do you believe there was any possibility that White House personnel might have had similar feelings about Mr. Dean's presence and might have felt constrained?

Mr. GRAY. I can't speculate on that at all. That is a matter for conjecture. To the best of my knowledge and recollection, I have no memory of any such request coming to us. If it did, we would have interviewed them.

Senator BYRD. Did the FBI inquire as to who suggested the procedure of having an attorney present when members of the CRP were being interrogated?

Mr. GRAY. I believe that was the committee itself, the Committee To Re-Elect the President.

Senator BYRD. And who in the name of the committee?

Mr. GRAY. I don't know. I will have to check that.

Senator BYRD. And who else?

Mr. GRAY. I don't know. I may have seen it, but I don't remember. I will have to check it.

Senator BYRD. Indicate who requested this procedure and by what means of communication. Would you do that for the record?

Mr. GRAY. Yes, sir; I will.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I have learned that on June 20, 1972, the Democratic National Committee filed a civil damage law suit against the Committee To Reelect the President. Either one or two days after this filing, Mr. Kenneth W. Parkinson contacted United States Attorney Titus and said he was representing the Committee To Reelect the President in this civil law suit. Mr. Parkinson asked whether the United States Attorney would have any objection to him (Mr. Parkinson) sitting in on interviews by the FBI of Committee To Reelect the President employees, in view of the pending law suit against the Committee To Reelect the President. U.S. attorney Titus called assistant U.S. attorney Silbert, who was actually handling the criminal case involving the Watergate breakin, and after thinking Mr. Parkinson's request over, Mr. Silbert said he would not object as long as the Committee To Reelect the President attorney would not interfere with the interviews. Assistant U.S. attorney Silbert subsequently telephonically contacted the Washington field office and advised of this decision.

Senator BYRD. Is the committee to understand that all of the CRP personnel who requested subsequent interviews were subsequently interviewed?

Mr. GRAY. That is my testimony under oath, Senator Byrd.

Senator BYRD. What about CRP personnel who did not complain specifically and ask for interviews? Were they reinterviewed privately anyway?

Mr. GRAY. No, sir; they were not, to the best of my recollection. I don't know of anyone we went to and said, "Hey, would you like to be interviewed? We will do it."

Senator BYRD. Why not?

Mr. GRAY. That suggestion never came up, and I never thought of it, to be honest with you.

Senator BYRD. If some CRP employees thought they were intimidated and thought they would like to be interrogated further, why not inquire of the remainder as to whether or not they were interested—

Mr. GRAY. It is not a normal investigative procedure to go back and do that.

Senator BYRD. The Watergate is not a normal case.

Mr. GRAY. I know it is not a normal case.

Senator BYRD. Were there any reinterviews with White House personnel privately and without Mr. Dean's knowledge?

Mr. GRAY. I do not believe so, and I believe I have testified to that fact.

Senator BYRD. Let us suppose that some White House personnel had requested to be reinterviewed privately without Mr. Dean being present; what then would be your response?

Mr. GRAY. He would be interviewed.

Senator BYRD. If Mr. Dean asked you who these people were or for copies of the FD-302 reports on such reinterviews, then what?

Mr. GRAY. That White House person would be interviewed.

Senator BYRD. Had Mr. Dean ever called for reports for the President of the investigation, any reports in any way?

Mr. GRAY. No; he has never asked me that question.

Senator BYRD. Bearing on the Watergate investigation?

Mr. GRAY. I want to be sure I am understanding your question.

Has he called me at the President's request and said, Did any White House people request you to interview them privately? Is that the question?

Senator BYRD. No; that is not the question. I am sorry. You misunderstand me.

How would you handle the situation if Mr. Dean told you he was calling for reports for the President?

Mr. GRAY. What type of reports?

Senator BYRD. Any type of reports dealing with the Watergate investigation.

Mr. GRAY. Well, I have already testified that when he called with regard to an LHM, a memorandum, I provided that through the Attorney General. I believe the Attorney General delivered it to him. Then I have already testified for the record that when he called with regard to looking at the FD-302's and the teletypes, I provided those. I provided, as I testified earlier, 82 such reports, and I testified yesterday as to what a report consists of, an administrative page, a cover page, a synopsis, and FD-302's, and there may be one FD-302 in a report or six or four.

Senator BYRD. Suppose that you had indications from those who were interviewed that they would like to be subsequently interviewed; would you then have supplied Mr. Dean with FD-302 reports of the subsequent interviews?

Mr. GRAY. I think I probably would have. It may have even appeared in this case, but I am not sure. I will have to check the record on that.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking, I find that the reports containing the reinterviews of these people were included in the reports I furnished to Mr. Dean.

Senator BYRD. Are there any FBI investigative reports in connection with the Watergate case that have been withheld from the White House?

Mr. GRAY. Yes, sir; because I only submitted those that I actually had read myself and which are contained in my own safe. Those that I supplied are 82 in number. There were 186 such reports compiled.

Senator BYRD. I believe you indicated that you would supply the committee with those 82 reports, did you not?

Mr. GRAY. I told the committee that I would supply the committee with the entire file in the custody of two special agents of the Federal Bureau of Investigation, to sit there and answer any question that any member wanted, and those 82 reports would be included in the 186.

Senator BYRD. Can you advise us as to the working relationship between Mr. Dean as legal counsel to the President and Mr. Colson during the time you were conducting the Watergate investigation?

Mr. GRAY. No, sir; I have no knowledge whatsoever of that relationship and very few of those relationships at the White House.

Senator BYRD. In the July 21 memorandum, it is indicated that these sources—I assume that this is referring to persons affiliated with the Committee To Reelect the President—further advise that all committee people subpoenaed before the Federal grand jury were subsequently debriefed by attorneys as to what occurred at the Federal grand jury hearing.

Did the FBI pursue this further?

Mr. GRAY. No, sir; no reason for us to pursue it, because secrecy is in the minutes of the Federal grand jury, and a witness before the Federal grand jury can discuss his or her testimony almost at will.

Senator BYRD. Can you indicate what committee people were so debriefed by—

Mr. GRAY. No, sir; I did not know. I did not check on them to see. A lot of people don't talk about their Federal grand jury testimony, and we don't check on them.

Senator BYRD. As you will recall, Mr. Gray, after the conclusion of the hearings on the nomination of Attorney General Kleindienst, this committee referred the entire transcript of the hearings over to the Justice Department so that an investigation could be made of possible perjury. Can you tell the committee the status of that investigation?

Mr. GRAY. I do not believe that matter has been referred to the Federal Bureau of Investigation, but I will have to check that, Senator Byrd.

Senator BYRD. Do you know what has held up the matter for so long?

Mr. GRAY. No, sir; I will have to check into that. I don't know.

Senator BYRD. What has the FBI's role been in the matter?

Mr. GRAY. In which matter, sir?

Senator BYRD. The matter I just inquired about.

Mr. GRAY. The ITT itself, and at what time? When we began way back when it was an antitrust investigation, the Federal Bureau of Investigation would have been looking at—

Senator BYRD. I am talking about the investigation that was made with respect to possible perjury. What has been the role of the FBI?

Mr. GRAY. I don't know. I will have to check and see whether or not this has been referred to us.

Senator BYRD. You cannot at this point state whether or not the FBI has been actively pursuing that matter?

Mr. GRAY. Well, I can't state as a matter of record, but I am being told it is. I would rather check for myself and give you the results of what I find.

Senator BYRD. You have been told it is?

Mr. GRAY. Yes, I have been told, but I can't state, as a matter of fact, myself, that it is.

Senator BYRD. Who is in charge of this investigation?

Mr. GRAY. I don't know.

Senator BYRD. Can you tell us anything about the perjury investigation?

Mr. GRAY. No, other than I know it had been referred to the Department and is being considered in the Criminal Division. It is not my memory that it had been referred to us, but I have been told that it has been referred to us. I will have to check for you and supply that for the record, Senator Byrd.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have checked, Senator Byrd, and have learned that by memorandum dated 12/5/72, Deputy Attorney General Erickson requested that the FBI interview Mrs. Dita Beard and a number of officials and employees of International Telephone and Telegraph (ITT) to develop facts for the Department's consideration of a possible Perjury violation involving conflicting testimony at the hearings of this Committee which was inquiring into the ITT Hartford Fire Insurance merger. The memorandum from Mr. Erickson also requested that we interview several of the same people concerning a possible Obstruction of Justice growing out of an inquiry between August 1971 and October 1972, conducted by the Securities and Exchange Commission looking into alleged "insider" trading of ITT stock by corporate officials. The Obstruction of Justice primarily involved alleged destruction of ITT files and alleged withholding of other documentary material from the Securities and Exchange Commission which had subpoenaed them. Our investigation is virtually completed and four reports have been furnished to the Department. We have about four more interviews to conduct but two of these people are out of the United States at this time.

Senator BYRD. Do you see any reason to disqualify yourself from the Bureau's handling of that matter?

Mr. GRAY. No, sir; no more than I saw any reason to "disqualify" myself from the Watergate, except for the comment that I made one day to the effect that this is a beautiful thing to have thrown in your lap with only 30 days—

Senator Byrd. Except that you were involved in deciding what information would be supplied by the Justice Department to the committee—

Mr. GRAY. I would respectfully differ with you on that. The involvement I had was one of making decisions with regard to documents that were to be sent over here, and meeting with the people of the Antitrust Division to reach those determinations, and discussing with the people in the Civil Rights Division the matter of making those determinations.

Senator BYRD. You don't feel that that activity in any way should disqualify you from the handling of this matter, then?

Mr. GRAY. I don't see how it could. Those were ministerial in nature. I wasn't making any policy decisions as such.

You could say I was by interpreting the rules and regulations of the Department of Justice, by conferring with the Assistant Attorney General of the Antitrust Division, of the Civil Rights Division, and by signing the letters that I signed to the committee and by discussing this with some committee staff members.

But the only thing I knew about ITT is what I learned about it when these hearings began and when I worked with a group of attorneys in the Department of Justice preparing issues and answers papers, and dealing with the matter of submitting correspondence and records requested by the committee.

Senator BYRD. You say that the Dita Beard memorandum was made available to Mr. John Dean by you?

Mr. GRAY. That is correct, sir.

Senator BYRD. Would you provide the date on which you made the memorandum available to Mr. Dean?

Mr. GRAY. I cannot. And after looking at my records and trying to summarize this as to how and when it happened, it had to occur sometime between the 10th of March and the 17th of March, somewhere in that period of time.

Senator BYRD. How was the Dita Beard memorandum transmitted back to you, by whom?

Mr. GRAY. I believe that Inspector Bowers brought it over first, but I am not even certain of that. I believe that is the way it came over first.

Senator BYRD. Would you indicate when specifically it was delivered back and by whom?

Mr. GRAY. As close as we can reconstruct it, I will do that, because I have no written records on that at all.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have tried to recollect when the Dita Beard memorandum was delivered back to me from Mr. Dean and by whom the delivery was made, and I find that I am unable to do so.

Senator BYRD. Would you provide us with any covering letter, or transmission letter, or notes, or buck slips that are sent along?

Mr. GRAY. There weren't any. I know that.

Senator BYRD. Either to Mr. Dean or back to you?

Mr. GRAY. No, sir.

Senator BYRD. Once you got the memorandum back, what did you do with it?

Mr. GRAY. I believe I returned it to the committee. That is the best of my recollection.

Senator BYRD. Would you check that, please?

Mr. GRAY. Yes, sir.

Senator BYRD. Whom did you give it to? You stated in response to a question by Senator Tunney that "the document was returned to me in exactly the same form as I had delivered it."

Does this mean there were no stains, cuts, mutilations of any nature resulting from the scientific methods that might have been used to test the authenticity of the memorandum?

Mr. GRAY. My instructions as I remember them—and as I can reconstruct it in my own mind—we were restricted in the tests we could make, because we couldn't stain the document or alter it in any way. It is my recollection that those instructions were carried out, that the FBI did not subject it to the standard chemical tests that discolor it.

Senator BYRD. Did you personally examine the document?

Mr. GRAY. No, I did not examine it.

Senator BYRD. Am I correct, in understanding your testimony, it is that you don't have the faintest idea of how the Dita Beard memorandum might have gotten into the hands of the ITT or its experts?

Mr. GRAY. My testimony is I do not know how it got into the hands of the ITT or its experts, nor do I really know as a fact so I could testify under oath that this did indeed occur.

Senator BYRD. Have you made any inquiry into this?

Mr. GRAY. No, I have not, Senator.

Senator BYRD. Who sent the memo back to you, Mr. Gray, from the White House?

Mr. GRAY. I believe that came direct to me from Mr. Dean.

Senator BYRD. Who brought it to you?

Mr. GRAY. I don't recall.

Senator BYRD. Has any inquiry been made as to how the Beard memorandum might have gotten into the hands of the ITT?

Mr. GRAY. No, sir; no such inquiry was directed.

Senator BYRD. You stated, at page 176, and again today that you don't know whether or not ITT had that document. You were present throughout the Kleindienst hearings, weren't you?

Mr. GRAY. That is correct sir, but I don't know, as a matter of fact, and I also said that I would have to review that ITT testimony.

Senator BYRD. Were you unaware of the fact that ITT's general counsel, Mr. Abell, testified that ITT had the document and had it examined, while the hearings were going on, by its own experts?

Mr. GRAY. I did not know that; no, sir.

Senator BYRD. Would you take a look at page S04 of the printed record of the Kleindienst hearings and—

Mr. GRAY. I will, Senator. I said I wanted to look into that. If we are going into the ITT matter, I will have to prepare on that, because I have done no preparation whatsoever on the ITT matter.

Senator BYRD. Would you indicate why, in view of Mr. Abell's testimony that ITT did have the document, that you never made any inquiry about this as to how it got into the hands of ITT or its experts?

Mr. GRAY. I have stated earlier, that if it did, and now Mr. Abell testified to that—and I will read page S04 of that record—I have already stated that one of the objectives of this committee was to determine the authenticity of that document; and this indeed was another method of determining the authenticity. I do not see that it was in violation of what the committee's ultimate objective was, that there was any violation of law that would be subject to the investigative jurisdiction of the Federal Bureau of Investigation.

Senator BYRD. Do you have any reason to believe that Mr. Abell or any other ITT people may not have told the truth about this?

Mr. GRAY. No, sir; I don't. I just don't remember the testimony; you know, it is just that kind of straightforward statement from me. I don't remember the testimony.

Senator BYRD. Has this question been explored in perjury investigations?

Mr. GRAY. I don't know, because I don't know what is going on in the perjury investigation. I told you that I would look into it.

Senator BYRD. Was Mr. Dean, in fact, provided with the FD-302's of those persons from CRP who subsequently asked to be interviewed privately and in confidence?

Mr. GRAY. I believe this will turn out to be the case. I will have to check into those S2 reports that I have, and were furnished to him, as to whether or not this is true.

Senator BYRD. Why would he be provided with these?

Mr. GRAY. He is a part of the chain of command in which I fit.

Senator BYRD. Did he specifically request these followup FD-302's?

Mr. GRAY. Not of these people by name; no, sir.

Senator BYRD. Did he request specifically—did he ask to be provided with the FD-302's of those persons from CRP who asked to be re-interviewed but privately and confidentially?

Mr. GRAY. He did not. He did not know about it. He couldn't have asked.

Senator BYRD. Did I understand you to say that he, nevertheless, in all likelihood was provided with those?

Mr. GRAY. That is what I believe to be the case, but I will have to check. He did not ask for them by name because he didn't know about them.

Senator BYRD. Why would the FBI provide him with this information if he didn't ask for it?

Mr. GRAY. He asked for the FD-302's and teletypes in order to assist him in conducting his inquiry for the President of the United States. I submitted to him those that I had gone over and I believe these three were in the ones that I had gone over.

Senator BYRD. Would you verify this for the record?

Mr. GRAY. Oh, yes, I will.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. As the record indicates above, I have previously furnished an insert for the record to clarify this.

Senator BYRD. Thank you, Mr. Chairman.

I have finished my questioning for now.

The CHAIRMAN. We will recess to 2:30.

(Whereupon, at 12:53 p.m., recessed until 2:30 p.m.)

AFTERNOON SESSION

The CHAIRMAN. Let us have order.

Senator Gurney, do you have any questions?

Senator GURNEY. Yes, Mr. Chairman.

In the questioning this morning, Mr. Gray, I think there were two things that again were attempted to be brought out.

One regarded allegations that these speeches you made were of a political nature and designed to help the reelection of President Nixon.

The other line of questioning was directed to a supposed lack of thoroughness of the FBI in the Watergate investigation.

I would just like to go over those to ask some questions myself and perhaps put them in a little better perspective.

As far as the speeches were concerned, you will recall that you gave us copies of all your speeches, and also on another memorandum, a list of the speeches and the dates on which they were made.

First of all, my recollection is that you termed these speeches as patriotic in nature and perhaps as a way to communicate as head of the FBI to the American public in general. Is that a correct understanding of why you gave the speeches?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. Yes, that is basically it. I felt this was the first time I had the public forum. I also felt that as I became more closely acquainted with the work of the men and women of the Federal Bureau of Investigation the telling of their story needed to be done, even though they had a tremendous majority of support from the American people. I still felt some of those criticizing us were criticizing us honestly but often basically from a paucity of information, because of some of our own policies in the past.

Senator GURNEY. Well, that was my understanding as to why the speeches were given.

I think the other important thing is when they were given and in what quantity. Those of us engaged in the first line of politics know one conducts vigorous campaigning generally 2 months or 6 weeks before election. In general elections it is in September and October.

As I review these speeches and the list you gave us as to their dates, you began to deliver speeches almost immediately after you became Acting Director of the FBI; isn't that correct?

Mr. GRAY. Yes; that is correct, Senator.

Senator GURNEY. When were you appointed as Acting Director?

Mr. GRAY. I learned on the afternoon of May 3, that I was to be named Acting Director, May 3, 1972.

Senator GURNEY. The first speech I see here was given May 17, before the Thomas More Society in Washington; isn't that correct?

Mr. GRAY. That is correct, sir.

Senator GURNEY. And then there was another one given also in May, in Mississippi.

Mr. GRAY. That is correct, sir.

Senator GURNEY. And then you give five in June and five in July, two in August. Of course the political conventions weren't even over until after August. Then you gave six in September, six in October, and then five others after election day in November; isn't that correct?

Mr. GRAY. That is correct, sir. I had others scheduled, too, further on into the year beyond that time.

Senator GURNEY. I noticed you didn't give any in December. I suppose that was during the period of your illness; is that correct?

Mr. GRAY. Yes, sir, from November 19 on. I was scheduled to speak November 19 to the Holy Name Society in Boston, but I couldn't give that speech. From November 19, until I came back to full duty I didn't give any speeches.

Senator GURNEY. So as I review this record of speech making, it has little to do with any political campaign. It was a speechmaking process that began almost immediately after you became Acting Director and continued until you were ill, was interrupted during that period of time, and then you resumed again and gave two in January and two in February; isn't that correct?

Mr. GRAY. That is correct, sir.

Senator GURNEY. It seems to me you really have to have a high imagination to come up with any political significance to that, especially after you read the speeches themselves, which as I recall don't mention the President or the candidate on the other side or either of the political parties.

Mr. GRAY. I think in one speech in Spokane I commented on drug abuse being designated as priority No. 1 by the President, but that is all the recollection I have that I mentioned any candidates.

Senator GURNEY. Now, I would like to get into this business about what kind of an investigation the FBI conducted into the Watergate. I think we had best start with the beginning.

Is it not correct that you, as Director of the FBI, started this investigation on your own before anybody said anything to you about it at all?

Mr. GRAY. Yes, sir; that is correct. One of the first questions to arise, of course, was one of jurisdiction. As you know, Senator, the case was reported as a burglary and, in fact, our Washington field

office originally named a burglary specialist as the case agent, the agent in charge of the case. Then the next report was that there were bombs involved, there was a bomb involved, and that was that smoke detector. Then we got the electronic device and there was no question in our minds this was an IOC, an interception of communications case, and we did assume jurisdiction right then and there.

It is true that later on the Department of Justice—in the middle of that Saturday, I believe it was about midday—informed us that we were to have full jurisdiction of the investigation. But we had begun prior to that.

SENATOR GURNEY. So even though this involved alleged, in the beginning, activity against the Democratic National Committee office, you, as head of the FBI, appointed by President Nixon, began this investigation on your own before anybody said anything about it?

MR. GRAY. Yes, sir, I began it on my own but at that time, Senator Gurney, I only knew this incident had occurred. I didn't know the names of the people. It wasn't until 3:45 Pacific daylight time that Saturday that I knew one of the individuals involved was identified as a man connected with the Committee to Re-Elect the President. But all that did, as far as I was concerned, was kick up the heat a little bit more to push that investigation even more aggressively.

SENATOR GURNEY. And the Department under which you serve, the Department of Justice, also in this present administration, confirmed your proceeding with the investigation and gave you a full green light; isn't that correct?

MR. GRAY. That is absolutely correct. The Attorney General was advised of my decision to conduct a full court investigation and withhold dissemination, to hold this very closely until we saw what we had. He did concur in both of those decisions. Those were recommendations to him.

SENATOR GURNEY. We have had a lot of discussion here about White House personnel being interrogated and the fact that an attorney was around and all that sort of thing. That amuses me, too, in view of the fact that this committee is composed of attorneys. But at any rate, how many people did you interview within the White House in the investigation?

MR. GRAY. Total number of people? There were quite a few of them, sir. We have submitted the list and I haven't really counted them off.

There were 14, and some of them were interviewed more than once, sir. Then we also interviewed OMB people and some administrative people in the White House with regard to records, and there were five of those, sir.

SENATOR GURNEY. Did you investigate or interview any and all people in the White House that your leads in any way connected with the Watergate or might be connected with the Watergate?

MR. GRAY. Yes, sir; I did not in any way hamper any White House lead and I would not have done it. It would have been an absolute disaster even if I had been so inclined, which I was not. The FBI, Senator Gurney, would have thrown me right out of there. They are just that kind of people. They are not going to take that kind of blatant political direction.

SENATOR GURNEY. You even interviewed, as I understand it, John Ehrlichman, who is represented by the media as one of the two right-hand men of the President, did you not?

MR. GRAY. Yes, sir, we did.

SENATOR GURNEY. Was there any lack of cooperation at any time during these White House interviews on the part of anybody in the White House from the President on down?

MR. GRAY. I cannot say from the President on down, because the President, you know, made only his public statements. I didn't talk to the President on this. I don't really know—

SENATOR GURNEY. Within your knowledge.

MR. GRAY (continuing). Other than what he said.

I know that in the beginning everybody was naturally jumpy about this sort of thing. I know that in the beginning there was a feeling on the part of our agents that we were not getting complete cooperation and complete candor. Certainly this feeling was expressed. I feel that as we went along we were able to overcome this. We were able to conduct interviews that were meaningful, and the mosaic and evidentiary pattern was developed by thorough investigation. Indeed from the information I have from the Federal grand jury which is limited, and the information from the trial which is complete, there was in no way any difference between that pattern and the grand jury or the trial.

SENATOR GURNEY. No one ever said to you at any time as far as the White House personnel are concerned that you can't interview Mr. X or you shouldn't interview Mr. Y?

MR. GRAY. Absolutely not, sir; I state that under oath without fear of contradiction.

SENATOR GURNEY. Now, there were, of course, one or two indications from your memorandum that in the Committee to Re-Elect there was less than full cooperation. But let us find out the extent of that investigation, too. How many people did you interview over there?

MR. GRAY. Once again, Senator Gurney, quite a few people over there that we interviewed—58, Senator Gurney.

SENATOR GURNEY. Again, did you interview all people that seemed to have any interest or connection with this Watergate affair?

MR. GRAY. Yes, sir, everyone that we thought we should interview as the result of a development of a lead we did interview.

SENATOR GURNEY. And any evidence of any one or two instances of lack of cooperation did not deter you in any respect in your conducting a full investigation as far as the Committee to Re-Elect?

MR. GRAY. No, sir.

SENATOR GURNEY. Now I understand that you interviewed some people over on the Democratic side, Mr. Larry O'Brien, for example. Did the FBI interview him?

MR. GRAY. Yes, sir, we tried on seven different occasions to interview Mr. O'Brien and we interviewed him on the seven occasions, I believe. He was traveling a considerable portion of that time.

SENATOR GURNEY. Did he have an attorney present with him when you interviewed him?

MR. GRAY. Yes, he did, sir.

SENATOR GURNEY. Did you interview any others on the Democratic National Committee?

Mr. GRAY. Yes, sir, we did. We interviewed 61, sir.

Senator GURNEY. Were their attorneys present when you interviewed them?

Mr. GRAY. Yes, sir.

Senator GURNEY. In every case?

Mr. GRAY. Yes, sir.

Senator GURNEY. There has been a lot of comment about Mr. Dean and his activities, particularly when he was present during the investigation of the White House people. I expect there probably will be more questions about that.

It occurs to me that it was fairly normal procedure if the President had instructed Mr. Dean to investigate the involvement of any White House personnel with the Watergate that he would want as much firsthand knowledge as he could get. So there is nothing unusual about Mr. Dean being present when White House witnesses or personnel are interrogated, is there?

Mr. GRAY. I didn't think so, although I testified our preference would have been otherwise from an investigative standpoint. We must keep that clear. But this man is the counsel to the President of the United States. He has an attorney-client relationship with the President of the United States and he had a specific directive from the President of the United States to perform a function. We were certainly in no position to resist. Had a similar situation occurred in prior administrations, going however far back, I cannot believe Mr. Hoover would have resisted either because of the fact the man is counsel to the President and he has that attorney-client relationship with the President which is a privileged relationship under our Constitution.

Senator GURNEY. Isn't there another reason why he would want to be present? Certainly it occurs to me that any investigator or lawyer charged with an investigation would want to be present when a witness testified or was interrogated so that he could not only hear the answers but also to get an impression of the demeanor of the witness; isn't this a fair thing to say?

Mr. GRAY. I would certainly think that would be one of his reasons, although he didn't spell them out to me, Senator Gurney.

Senator GURNEY. It would seem most unusual to me if he were charged with that sort of a job, for him not to be present when these people were interrogated.

Mr. GRAY. Well, I don't feel so either because he had a very, very tough question on his hands, and I know from the initial telephone conversations I had with him that he was at "sixes and sevens" and didn't have any idea about what was going on.

Senator GURNEY. Did he in any way attempt to interfere or throw any roadblocks into the FBI investigation of people down at the White House?

Mr. GRAY. No, sir; in no way. My agents tell me he asked no questions or interfered in no way with their interviews.

Senator GURNEY. Let us turn to Mr. Segretti for a moment. There has been a lot of conversation about him. How many times did the FBI interview Mr. Segretti?

Mr. GRAY. I believe, sir, it was on the 22d of June and the 26th of June; and then, I think, on the 30th of June, Senator, we contacted him to get an identification on a picture.

I am sorry, sir, may I correct that? My executive assistant reminds me it was the 26th and 28th of June.

Senator GURNEY. Did you find in these interviews that he had any connection with the Watergate affair?

Mr. GRAY. No, sir; not as to the intercepted communications at all. He was not involved in the criminal investigation. We saw nothing in those interviews that indicated his involvement.

Senator GURNEY. And you were investigating the criminal charges or activities surrounding this bugging and surveillance of the Democratic National Headquarters; isn't that right?

Mr. GRAY. That is correct, sir. We made all of this information available, of course, either to the U.S. attorney or the assistant U.S. attorney, and there was never any indication from either the assistant U.S. attorney or U.S. attorney that there was any likelihood of prosecution of Mr. Segretti.

Senator GURNEY. And nowhere within the perimeters of your investigation were you directed to look into the other political activities of Mr. Segretti or anybody else in connection with the election of 1972?

Mr. GRAY. No, sir; we weren't.

Senator GURNEY. In fact, it would have been highly improper had you done so, wouldn't it?

Mr. GRAY. It would not have been in accordance with Department of Justice policy. If we get preliminary information from an interview with Segretti and if there are witnesses—which we didn't have—and get information from Segretti which later turns out—but at that time, no, we did not have anything to go on. We had no reason for doing anything, and the Department of Justice did not order us to do anything.

Senator GURNEY. As I understand, in connection with that last reply, the Department of Justice didn't audit your interviews. Your interviews of Segretti were turned over to the U.S. attorneys, were they not?

Mr. GRAY. Yes. Every one of our reports. Initially, we held everything tightly, and it was then a question of the case agents and the assistant U.S. attorneys working together. Then, gradually, we began to feed our the reports of our investigation to them so that they had the written material. But this was a fast-breaking investigation, and, as Senator Hruska pointed out this morning, everything was immediate and agents were poured into it right away, and reports were coming in awfully quickly.

Senator GURNEY. But if there was any criminal activity on Segretti's part or perhaps a hint that there might have been, a U.S. attorney would have either proceeded by asking you for further investigation, or, of course, if the facts warranted it, charges of criminal prosecution would have been placed against him; isn't that correct?

Mr. GRAY. That is correct.

Senator GURNEY. In other words, you had done your job when you turned over the information and materials that you had obtained, to the U.S. attorney?

Mr. GRAY. That is correct.

Senator GURNEY. As I understand, we really don't know whether Mr. Segretti ever saw these FBI interviews on him. All we know, of

course, is that there was a newspaper story about it. But suppose he had seen it. Is there any crime involved here?

MR. GRAY. Senator, I am not really in a position to make the final judgment on whether or not a violation of law has occurred. I testified that if this alleged act occurred as reported in the newspaper, I think I said I would classify it as a grievous and most serious breach of trust. But not as a violation of law within the laws of the United States, within the investigative jurisdiction of the FBI.

SENATOR GURNEY. And on that point of serious breach of trust, my recollection of your testimony is that as soon as you read this or heard about it, you called up Mr. Dean right away and asked him if this had been done; isn't that correct?

MR. GRAY. That is correct, because, you know, I had given these to him, and the natural thought, the natural reaction on my part, has got to be that this is what happened if it happened.

SENATOR GURNEY. Then there has been some either plain criticism or implied criticism here that you should have conducted a more thorough investigation of Mr. Dean and this memorandum to Mr. Segretti. But it is my impression from hearing your answer that when you had this exchange with Dean that you thought he told you that he didn't show these to anybody, and within the perimeters of that answer you got the impression that he didn't know anything about how this happened either; isn't that correct?

MR. GRAY. Well, that inference could be drawn. Of course, I may have gone through that mental process in deciding to go no further, but I was satisfied with his answer when he said that he did not do this and did not even have these with him in Miami.

SENATOR GURNEY. And I suppose you would have assumed that if he knew, if anybody else in his office or out of his office, for that matter, had gotten hold of these things and showed them to Segretti, he would have told you?

MR. GRAY. He would have. I didn't say it was breach of trust to me. I said it was a breach of trust to the President. I said, "you are counsel to the President, with an attorney-client relationship with him; now, did this occur?" and I used some profanity there because I was angry when I read that story.

SENATOR GURNEY. There have also been inferences here that perhaps you should have tried to go around these cases where the witness requested an attorney present. That is true of some of the Committee To Reelect the President people; and then of course, there is the Dean business, too, although that is not the turning point because he was acting for the President. But what is the policy of the FBI if a prospective interviewee says he wants an attorney present; do you honor that request?

MR. GRAY. Yes, sir; we either honor that request or we don't conduct the interview, and we don't go around the back door. It is a matter, really, of an ethical consideration involved there. You have an employer who says you can interview my employee with counsel present. This is not the first time this has happened. It has happened in other cases.

SENATOR GURNEY. One final question of Segretti. What if he had come to the FBI after you had interviewed him and said, "I would like to see a copy of my interview." What would the FBI have done?

Mr. GRAY. The very strong probability is that we would have consulted immediately with the U.S. attorney, and, very likely, he would have gotten his FD-302 to look at.

Senator GURNEY. Those are the customary procedures in these cases?

Mr. GRAY. That is, sir. He was not charged with an offense. He was not a suspect or a subject, and there had been no formal referral to the U.S. attorney against him. But our normal practice would have been to check with the U.S. attorney and let him take a look at them.

Senator GURNEY. That is all I have for the moment, Mr. Chairman.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. GRAY, I would like to pursue a few questions with respect to Mr. Dean.

Mr. Dean was given the Dita Beard memo which ended up in the hands of the ITT. As I understand it, you did not pursue Mr. Dean's involvement in that particular case.

Mr. Dean was given the FBI file on the Segretti interview, and there were press reports—and we don't know whether this in fact happened—that Segretti was briefed for the grand jury inquiry prior to his appearance on the basis of his file. You did speak to Mr. Dean about his involvement in this, and he denied it. As I understand it, that is as far as you went.

We know that Dean sat in on the interviews of White House personnel at his own request, and we know that Mr. Dean was sent the interviews of S2 people, including those people interviewed, the CRP people, who did not want counsel present.

As I understand it, Mr. Dean directed the confiscation of the material in Mr. Hunt's safe and that he kept the contents for approximately 1 week and then turned the material over to the FBI on June 26.

As I see it, Mr. Dean was omnipresent in this total investigation. I would like to ask you how many of the White House witnesses that the FBI talked to had already been talked to by Mr. Dean?

Mr. GRAY. That I don't know, sir.

Senator TUNNEY. Wouldn't that be an appropriate line of inquiry in such an investigation, considering the fact that, No. 1, here was a situation where Mr. Dean had directed the confiscation of Mr. Hunt's safe?

I would like to pursue that. Is that appropriate in this type of situation, where the FBI has gotten into an investigation, starting on the 17th of June, to have someone at the White House confiscate a safe that was directly relevant to the investigation, particularly inasmuch as the White House knew, as I understand it, on June 17 that Mr. Hunt was probably involved?

Mr. GRAY. Well, certainly late in the evening of the 17th, Mr. Butterfield was talked to, and we told him we thought Mr. Hunt was involved in this. But as that week passed, we did not have, as I testified this morning—and I asked all these questions—we did not have sufficient information to request a search warrant with the specificity and particularity required in order to get a search warrant for the White House. That thought did not enter the minds of the case agents working the case. It did not come up. It did come up at a later date, and these documents were delivered to us by Mr. Dean.

Senator TUNNEY. Were you surprised that the safe had been opened up and that the safe had not been turned over to the FBI?

Mr. GRAY. No, I would have been surprised had it not been, because I didn't know what kind of papers were in there. In fact, I was surprised to find out what kind of things were turned over to us.

Senator TUNNEY. Wouldn't it have been appropriate under such circumstances, where on June 17 the White House was notified that Mr. Hunt was under investigation, that a safe in his office would be turned over to the FBI which had an ongoing investigation?

Mr. GRAY. I think probably the first consideration would be the President's counsel, and the President's counsel has said himself he would like to determine what might be there. I see absolutely nothing wrong with it. That is the White House, and that is the attorney-client privilege that exists there, and that is the man who is charged with an investigation for the President.

Senator TUNNEY. Was Mr. Dean Mr. Hunt's counsel, too?

Mr. GRAY. No, he wasn't Mr. Hunt's counsel that I know of. Now, I don't know. I don't think he was.

Senator TUNNEY. The attorney-client relationship didn't run between Mr. Dean and Mr. Hunt?

Mr. GRAY. No, between Mr. Dean and the President. Hunt allegedly had an office there at the White House. The White House records actually showed, as we checked them, I believe, that this man's last day of work there was the 29th of March 1972.

Senator TUNNEY. So it is perfectly appropriate, then, when you have an ongoing FBI investigation, for a man who serves in an attorney-client relationship with the boss of the man who is being investigated, to go through the files of that man being investigated and hold the material for 1 week prior to the time it is turned over?

Mr. GRAY. I have no information that Mr. Dean went through those files, Senator Tunney.

Senator TUNNEY. Just reading from the answer to the motion to suppress, which was filed by the Government in opposition to defendant counsel's motion to return the property as suppressed evidence, it states:

On Monday, June 19, 1972, John W. Dean III, Legal Counsel to the President, having received information that Hunt, an alleged White House employee, was possibly linked to the Watergate break-in, attempted to determine whether Hunt was in fact employed at the White House. He discovered that Hunt had been employed as a consultant to work on national security matters relating to the Pentagon Papers and international narcotics trafficking, that he had been assigned an office in the Old Executive Office Building (Room 338), and that he was no longer employed as a consultant. Mr. Dean was anxious to know whether Hunt had complied with established procedures to turn over all White House papers and files upon termination, particularly because of the sensitive nature of the matters on which Hunt had been working, and because of Hunt's possible implication in the Watergate break-in. Accordingly, Mr. Dean instructed Bruce Kehrli, staff secretary to the President, to go to Hunt's former office in the Old Executive Office Building and to retrieve whatever documents were there. At the time Mr. Dean issued these orders, he had not yet received any inquiries from law enforcement officials regarding Hunt.

Mr. Kehrli entered Room 338 of the Old Executive Office Building late in the afternoon or early evening of June 19. There were no pictures on the walls, the desk top was clean and the desk drawers contained only office supplies such as stationery and paper clips. Mr. Kehrli noticed a safe in the office but it was locked with a combination lock, and the combination was not on file. In order to obtain

the papers which he was instructed to retrieve, Mr. Kehrli arranged with the General Services Administration to have its employees move the safe to a storage area and open it. For security reasons, the safe was opened in the presence of a Secret Service Agent. Before removing items from the safe, Mr. Kehrli called Mr. Dean's office, and, in Mr. Dean's absence, Mr. Fred Fielding, Assistant to the Legal Counsel to the President (Mr. Dean's principal assistant), responded to the storage area and assisted Mr. Kehrli in removing articles from the safe and placing them in cartons. Because of the lateness of the hour, these boxes were moved to Mr. Kehrli's office in the West Wing of the White House where they would be secure overnight.

On Tuesday, June 20, 1972, Mr. Kehrli instructed that the cartons be removed from his office and taken to the office of John Dean. Mr. Dean sorted through the boxes in order to determine whether there was any classified material contained therein. There were a number of envelopes and file folders stamped with classified designations which, upon opening, were found in fact to contain classified matter, most of it relating to the Pentagon Papers. There was also a black attache case among the material which had been removed from the safe, and Mr. Dean opened it in order to see whether it too contained classified material. Upon opening the case, he saw in plain view a large amount of electronic equipment, as well as written matter, pamphlets and instruction booklets relating to electronic equipment. Mr. Dean placed items such as office supplies in a cardboard box which he left on the floor in his office, but he placed the classified material and the attache case in file cabinets where they would be safer. All the material seized from Room 338 of the Old Executive Office Building was subsequently turned over to the Federal Bureau of Investigation.

Now, it is clear that the White House knew that the investigation was going on, and on June 17; this material was taken on the 19th and not turned over until the 26th. Mr. Dean had it in his office for approximately 1 week. My question to you is, is this appropriate? Would this be something which the FBI considers to be appropriate in an investigation of this type?

Mr. GRAY. I would say that at the time we didn't even know this material existed. We didn't know what to ask for.

Senator TUNNEY. Mr. Dean did?

Mr. GRAY. Yes.

Senator TUNNEY. And Mr. Dean apparently was present on all the interviews involving White House personnel. He apparently received the interviews of 82 people. Mr. Dean is the same one who got the Dita Beard memorandum. He is the same one who received from you the Segretti file. Didn't all the circumstances lead you to believe that Mr. Dean perhaps should have been interviewed with respect to the question as to whether or not he had talked to White House witnesses prior to the time the FBI talked to them?

Mr. GRAY. No, I didn't, because I didn't think that he was sitting there in the attorney-client privilege position at all. You know, generally, when you have that attorney-client privilege position and you are an attorney working with witnesses, you are obviously going to talk with them. The knowledge that I had and still have is that he was sitting there as the counsel to the President in his official capacity in conducting an inquiry. Also, Senator Tunney, he may very well have talked to many in the process of his own inquiry. I don't know that he did or did not. I did not ask him because that once again goes back to the question, did I consult with him in regard to the results of his investigation? The answer to that is no, we did our own, in our own way, all the way.

Senator TUNNEY. What was the relationship between Mr. Dean and Mr. Hunt?

Mr. GRAY. That I don't know.

Senator TUNNEY. Wouldn't it be appropriate to the investigation to know what the relationship of Mr. Dean was to Mr. Hunt when you consider that Mr. Dean was omnipresent during this investigation?

Mr. GRAY. He wasn't that omnipresent, really. I don't have that kind of a feeling about it. He was doing it from his side, from the White House involvement side. He wasn't doing all the things we were doing. He was not in our hair constantly. He wasn't that omnipresent as far as I was concerned at all, Senator Tunney. I was frankly surprised at the materials they turned over to us.

Senator TUNNEY. Well, they relate to the investigation, of course.

Mr. GRAY. He turned over some top-secret material to us. As I recollect that inventory—I will have to check it. I haven't looked at it since October, at the time of the motion.

Senator TUNNEY. The FBI must have all kinds of top-secret—

Mr. GRAY. I know, but I didn't expect to see—I will have to check, but these were top-secret dispatches with regard to South Vietnam, as I remember them.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. I have checked the records regarding Mr. Hunt's material which was turned over to us and I find that among the effects are classified documents relating to the "Pentagon Papers." I have already supplied the committee an inventory of the items turned over to the FBI.

Senator TUNNEY. With respect to Mr. Hunt and his relationship to Mr. Dean, it would seem to me that, inasmuch as Mr. Hunt was one of the prime suspects in the Watergate case, it might be well to know what his relationship was with Mr. Dean, as Mr. Dean was very much involved in all aspects of the investigation.

Mr. GRAY. As we got into this investigation, we found out about Mr. Hunt, found out who his relationships were with, but we didn't in this early week know too much at all about him. We had to develop it. That is part of the development of the mosaic and evidentiary pattern.

Senator TUNNEY. But after you did learn about Mr. Hunt, wouldn't it have been useful information in this investigation to find out what Mr. Dean's relationship with Mr. Hunt was?

Mr. GRAY. No, because there was no lead that pointed to any kind of relationship between Mr. Hunt and Mr. Dean.

Senator TUNNEY. Except for the fact that Mr. Dean did have those materials from the safe of Mr. Hunt in his office for a week.

Did you request the materials be turned over to the FBI or did he turn them over of his own volition?

Mr. GRAY. My information is he turned them over. We made no direct request, because we didn't know they existed during that early period of time.

Senator TUNNEY. When were you first aware of the rumors that not all of the materials were turned over by Mr. Dean?

Mr. GRAY. I think this came up in October during the motion, that motion to suppress, and at that point in time the allegation was made, as I recollect, with regard to the pocket notebook and that Hermes notebook. And as I testified this morning, none of us knew what a Hermes notebook was and special agents went out into the city of Washington—I think I am correct—to seven different stationery

stores trying to find out what a Hermes notebook is. It is some kind of an English notebook.

Senator TUNNEY. The record you supplied to the committee of interviews of White House people indicated the last time Mr. Dean was interviewed by the FBI was on July 8, 1972.

Why wasn't he interviewed in October after it became known to you, or to the FBI, that there was an allegation that he had not turned over all the materials in the safe?

Mr. GRAY. Once again this was a newspaper story.

Senator TUNNEY. Right.

Mr. GRAY. He was interviewed. He was interviewed in connection with the response to the motion, because the Government would undoubtedly call him, and call Mr. Fielding, and call Mr. Kehrl. He was interviewed by Assistant U.S. Attorney Silbert in the presence of Assistant Attorney General Henry Petersen in charge of the Criminal Division and in the presence of one special agent of the Federal Bureau of Investigation. All three of those people were there.

Senator TUNNEY. I see. It wasn't in the record you supplied the committee.

Mr. GRAY. That was a pre-trial preparation and pre-motion type of thing and it was called by the assistant U.S. attorney. That was part of our working with them, filling in any holes or gaps as we did in preparing for trial.

Senator TUNNEY. And Mr. Dean denied that he had failed——

Mr. GRAY. Yes, he did.

Senator KENNEDY. How did you know he turned all the material over to you?

Mr. GRAY. How do I know, as a matter of fact? I have no way of stating with positive certainty other than that this question has been looked into, Senator Kennedy, on several occasions, and positive affirmative denials have been made. Also, there is the fact that material was turned over that was incriminating material, material that you would naturally in a suspicious frame of mind think would not be turned over. But I can't sit here in judgment and say I know as a positive, certain fact that every single piece of paper was turned over. I can't do that, and I wouldn't do that.

Senator TUNNEY. Was Mr. Hunt questioned regarding this point?

Did Mr. Hunt say that all the materials were not turned over?

Mr. GRAY. The motion paper mentions that. We have made attempts to question those individuals who were indicted and, of course, they won't speak with us.

Senator TUNNEY. But the motion paper does indicate that not all the materials were turned over; does it not?

Mr. GRAY. I am sorry, sir?

Senator TUNNEY. Is there any indication on the record that Mr. Hunt believed that not all the records were turned over to the FBI?

Mr. GRAY. I will have to check the records to answer that question because I just don't know.

Senator TUNNEY. It would be fairly important to the investigation, would it not?

Mr. GRAY. Yes, but I don't remember those infinite details and I want to be sure what records you are referring to—if you are talking about the motion papers or if you are talking about our FD-302's, Senator Tunney.

(Mr. Gray subsequently submitted the following document for the record.)

Mr. GRAY. Senator Tunney, I have checked the records and I do not find any indication that Mr. Hunt told the FBI he thought that all the effects in his office were not turned over to the FBI. It is a matter of record with the U.S. District Court for the District of Columbia, however, that on October 11, 1972, Mr. Hunt swore to an affidavit, which was part of a motion for return of property and to suppress evidence filed on his behalf with the court. That affidavit of Mr. Hunt's specifically mentions a "Hermes" notebook and a "name-finder" notebook as being among the items which were in his effects in Room 338 Old Executive Office Building. These alleged items were not among the materials which White House personnel removed from Mr. Hunt's office and which Mr. Dean and Mr. Fielding turned over to the FBI on June 27, 1972. [The June 27 date was subsequently changed to June 26.]

Senator TUNNEY. Assuming that the allegations were correct—wherever they came from—I understand that the press was worried that the FBI—

Mr. GRAY. I would hope that is not true.

Senator TUNNEY. I would hope it is not true, too.

But assuming it, for the moment, to be true—I am not saying it is—assuming it is, that would be a pretty important point, would it not, an address book with names of people?

Mr. GRAY. It was allegedly a pocket notebook and Hermes notebook. We found a pocket notebook that had nothing in it. We found one in an automobile down in Miami that had nothing in it. When you are confronted with affirmative and consistent denials, once again you come to the point of where is the finality. You shake it and you shake it and shake it, and at some point in time you have to say I am just not getting anything.

Senator TUNNEY. How about Mr. Kehrli? Was he questioned on that point?

Mr. GRAY. I would have to consult the 302.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Upon checking the record, Senator, I find that Mr. Kehrli was not questioned on this point by the FBI. However, on January 4, 1973, in pretrial preparation, Mr. Kehrli along with Mr. Fielding and Mr. Dean, was questioned by Assistant U.S. Attorney Silbert in the presence of Assistant Attorney General Petersen of the Criminal Division. A Special Agent of our Washington Field Office was present at that questioning by Mr. Silbert which took place in Mr. Petersen's office at the Justice Building.

Senator TUNNEY. Mr. Kehrli was the one actually brought the safe over to his office and removed the papers in the first instance. Could we have that information? Was he questioned by the FBI after these allegations were made or the rumors were started that not all the documents have been turned over to the FBI—and also the agent of the Secret Service who happened to be present.

Mr. GRAY. No; there was no Secret Service—I said the special agent, I thought.

Senator TUNNEY. No; I was talking about the answer to the motion.

Mr. GRAY. I see.

Senator TUNNEY. It indicates a Secret Service agent was present with Mr. Kehrli as they removed the items from the safe. I am curious to know if, after these rumors were started that somehow not all the documents were turned over by Mr. Dean, Mr. Kehrli was interviewed and if the Secret Service agent was interviewed in addition to Mr. Dean.

Mr. GRAY. I can state, Senator Tunney, that Mr. Dean, Mr. Kehrli and Mr. Fielding were interviewed by Assistant U.S. Attorney Silbert in the presence of Assistant Attorney General Henry Petersen of the Criminal Division and one agent of the Federal Bureau of Investigation, but I cannot specify with regard to the Secret Service agent. I will have to check for you and make an insert for the record.

(Mr. Gray subsequently submitted the following document for the record:)

After checking, I have been informed that the Secret Service agent was not questioned on this point by Assistant United States Attorney Silbert, nor was he questioned on this point by the FBI. Our files show that among the people we interviewed relative to the removal of Mr. Hunt's effects from Room 335 in the Old Executive Office Building was a Secret Service agent who was interviewed on June 29, 1972. He was present when Mr. Hunt's safe was drilled open on the evening of June 19, 1972. When the safe was opened and it was seen that some highly classified material was contained therein, it was immediately closed and Mr. Kehrli was informed. Mr. Kehrli took the responsibility for the contents and the Secret Service agent was thereafter excused and did not participate in recovery of the items from the safe.

Senator TUNNEY. Mr. Gray, during the Watergate investigation how many times did you personally speak to Mr. Dean?

Mr. GRAY. I don't know the exact number of times, but in the beginning I know there were quite a few telephone conversations there; we were trying to get this procedure ironed out.

Senator TUNNEY. The procedure for interviewing the White House people?

Mr. GRAY. That's right.

Senator TUNNEY. And the procedure that was worked out was what?

Mr. GRAY. I worked out the procedure with him and told him, and made no bones about it, that this investigation was going to be aggressively conducted and that as far as I was concerned we ought to find out who is involved, regardless of where we had to go, and this we were going to do. The White House was well aware of this. They made no objections to this. They concurred in it. It was during conversations along these lines and along the procedural lines that I finally said—and I want to put this in the context of either my No. 2 man or the Special Agent in Charge of the Washington field office calling. I believe that Mr. Felt had one telephone call with Mr. Dean on this, then the calls were direct from the Special Agent in Charge of the Washington field office to Mr. Dean. But I talked with Mr. Dean quite frequently. There were a lot of matters that I talked with him on, but I will be glad, as I said to Senator Byrd this morning, to check the records and give you the dates. I think we have the times that I talked to him.

(Mr. Gray subsequently submitted the following document for the record:)

To the best of my recollection and upon checking my records, I find that my contacts with Mr. Dean regarding the Watergate investigation were as follows:

Date	Time ¹	Appointments
June 21, 1972	11:30 a.m.	At my office to discuss procedures re interview of White House personnel.
June 22, 1972	6:30 p.m.	Do.
July 28, 1972	11:30 a.m.	At my office to receive investigative reports from me.
Sept. 18, 1972	3 p.m.	At my office to return investigative reports to me.
Oct. 18, 1972	9:30 a.m.	At my office to discuss leaks re investigation.

Date	Time	Telephone calls
June 21, 1972	10 a.m.	To Mr. Dean to set up appointment re procedure for interview of White House personnel.
Do	5:26 p.m.	To Mr. Dean to discuss his role at interviews and scheduling of interviews through his office.
June 22, 1972	10:21 a.m.	From Mr. Dean to set up appointment for later today.
June 23, 1972	8:24 a.m.	From Mr. Dean re rumors of leaks of FBI information.
Do	2:53 p.m.	To Mr. Dean to deny that information re the investigation is being leaked from FBI.
June 26, 1972	3:13 p.m.	From Mr. Dean; referred to me at Cincinnati field office; called back at 4:26 p.m. re allegations that FBI information was being leaked.
June 27, 1972	9:28 a.m.	From Mr. Dean re material delivered to the FBI.
June 23, 1972	10:25 a.m.	From Mr. Dean re leaks concerning material delivered to the FBI.
Do	4:35 p.m.	To Mr. Dean, I have no recollection of the substance of this call.
June 30, 1972	10:13 a.m.	From Mr. Dean; referred to me through San Diego field office; returned call at 10:30 a.m. re information leaked to newspapers.
Do	1:02 p.m.	From Mr. Dean re same subject.
July 5, 1972	2:53 p.m.	To Mr. Dean to request Mr. Hunt's toll call records.
Do	3 p.m.	From Mr. Dean re providing Mr. Hunt's toll call records.
July 17, 1972	11:10 a.m.	From Mr. Dean requesting a summary of the status of investigation.
July 20, 1972	9:57 a.m.	To Mr. Dean re transmission of a summary of status of investigation.
July 21, 1972	2:44 p.m.	From Mr. Dean; informed him a summary of investigation had been signed and sent to Attorney General.
July 25, 1972	10:32 a.m.	To Mr. Dean, I have no recollection of the substance of this call.
Do	11:30 a.m.	From Mr. Dean requesting that he be provided copies of investigative reports.
Aug. 2, 1972	3:09 p.m.	From Mr. Dean re leaks of FBI information.
Aug. 3, 1972	2:54 p.m.	From Mr. Dean, I have no recollection of the substance of this call.
Aug. 4, 1972	10:32 a.m.	Do.
Sept. 14, 1972	6:25 p.m.	To Mr. Dean to inform him of a possible 2d intercept of communications case at Democratic National Headquarters.
Sept. 19, 1972	12:14 p.m.	From Mr. Dean; referred to me at Kansas City Field Division. Call returned at 12:25 p.m. re leaks of FBI information.
Sept. 20, 1972	3:51 p.m.	From Mr. Dean re FBI safeguards against leaks.
Oct. 12, 1972	3:12 p.m.	From Mr. Dean re leaks of FBI information.
Oct. 18, 1972	9:05 a.m.	To Mr. Dean re news articles based on Mr. Young's affidavit.
Jan. 8, 1973	2:59 p.m.	To Mr. Dean to request return of second group of investigative reports.
Feb. 2, 1973	11:20 a.m.	From Mr. Dean re FBI request to interview Mr. Chapin and leaks of FBI information.

1 All times are EDT or EST.

Senator TUNNEY. Did you talk to him, say, in the first few days after the flap broke?

Mr. GRAY. I think my recollection is I didn't talk to him at all until I got back to Washington on the 21st.

Senator TUNNEY. On the 21st?

Mr. GRAY. Yes, sir.

Senator TUNNEY. But—

Mr. GRAY. But that is subject to correction.

Senator TUNNEY. I understand. It is a long time ago and dates are very difficult to remember.

Let's say that you talked to him on the 21st. That was approximately 2 days after he had confiscated the materials from the safe of Mr. Hunt and approximately 5 days or 6 days before he turned them over to you. Did he mention in that telephone conversation that he had those materials?

Mr. GRAY. No; he did not. He and I did not discuss his investigations at all and I wouldn't get into it. I absolutely refused. I just wouldn't do it. If it had to come up I would say "No, I don't want this."

Senator TUNNEY. Weren't you surprised to find out on the 26th when he made these documents available to you, these materials available to you, that you had had conversations with him earlier and that he hadn't mentioned them?

Mr. GRAY. No, not at all, because we didn't know at that time what Hunt had, where his offices were, with whom he was working, whether with Robert R. Mullen & Co., this kind of thing. The thought never entered my mind.

Senator TUNNEY. Do you think Mr. Dean knew where Mr. Hunt worked?

Mr. GRAY. At that particular time, I think not.

Senator TUNNEY. But you don't know?

Mr. GRAY. I don't know, absolutely not; no, sir.

Senator TUNNEY. When did Mr. Dean first indicate to you that he wanted to sit in on the questioning of White House witnesses?

Mr. GRAY. I think that was right at the outset, in that very first conversation. My recollection is it was in that very first conversation or the second. I think that was Wednesday, Thursday, or Friday, right in that 3-day time frame, Senator.

Senator TUNNEY. Which would have been approximately 1, 2, or 3 days that he had the material from Mr. Hunt's safe when he mentioned that he wanted to sit in on the interviews with the White House witnesses?

Mr. GRAY. That would be correct.

Senator TUNNEY. Did any of the witnesses object, the White House witnesses object, to Mr. Dean sitting in?

Mr. GRAY. If they did, no such objections have been reported to me, sir.

Senator TUNNEY. Under normal course, were they reported to you, under normal course?

Mr. GRAY. Certainly. My agents would have reported that to me because, as I testified in response to a question from Senator Gurney, there was some grumbling from my agents that they didn't feel we were getting all we should be getting.

Senator TUNNEY. Who instructed the agents that Mr. Dean could sit in?

Mr. GRAY. I am sure that decision was mine, was conveyed through the chain of command through the Special Agent in Charge through the Washington field office.

Senator TUNNEY. A thing that I am a little confused about—and I can understand the problem that you had at this particular point in time, Mr. Dean being counsel to the President and your feeling that everything you reported to him was being reported to the President, I understand the sensitivity, the relationship that existed there—but you indicated that Mr. Dean was sitting in on those interviews in the position of attorney for the President. The attorney-client relationship existed between Mr. Dean and the President. On the other hand, no attorney-client relationship existed between the White House interviewee and Mr. Dean.

Mr. GRAY. That is correct.

Senator TUNNEY. So—excuse me, go ahead.

Mr. GRAY. I was going to finish responding. The other situation here, Senator Tunney, is where you have an employer-employee relationship. This happens to us where he says I am going to have my counsel sit in when you are going to interview my employee. We either take the interview or don't take the interview. That is the option we have, and in all the important cases we take the interview.

Senator TUNNEY. And allow the attorney for the employer to sit in?

Mr. GRAY. Yes. Just so this record doesn't get obfuscated or confused, let me state that our preference is that an attorney not be present but in today's world it is becoming more and more the situa-

tion where attorneys are present. It is not normal, however. We prefer the other way. The norm is still to conduct an interview without the attorney.

Senator TUNNEY. At the time Mr. Dean was sitting in, you didn't know what his relationship, if any, was with Mr. Hunt?

Mr. GRAY. No, sir.

Senator TUNNEY. Let us say that—

Mr. GRAY. What I found out since indicates that he had no relationship with Mr. Hunt and this doesn't strike me as unusual. I have talked to persons in the White House and said, "Hey, so and so called me up," and they don't even know who he is. This has happened. This is a fact of life.

Senator TUNNEY. Did Mr. Dean talk to any of the interviewees prior to the time that the FBI interviewed them?

Mr. GRAY. I don't know, sir, because I didn't inquire into any of his inquiry work or any of his investigation at all.

Senator TUNNEY. You don't know whether he coached any of the witnesses?

Mr. GRAY. No, I wouldn't even have asked him if he coached any of the witnesses, and we didn't.

Senator TUNNEY. But considering the fact that he had probably more information than anyone else, other than the FBI, and inasmuch as he seemed to have almost as much information at times as you did, at least he had prior information with regard to Hunt, wouldn't it have been a normal question to ask Mr. Dean if he was interviewing the witnesses before the FBI interviewed them?

Mr. GRAY. No, sir, because Mr. Dean had zero information at the beginning and he stayed that way for a long period of time. As a matter of fact, until the 21st day of July when I knew what kind of a situation I was in, I wasn't about to be putting out information anywhere. I was holding it as close as we could hold it. I think I testified earlier this was the procedure. We were working at the case agent level and doing very little writing because of the immediate nature of the inquiry and because of the manner in which the teletypes and so forth were coming in, and that information was held pretty closely. That is why at the end of the first week, on that Saturday, I raised Cain because those two things appeared in the newspaper. He didn't have any information in the beginning.

Senator TUNNEY. As of the 19th he had an awful lot of information on Mr. Hunt?

Mr. GRAY. I don't know what he had.

Senator TUNNEY. He had the materials he turned over to you.

Mr. GRAY. That is right, and you can look at the inventories there and they are not that great, the materials listed there.

Senator TUNNEY. There was bugging equipment, wasn't there?

Mr. GRAY. Oh, yes, that was there. I don't think it was actually bugging, that is a specific electronic equipment. I remember the word "Kelcom." It was certainly related to electronic transmissions and receptions, but I don't think we in our lab would classify it as bugging equipment.

Senator TUNNEY. As of the 19th you knew Mr. Hunt had electronic equipment that was pretty extensive. So he may not have had as much information as you had, but he had a fair amount of information. Do

you think maybe the reason he asked to sit in on those interviews was because of the fact he had gone through the safe and found out what was in it?

Mr. GRAY. No, I don't think so, sir. I think the reason he asked to sit in was that he had a dearth of information and was trying to acquire it in the easiest possible manner regarding the White House involvement. He doesn't have the resources at his command to the extent we have. I believe that is the reason that was given to me, in his official capacity as counsel to the President conducting this inquiry.

Senator TUNNEY. Did you speak to the Attorney General or the President about it?

Mr. GRAY. No, sir; I did not talk to the President.

Senator TUNNEY. To the Attorney General, about the attorney-client relationship?

Mr. GRAY. Not in the beginning. I didn't consider this to be highly irregular or improper at all. Later I talked to him.

Senator TUNNEY. Highly irregular or improper for—

Mr. GRAY. Dean, counsel to the President, acting in his official capacity and in his relationship to the President, to sit in on this.

Senator TUNNEY. And how about keeping the material from Hunt's safe a week?

Mr. GRAY. I don't think—I testified before about that, you know—

Senator TUNNEY. Don't think that is a problem?

Mr. GRAY. No, because the President has a rather substantial interest as to what might be in those papers and I see nothing irregular about it.

Senator TUNNEY. As Senator Byrd brought out this morning, not only was the White House the first to know about Hunt's involvement, but it had first access to the safe and desk remaining in Hunt's vacant office in the Executive Office Building after his departure in March, 1972, and I read from the answer filed by the Government to the motion to suppress evidence.

As I understand it, you have no assurance that Mr. Dean did turn over all the material, other than what Mr. Dean himself said?

Mr. GRAY. I said to Senator Kennedy that I can't say as a positive fact that he turned over everything he found there. I have every reason to believe that he did because of the interviews on this subject in connection with the preparation of the motion papers. I added also, to make my answer complete in this sense, that when you see these kinds of things being turned over to you, your suspicious mind begins to work and you figure if they are turning over this kind of stuff people are not trying to hide anything. I called John Dean up and said, "Do you know a gun was in the safe?" I said, "You jolly well had better check your security procedures." I said, "How does a gun get inside the Office of the White House?" I called him on that.

Senator TUNNEY. It is also true that you called pretty hot under the collar when you read a newspaper report that somehow information which had been turned over to Mr. Dean had perhaps gotten into the hands of Mr. Segretti?

Mr. GRAY. That is right. I testified to that, quite a few times, Senator Tunney.

Senator TUNNEY. What I am trying to find out is why was it a White House counsel seemed to be so heavily involved in a FBI investigation, to the point that at times it seems that he knew almost as much about what was going on as you did, at least in the case of Hunt he knew before you did, and he sat in all of these interviews. He received 82 interviews from you, including apparently the interviews of people who had asked specifically not to have counsel present from the Reelection of the President Committee, and despite the fact that they didn't want counsel present, still this material was also turned over to Mr. Dean.

Do you have any knowledge as to whether any attempts were made to retaliate against those people who gave those interviews without counsel being present?

Mr. GRAY. I would like to go back to the beginning of your statement, if I may. We must put this in the proper time frame so the record shows what happened, because Mr. Dean had zero information at the beginning. He was starting from ground zero. He sat in on only the White House interviews. He didn't get any information until the 21st of July. We had completed the bulk of the real tough interviews by that time and, Senator, it just isn't correct to state he had as much information as the FBI.

I have no information, Senator, that he took any retaliatory action against those people. Once again, I would find this to be really a breach of trust and I don't think John Dean would do that. He is counsel to the President. He is sitting there in his official capacity and this is being delivered to him in a lawful manner in his official capacity.

Senator TUNNEY. Mr. Hunt was also in the White House and had some top secret information and he did certain things——

Mr. GRAY. Yes, but he certainly was not the counsel to the President. He did not occupy this kind of position. He did not discharge this type of responsibility. I think really there is a vast difference between Mr. Hunt's position and Mr. Dean's employment. Mr. Dean sat in on 13 or 14 White House interviews and we made over 2,300 interviews. So it just isn't correct to say he knew as much as we knew.

Senator TUNNEY. I can't speak for other members of this committee, but what I am trying to do is to establish in my own mind the degree of independence that you have of those White House counselors.

Now I understand that you take orders from the President and from the Attorney General but by golly you don't take your orders from White House counselors, or you shouldn't.

Mr. GRAY. That is right, I don't. Those people over there knew, John Dean and John Ehrlichman both knew my thoughts going into this thing, because I made it clear to them. They concurred and I made the statement several times that no matter how far this reaches, these facts have to be found out and put on the table. This is how to do it. I am trying to help you and show you, to demonstrate this kind of approach. But right now, as far as you and I are concerned, it is a one-on-one situation. You have to judge me. I know your questions are well intentioned. I know they are proper and they are probing and they are thorough and they should be. And I want to try my level best to answer them, because I am trying to give you what went on in my heart and my mind when this thing hit—by golly I mean it, and Mr. Dean and Mr. Ehrlichman were told this.

Senator TUNNEY. I have no questions regarding your integrity, believe me. I say this publicly. I think you are a man of integrity.

But that, of course, does not answer the problem, which is whether or not you have taken orders from White House counselors and whether or not Mr. Dean's activities during this period of time were proper and whether your responses to him were proper.

Mr. GRAY. It is a difficult position that the Members of the Senate are in. It is a difficult position that I am in, because, you know, I have turned down some requests for information. I told you this earlier when we talked about the files, and I will continue to do that.

When I can't do the job my way I am going to go, because I came to this town with reputation and integrity and I am going to leave that way, so help me God.

Senator TUNNEY. In the answers you supplied to the committee yesterday you amplified and corrected testimony of last week and now state that you personally made the Dita Beard memo available to Mr. Dean.

Your answers yesterday indicated that when you questioned Mr. Colson on August 29, he told you he had sent Mr. Hunt out to see Dita Beard last March. On what date did he do so, do you know?

Mr. GRAY. No, I don't know the date. We will find it, though, and we will put it in the record.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. Upon checking the record, I find that August 29, 1972, was the day Mr. Colson advised us he sent Mr. Hunt, in March, 1972, to Denver, Colorado, in connection with the "ITT case."

Senator TUNNEY. You also stated that you did not explore with Mr. Colson the precise nature of the Hunt visit since there was no connection between Watergate and ITT. Did you at least ascertain that Mr. Hunt was talking to Dita Beard about ITT?

Mr. GRAY. No, sir. I don't believe we did because we didn't connect those two. I want to be sure I understand, so I don't—are we talking about March, that we didn't question him in March, or this year?

Senator TUNNEY. In August.

Mr. GRAY. Of 1972?

Senator TUNNEY. Yes.

Mr. GRAY. I am almost sure we didn't, but I want to check that FD-302.

Yes, after checking the record, I find we did not question Mr. Colson as to the purpose of Mr. Hunt's trip to Colorado since there was no apparent connection between that trip and the Watergate investigation and we were not investigating the ITT matter.

Senator TUNNEY. I am not maintaining that Watergate and ITT are linked in any way. What I am suggesting is there has been a pattern of dissemination of information in the White House.

Specifically, you gave the ITT memo to Dean and shortly thereafter Colson sends Hunt out to see Dita Beard and shortly after that she begins to question the authenticity of the information.

What I am driving at is that your testimony with regard to the alleged leak of information to Segretti is that you did not feel it necessary to go beyond Dean's word that he personally did not take the

document to Florida. The press report on Segretti indicates that information passed on to Dean got outside the White House as did the Dita Beard memo which was passed on to Dean. I am suggesting that it would have been normal to be more suspicious in October.

Mr. GRAY. No; because I think you are stretching that analysis beyond reasonable bounds. I think it is an area that you have to probe, but I think you have to respond to it in that manner, too.

Senator TUNNEY. You don't think that the fact that these things happened, would in any way lead to any suspicion that documents that you were turning over to Mr. Dean perhaps could be leaked to other people?

Mr. GRAY. When you put it that way, I have to put it that perhaps anything can occur in this man's world. These days it is a very troubled world and things can occur. I have got to admit that. But then I have to bring myself back to what is most reasonable, and the natural and probable consequences, and I have to evaluate what a man's position is and that sort of thing. When I make these judgments—the biggest proof of the pudding is that no leads were sent up and we didn't say we have to go check that out and that kind of thing.

Senator TUNNEY. If I gave you, the FBI, a document and that document ended up in third party hands it would tend to make me suspicious that you gave it to that third party.

Mr. GRAY. That's right, and I think you would ask me.

Senator TUNNEY. Even if you denied it I would be suspicious.

Mr. GRAY. I think, working with you, I would believe you, Senator Tunney.

Senator TUNNEY. You are too nice a guy, Mr. Gray.

Mr. GRAY. I don't think so. I don't think so. I enjoyed my visit with you in your office, and I thought there was some chemical affinity there.

Senator TUNNEY. Mr. Gray, on page 216 of the transcript I asked you whether you had procedural guidelines available to you. You answered:

They are not procedural guidelines as such, they are rules and regulations of the Department of Justice. We have the Manual of Rules and Regulations for the FBI regarding each of our jurisdictional categories in which we investigate, dissemination of reports that are to be made thereunder.

A bit further on, you said they are not really guidelines but jurisdictional perimeters established by the statutes of the United States.

The day I came into the FBI one of the very first avenues of inquiry that I launched, one of them had to do with jurisdiction, because I knew this was a problem and we had a very fine paper developed on jurisdiction. We discussed it May 23 and 24 at our Quantic meeting. I have given explicit instruction we investigate only questions within our jurisdiction.

Can you supply those for the record or is that impossible?

Mr. GRAY. No, you are going to have me giving away things in supplying those. I would prefer not to.

Senator TUNNEY. Were these guidelines followed with regard to your transmittal of Watergate memorandum to Mr. Dean on the 23d?

Mr. GRAY. If you mean is there something specific in these guidelines that sets forth in an Intercept of Communication case that we make a transmission like this to the White House, I think the answer would probably be that I wouldn't find anything in there like that with re-

gard to an IOC case. These are broken down with regard to categories of cases and then you have to go into the area of what dissemination is made to the White House. In the past, the policy has been generally to disseminate when and to whom the Director says. I am trying to get away from that to where we have it nailed right down. Then, in this particular case, I asked for the opinion of our Office of Legal Counsel before I caused to be prepared the letterhead memorandum of July 21, 1972.

But what I would do with regard to the Manual of Rules and Regulations, and jurisdictional statements, is to take a look as to whether or not there is something that would be helpful to you. I would even review that paper that was submitted in Quantico. There are going to be some investigative techniques and tactics in this material and that is the reason I am hedging by not submitting it for the record.

Senator TUNNEY. I wouldn't want you to submit anything that would obstruct your efforts at justice but it would be interesting to note if, in turning over these documents to the White House and dissemination of information occurred as is alleged to have occurred, there was a violation of FBI procedures?

Mr. GRAY. I think not, Senator.

Senator TUNNEY. Mr. Gray, you have supplied this committee, in response to questions asked March 1st, material to the effect that Mr. Baldwin informed the FBI the nature of the conversations which were overheard at the Watergate. You state John Dean was furnished certain specified information on FBI FD-302 forms. Did you supply Mr. Dean with material which included the substance of the conversations overheard by Baldwin or others at Watergate?

Mr. GRAY. I believe the 302 was in that group of 82 reports that I supplied to Mr. Dean.

Senator TUNNEY. The substance of the conversations that he overheard?

Mr. GRAY. Yes. It is a natural thing. It wasn't the kind of thing about who did what to whom, yet, as I recollect that 302, there were some names in there. I would have to look at it again, but I believe that there were some names in there.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. After checking the record, Senator Tunney, I find that Mr. Baldwin's FD-302 set forth the nature of the conversations he overheard. In addition, there are set out in the FD-302 the names of several individuals whose conversations were overheard.

Senator TUNNEY. Would it be appropriate or even legal for the FBI to turn over contents of overheard conversations to third parties?

Mr. GRAY. When you just say third party—remember, that statute has the word "willfully" in it, and the legislative history of the particular statute deals with that. With "willfully" you have got an act that is premeditated, with malice, and without any legal justification whatsoever. This, I think, is in the nature of turning over those documents within the official chain of command of the U.S. Government. It is not just turning them over to third parties.

Senator TUNNEY. But the White House counselor is not a member of the FBI?

Mr. GRAY. No, he is not a member of the FBI, but he is sitting there in his official capacity as counsel to the President, conducting an inquiry directed by the President of the United States. And I think he is right in the chain of command and there is legal justification. This is the point lawyers would argue about, and some lawyers are not going to agree with you.

Senator TUNNEY. It concerns me, because I have always had the impression that the FBI had information that should be kept sacrosanct and secret during the course of an investigation—if not thereafter. It seems to me that Mr. Dean had access to anything that you had in your files.

Mr. GRAY. No, he didn't. There were 186 complete reports. I sent over only those that I had read and that was a total of only 82. I didn't send over all of the reports.

Senator TUNNEY. Did you send over anything that he asked for?

Mr. GRAY. He didn't ask for anything specifically. He asked if he might look at these in order to assist him in the course of his investigation.

Senator TUNNEY. Let's just say that he made a request for all the reports?

Mr. GRAY. In a situation like this where he is charged by the President to conduct an inquiry, yes, I probably would have made them available to him. But as I told you earlier, Senator Tunney, there are circumstances under which I don't, and I ask an awful lot of questions. This was a unique situation. We have said this time and again, but I have to point it out for the record, at the risk of belaboring the point, where in other cases I wouldn't do it.

Senator TUNNEY. One of the interesting documents that you supplied yesterday was the State by State response compiled in answer to Mr. Ehrlichman's request.

It was interesting to me to see the types of information compiled. I am not going to read specifics because I don't want to put into the public record innuendoes and allegations against people who I think have fine character. But there is information there that certain law enforcement officials are associated with homosexuals, and things of that nature.

Mr. GRAY. Just one, and that is common knowledge. That is public knowledge, and has already been—the things these men generated, they were criminal justice things, derived from living and striving in the community. We can dredge anything up out of our files. This wasn't just drawn from files. This was one of the living, breathing criminal justice things out there in the community.

Senator TUNNEY. But it was in connection with campaigning?

Mr. GRAY. I have already said it was an improper thing to do, and I raised a lot of Cain about it.

Senator TUNNEY. In an answer that you supplied this morning you indicate, to my knowledge for the first time, that in an FBI interview with Mr. Kalmbach on September 4th, he stated he recommended Segretti as a man who would be of service to the Republican Party. He contacted Segretti to repay him, although he had no knowledge of what Segretti was doing, and Kalmbach said he was accountable to no one for the payments of record. Was anything done with this?

Mr. GRAY. The U.S. Attorney has all of this.

Senator TUNNEY. And you turned these over to the—

Mr. GRAY. Yes, sir, that is our normal procedure. Of course, this time we were working very, very closely with the U.S. Attorneys. I don't know whether the indictments had been handed down by then or not. No, we were still working with the U.S. Attorneys.

Senator TUNNEY. So that is still an open case?

Mr. GRAY. The Watergate itself is an open case.

Senator TUNNEY. I am talking about this aspect of it.

Mr. GRAY. I don't know what the Department of Justice is doing with many aspects of this case.

The CHAIRMAN. What you are is an investigative agency, isn't it?

Mr. GRAY. That is correct.

The CHAIRMAN. You investigate and turn over what you find to the Justice Department?

Mr. GRAY. That is correct.

The CHAIRMAN. And they make the decision on whether to prosecute or not?

Mr. GRAY. That is correct, sir; we don't recommend it.

Senator TUNNEY. I don't want to go into details of a case that is still being investigated and considered by the Department of Justice with regard to possible charges being brought. So I won't go on.

Mr. GRAY. It is true in some of these cases. This is not a closed book by any manner of means, Senator Tunney. This is one of the problems generated, I think, in the dialog yesterday morning before the committee.

Senator TUNNEY. I would like to go into a couple of areas with regard to FBI procedures.

I wish that these kinds of questions had been the sole subject of these hearings.

Mr. GRAY. So do I, Senator.

Senator TUNNEY. How does the FBI define organized crime?

Mr. GRAY. We have—I have to define it for you by offenses and by Federal statutes and groups of people, and distinguish it from general crime. I think if we refer to our Federal statutes and those statutes that have been enacted just recently in the decade of the sixties, dealing with racketeering in general, you would find in that area certain syndicates that we know are engaged in this interstate transportation—the ITSP statute, as we call it—in extortion of credit and all of these kinds of things. These activities flow from the generation by organized crimes of investment capital through their illegal gambling activities. They also reach over into the general crime field because of their attempts to penetrate legitimate businesses, and there is a very lively discussion going on right now within the FBI as to whether we should continue to make that distinction between organized and general.

Senator TUNNEY. What did your inquiry with regard to organized crime conclude?

Mr. GRAY. The initial inquiry that we did, as a result of the early papers and the meeting down at Quantico, concluded we were doing rather well and indeed better than we were credited with doing. However, it also indicated that there was a need to effect some changes in our tactics and strategy and to reallocate manpower. We have

done that, Senator. I am hoping, as we establish a relationship with this committee, and we have a subcommittee of this committee if that be the wish of the Senate, that some of these things we will be able to discuss with a subcommittee of this committee. But that isn't my problem. That is a consideration for the Senate. But we have done many things.

Senator TUNNEY. You made some changes?

Mr. GRAY. Yes, sir. We have different types of operations going and operations that are on a very, very limited need to know basis, that are not in keeping with the regular view of what the FBI does and how we do it. I think really our record in delivering evidence to the U.S. attorneys, of arrests and indictments and the backlog of individuals awaiting trial, is higher now than it ever has been in the Federal Bureau of Investigation. I can't claim the credit. Only 10 months of that is a result of some of the things we have initiated together.

Senator TUNNEY. Is it possible to describe some of these in this forum?

Mr. GRAY. It would be pretty difficult. Some of the things that we have done with regard to transmitting narcotics intelligence and the stepped up effort in the whole field of narcotics, I have little note cards, that kind of thing. I could insert some of those in the record.

Senator TUNNEY. Would you insert those in the record?

Mr. GRAY. I would like to insert just a few. We are getting the source information, but I can say quite a few of the recent narcotics arrests have been in the big cases I am talking about now and have been as a result of FBI information.

(Mr. Gray subsequently submitted the following document for the record.)

Mr. GRAY. In September, 1972, local and state authorities in Illinois, utilizing information from an FBI informant, arrested three individuals in a series of inter-related raids and seized more than \$400,000 worth of marijuana.

On November 4, 1972, information disseminated to the Royal Canadian Mounted Police and to the Bureau of Narcotics and Dangerous Drugs assisted in the arrest of seven members of a major smuggling ring and the confiscation of some \$2,500,000 worth of heroin. Approximately one month later, same two agencies utilized information developed by the FBI during the course of investigation that resulted in the arrest of one individual and the seizure of an estimated \$3,250,000 in heroin.

On February 21, 1973, the Los Angeles County Sheriff's Office, acting on information provided by the FBI, arrested two individuals and seized cocaine having an estimated value of \$3,000,000.

Senator TUNNEY. Maybe you can also insert in the record any suggestions you have for legislation to make prosecution of organized crime figures easier.

Mr. GRAY. I have a problem with that. The Department of Justice says they speak legislatively for the Department of Justice, so all of my recommendations have to go to them. That is the way the Department's legislative program is built, Senator, and may I be excused from that question?

Senator TUNNEY. What are the FBI's procedures for cooperating with other national and local police agencies in investigation of organized crime? Do you believe there are any impediments to any cooperation at the present time and if so, how can they be removed?

Mr. GRAY. There may well be some now, but I doubt it. If there are, it would be through personalities, because early in the game I

met with all these major city police chiefs—met with them in small enough groups so they could let their hair down, and we could really talk frankly with one another. I think they believe we always have cooperated with them and we mean to cooperate in the future as far as we can go. The people in the FBI know that we have to work together, we can't do the job unless we work together.

Senator TUNNEY. With regard to subversion, what was the results of your detailed analysis and justification for the current policy in regard to investigation of individuals where there has been no specific violation of Federal law?

Mr. GRAY. The problem here, Senator Tunney, is speech versus conduct and where do you move across that line where the conduct tends to go to violence. But I think I have emphasized pretty heavily within the Federal Bureau of Investigation that first amendment rights are indeed critically important and this believe me, was the belief within the Federal Bureau of Investigation. I think there comes a time, an era in a nation, where things get hot and heavy and we have been through this kind of a thing. We may still be in it, I don't know. But as far as I am concerned, with regard to the rights to associate, the rights peaceably to assemble and petition one's government, I don't have any problems with that.

Where I have the problem is where that speech translates itself into conduct and where some become embroiled in advocating violent conduct and indeed engaging in violent conduct. I think we have a duty to be aware through our intelligence gathering methods of these types of individuals. I cannot see us wasting manpower investigating those who are not advocating, preaching and practicing violence, not—I can't say on a continuing basis, but frequently enough to give us cause for some concern.

Senator TUNNEY. Have you developed procedures within the FBI as to how this type of surveillance takes place and who makes the decision, if it will take place, and who is considered to be an advocate of violence?

Mr. GRAY. Yes, sir. I have to make that decision. In memoranda coming up to me, my people have to spell out the jurisdictional basis on which they base this request. Then I must consider the sum total of the evidentiary pattern and the laws of the United States and make a judgment as to whether or not we are indeed going to look into this. If we miss one of these—and once again I am getting into some tough areas of testifying—but I think something that occurred today is public knowledge and it occurred through our efforts in watching people who advocate violence, who practice violence, not continuously but frequently enough to give us cause for concern.

Senator TUNNEY. You can't make a decision in every case. Do you have any kind of procedures?

Mr. GRAY. Sure, they know, this has to come right on up through the regular chain of command. The case agent through the field supervisor, the SAC and Intelligence Division and headquarters and right up to me. They work with me closely on this. I raise Cain with them. Why didn't we know about De Mau Mau, why didn't we know about the Tullers? How many bases can you cover all the time? That is our problem right now.

Senator TUNNEY. What are the standards in deciding to infiltrate groups? Is this less than probable cause?

Mr. GRAY. I'd like not to discuss that at all in this public forum.

Senator TUNNEY. But you have procedures?

Mr. GRAY. Yes, indeed. My people know exactly how I feel on it and I know how they feel on it.

Senator TUNNEY. Are these written procedures? Are they word of mouth procedures?

Mr. GRAY. No; I don't think they would be word of mouth. I don't know. I would have to check to see if we have any SAC memos outstanding on this, but as a result of executives conference meetings, the Quantico meeting, notes that I request on certain things, it is sort of like building up case law as to what the Acting Director's decision is on this and how we pursue these activities.

Senator TUNNEY. Is this done pretty much on a case by case basis?

Mr. GRAY. Yes; it is. But it is done on a continuing basis, too, where there are groups.

Senator TUNNEY. And what are the standards that are used in deciding what groups are ones that are say prime subjects for surveillance?

Mr. GRAY. Those who advocate violence and those who practice violence. The speechmakers we are not interested in. We don't have the troops to do this kind of thing. We just don't have it. I have requests now for additional agents to do other kinds of things in the intelligence area that have nothing to do with this kind of operation.

Senator TUNNEY. Then I would assume that your answer is that the Bureau does not have a policy of collecting information about groups based mainly on political identification or racial identification?

Mr. GRAY. I think every man and woman in the FBI has that message loud and clear, and I am not at all sure from our study of it that this was our policy in the past at all.

Senator TUNNEY. With respect to informants, is there any requirement that special agents recruit a certain minimum of informants?

Mr. GRAY. No, sir. I have said there shall be no quotas and we are seeking in all of our efforts quality rather than quantity. There have been many messages put out on this, teletypes to the field, the inspection division has been alerted to look into this, and we have driven heavily and hard on this.

Senator TUNNEY. How about the structures that exist that assure the on-going reliability of informants? For instance, how does the Bureau protect itself against the informant who fabricates information regarding other people in the community?

Mr. GRAY. We have to corroborate and verify and check out, and, you know, I hate to say—well, I will say it—some of these people have to be carried as potentials before they are carried as regulars. We try very, very hard to evaluate them because we know we are open. We can be exposed at any time. We have to be aware of the double agent possibility all the time. It is a real hazard and as far as our reputation is concerned, it is something we have to work at and we do, Senator. We try very, very hard. It is a thought that goes through my head every time—in discussions of this program, in considering individual reports: have we verified and corroborated; how do we know we are not being duped? I ask this all the time.

Senator TUNNEY. With regard to the Director's advisory committee, which has been created by you, what do you think that the advisory committee should consist of in the way of individuals?

Mr. GRAY. Well, I considered that, Senator Tunney, but I shot it down after a long, long line of thinking and many papers and many discussions with the field commanders, the special agents in charge of the Federal Bureau of Investigation. There is no way to work it with citizens groups. The type of institution we have, the type of information we handle, is of the utmost sensitivity. I can't say that any other Government agency in—well, I had just better stop right here.

For example, I tried an experiment with a law enforcement training advisory committee with prominent law enforcement people, et cetera, and they did a tremendous job. But when it came to the point where we had to have public meetings and discuss these things, well, it has to go out of the picture because we couldn't discuss it. But we worked with them for 6 months, and they were tremendously impressed with us and we were tremendously impressed with them. We worked with them together with the University of Virginia, with whom we have an affiliation with our National Academy.

Senator TUNNEY. Do you feel that the FBI is subject to adequate controls within the Justice Department?

Mr. GRAY. I think so, sir, because we are dealing with many attorneys within the Justice Department, not just an Assistant Attorney General and a Deputy Assistant Attorney General, but many career attorneys. We deal with many of them, as well as politically appointed attorneys. Then our work product is always subject to the scrutiny of the courts. We have some, I think, rather tight controls as far as the legal and investigative relationship is concerned, and the judicial relationship is concerned. I will be the first to admit, however, that we have room to improve in our relations with the Congress and with committees of the Congress. There would be the void.

Senator TUNNEY. Between the Congress and the—

Mr. GRAY. Yes.

Senator TUNNEY. How about the problem you are presented with of reporting directly to the President as well as to the Attorney General? Does that create a difficulty for the FBI?

Mr. GRAY. No; I have never thought so, Senator Tunney, and I would like to tell you why. I feel that a man who comes through our political process, as tough as it is, the adversary system that it is—I have noted earlier all the things we ask our elected officials to do, and rise step by step through that process. When such a man becomes converted into a President, I think, the whole nature of the man is hit by the awesomeness of that office. I think whatever may have been the problems and adversities he encountered along the line, when he becomes President the buck stops there and he considers the overall well-being of the Nation. I have never felt any problem working that way, and as an individual I don't feel I have a problem in speaking my mind.

Senator TUNNEY. I was not thinking of that so much as reporting both to the Attorney General directly and to the President directly. This is no problem?

Mr. GRAY. No; I don't find that to be a problem.

Senator TUNNEY. Do you feel the FBI should continue to have a lump-sum budget?

Mr. GRAY. Yes, sir. I can tell you if we didn't have one we would be in tough straits right now. We have to hone and cut and pare and live within our budget. For example, just today I refused to buy 289 automobiles which were authorized and appropriated because I need that money for training. When we operate with that kind of a budget we can do this kind of thing. I think right now, and I have said this to my budget people, we have to stop this business of trying to live out of next year's pocket right up to the end. We are doing this, surveys and studies are going on right now. We have to analyze what we need, budget for it and spend for it, and we have to stop this business of living from hand to mouth. It has been a very, very tight fiscal operation in the FBI.

Senator TUNNEY. Mr. Chairman, do I understand that you would like to wind up?

The CHAIRMAN. No; I just want to know how much longer you will be.

Senator TUNNEY. Just about 5 more minutes. I appreciate your indulgence. I just want to get some of these questions on the record.

The CHAIRMAN. Go ahead.

Senator TUNNEY. How does the FBI handle complaints from individual citizens that FBI agents have violated citizens' rights?

Mr. GRAY. When we have complaints in the field divisions our Inspection Division moves immediately. They report to me and I move the men on.

Senator TUNNEY. Do you feel there ought to be any kind of ombudsman procedure within the FBI or within the Justice Department?

Mr. GRAY. No, I don't. When I have seen our Inspection Division go into cases that I have ordered them to enter, they go in heavily, and there are some tough cases—in your home State—they just really go into it.

Senator TUNNEY. In your months as Acting Director, did you find that the FBI suffers from too little external control or too much external control? What are your thoughts on it?

Mr. GRAY. No, sir; I don't feel that we are suffering from too many external controls. I feel we are in about the right position, the position we ought to be. If we have any, the void exists here in the relationship with one of the great branches of our government.

Senator TUNNEY. With the Congress?

Mr. GRAY. Yes, sir; a lot of people wouldn't agree with me but that is my judgment.

Senator TUNNEY. What is the Bureau's policy with regard to electronic surveillance and wire tapping in national security cases?

Mr. GRAY. Probably as tough a one as we can devise, with the checks that we have along the line and the requirements that must be set forth in detail before that document ever gets to me. One step in the review before it gets to me is in the Office of Legal Counsel. Every single one of them is reviewed. I am talking about the FBI Office of Legal Counsel, not the Department of Justice Office of Legal Counsel. Then there is my final review and my transmission to the Attorney General.

Senator TUNNEY. In all instances the Attorney General makes the final decision?

Mr. GRAY. Yes, sir; that is correct.

Senator TUNNEY. Does the FBI have any procedures for assuring itself information obtained from other police agencies which is then stored in your files is not the result of illegal electronic surveillance or wiretapping?

Mr. GRAY. I don't know that we get that kind of information from other police agencies in writing or in the form of a file. I am going to have to check that. My understanding of it is that we do not, that it is a working level type of information—like the case I was citing to you that may very well be publicized today when we have all the information. It was a phone call to our field office in a certain city and a phone call from that field office to the police department concerned.

(Mr. Gray subsequently submitted the following document for the record:)

Mr. GRAY. We would not accept nor would other police agencies likely advise us of information they had obtained as a result of illegal electronic surveillance or wiretapping. The obtaining of information in such an illegal manner is a violation of Federal law within the investigative jurisdiction of this Bureau pursuant to U.S. Code, Title 47, Section 605, and Title 18, U.S. Code, Sections 2510-2513.

It should be observed, however, that a number of state jurisdictions, actually a total of twenty, have provision for legal interception of communications pursuant to state law. Receipt of information from police agencies in these states obtained according to their laws would be proper.

Senator TUNNEY. Does the Bureau maintain that there is any legal basis to conduct electronic surveillance or wiretapping other than the 1968 Crime Act?

Mr. GRAY. On the national security surveillance type, by direction of the President, yes. You know, this is the whole field of national security, foreign intelligence, and of course that has been somewhat—at least one part of it was raised in the *Keith* decision the Supreme Court handed down somewhere in the middle of June last year. Of course, the *Keith* decision is observed in every one of the applications that comes to my desk today. Each application must have a specific statement by the Office of Legal Counsel that this has been examined within the limits and perimeters of *Keith*.

Senator TUNNEY. Just a few more questions. With respect to the Bureau's policy with regard to the investigation of alleged violations by local police of civil rights, who conducts these investigations, what are the procedures?

Mr. GRAY. We do, Senator. I have changed those procedures a little bit because of some of the complaints that have been made and because of the unfairness, I thought—once again this is my judgment, made in conjunction with the executive conference of the FBI. It was my judgment that it was unfair to the police, unfair to the citizen who had made the complaint, and unfair to the special agents of the FBI involved to send them in to investigate complaints against police with whom they associate regularly. We do not do that. We have a specific order out now, which I issued, setting forth clearly our policy that this shall not occur. In the major cases, I send in agents completely out of the area concerned. Down in Baton Rouge, in the Southern University situation, for example, I could have taken agents from New Orleans and sent them up to Baton Rouge because there was no con-

nection between our offices in New Orleans and Baton Rouge. Even though I had a topnotch agent in charge in Baton Rouge, I brought in an agent from outside. That is our policy.

Senator TUNNEY. That is your policy?

Mr. GRAY. Yes, sir.

Senator TUNNEY. Well, thank you very much, Mr. Gray, for answering these questions on these procedures so thoroughly.

I have no questions about your competence to be the Director of the FBI, from the procedures that you have instituted and from what I have heard about the way you have managed the problems.

The only problem I have with your nomination is the question of the political implications that have been raised and regarding your relationship with political appointees in the White House—not the President, but political appointees in the White House.

Mr. GRAY. You have been very kind and generous. I hope I have been and will be able to persuade you of the feeling in my heart when I made those very early statements—that we were going all the way with our investigation, no matter how it goes, and that this would be the best thing that could happen. I said it then. I meant it. The people agreed with me. This was very, very helpful to me. But I understand the difficult position in which the members of the committee find themselves.

Senator TUNNEY. I would like to believe that the future would be one in which you would not be overly responsive in political terms to anyone, including counselors to the White House.

I do, however, feel that we ought to have Mr. Dean. I have said that publicly. We ought to have Mr. Dean testify before this committee. I have indicated publicly that at the first executive session we have, I am going to make a motion to have Mr. Dean come before this committee. I think Mr. Dean's name has come up so frequently that it is important that there be laid to rest some suspicions we have with regard to Mr. Dean's relationship with the FBI.

I want to thank you for your answers today.

Mr. GRAY. Thank you, Senator Tunney.

The CHAIRMAN. We will recess until 10:30 tomorrow morning.

(Whereupon, at 4:42 p.m., the committee was adjourned until 10:30 a.m. on Thursday, March 8, 1973.)

NOMINATION OF LOUIS PATRICK GRAY III

THURSDAY, MARCH 8, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Byrd of West Virginia, Tunney, Hruska, Gurney, and Kennedy.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

The CHAIRMAN. The committee will come to order.

Senator KENNEDY.

Thank you very much, Mr. Chairman.

Good morning, Mr. Gray.

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. Good morning, Senator.

Senator KENNEDY. Some of the concern that has been expressed in the course of the questioning of you about the role of Mr. Dean when he was sitting in on various interviews, and about the communications between the FBI and Mr. Dean, has been highlighted in a number of newspaper stories. The Washington Post has raised questions about the relationship between Mr. Dean and Mr. Hunt, for example. Mr. Dean and Mr. Liddy were working in tandem on legal problems related to the committee to re-elect's money, and there were also legal volunteers working in the White House itself on these matters, presumably under Mr. Dean. And we have seen the story in the Post that, at least in Mr. Hunt's eyes, Mr. Dean should be one that Hunt could look to for some help in trying to get some legal counsel.

Then we have the story from September 18 by Mr. Clark Mollenhoff talking about the position of Mr. Dean and Mr. Dahlberg's \$25,000 check, indicating that Mr. Dean at least felt there was some legal basis for the treatment of the check despite the contrary view of the GAO. So there were at least three different newspaper reports which have raised legitimate questions which lead one to wonder whether at any time you had any concern in making available the investigative material on the Watergate affair to Mr. Dean, whether you thought, for example, that he was completely separated from any kind of Watergate involvements given, as I mentioned, a series of

instances, the advice on the Dahlberg check, the fact that Mr. Hunt even during the course of the early investigation thought he could ask Mr. Dean for counsel, the fact that, according to a newspaper report this morning, the close relationship between Liddy and Dean.

I am wondering what your reaction is to some of these reports, and whether you had any kind of feeling before that there was at least the possibility that Mr. Dean was more involved in this Watergate affair than otherwise might have been thought, and whether, on the basis of "regularity," access to the files and interviews should have been extended under these circumstances?

Mr. GRAY. Yes, Senator. Addressing myself to the point in time when this occurred, my best recollection, and I feel quite certain that my memory is good on this, is that we had no indications whatsoever that Mr. Dean was involved in any way, where he might have been asked to represent anybody. This just never did come up. I knew, of course, that he was counsel to the President, and I knew that the President had named him to conduct this inquiry. I did not at any time believe that he was compromised nor did I believe at any time that, had there been any reason to consider that he was compromised in any way by Watergate, the President would have designated him as the individual to conduct the—

Senator KENNEDY. Perhaps the President didn't know.

Mr. GRAY. This could be a possibility, Senator. Really that would be a very, very remote possibility. We really had no information on the basis of the reports coming in to us from all kinds of sources that Mr. Dean was involved in any way. In particular, I remember well the \$25,000 and the \$100,000 which we tried awfully hard to locate in the beginning. We got those leads and got the information early on. We ran across nothing involving Mr. Dean in any of this. So I would say, at that point in time, and right up until this point in time, I had no indication, no reason to believe, and the information available to me didn't create any thought in my mind that he would possibly be involved in the Watergate.

Senator KENNEDY. Did these reports which are alleged in the newspaper about the relationship between Mr. Dean and Mr. Hunt, come as a complete surprise to you?

Mr. GRAY. Well, I guess you would have to say I was surprised to read that because of the fact we had absolutely no information, out of all the many trails that we crossed throughout our interviews, that this would be so. I just must believe, Senator Kennedy, that it is not correct.

Senator KENNEDY. Then in the pursuit of Mr. Liddy, you didn't run into any kind of trails of Mr. Liddy in conversations with Mr. Dean about the finances of the organization?

Mr. GRAY. No, sir, none that I recall. Of course, we were not permitted to interview Mr. Liddy. But we tried to trace their pattern of movement, Mr. Liddy's and Mr. Hunt's, where they might have gone and who they telephoned and that sort of thing, and it just didn't show up.

Senator KENNEDY. As was suggested in the newspaper this morning?

Mr. GRAY. No, sir.

Senator KENNEDY. And even the activity of Mr. Dean in advising and giving his legal opinion that that check, the Dahlberg check, was legal contribution as opposed to the GAO assessment, didn't set off any kind of a signal to you?

Mr. GRAY. I didn't know of his legal opinion at that time. The information we have, of course, is that that check was put in other hands to make a determination as to its legality. The information we obtained from Mr. Dahlberg was that it was a contribution he had collected when he was in Boca Raton in his fundraising activities, and that information, of course, later turned out to be correct.

Senator KENNEDY. The instances that I have just touched on briefly, of course, have been reported in the newspapers. But it is your testimony that in your investigation of the committee it developed that you didn't find any other kinds of lines that led back to Mr. Dean?

Mr. GRAY. None, sir.

Senator KENNEDY. Of course, the personnel of CRP in many instances were people who had worked over there in the White House, had been associates. Of course, the former Attorney General had worked as the Attorney General and then went to the committee. So it isn't really enormously surprising that a number of people that were very much involved in the CRP organization had been in the White House or were associates, were friends known well to someone like Dean who was still in the White House?

Mr. GRAY. I think probably it is correct to state, Senator Kennedy, as you have, that the top officials of the Committee to Reelect the President indeed knew Mr. Dean, and I was aware of that fact.

Senator KENNEDY. Were you concerned about that?

Mr. GRAY. No sir; I wasn't.

Senator KENNEDY. Why not?

Mr. GRAY. Once again, Senator, you have to operate on the basic presumption of regularity. When you put that together with all the threads of information that are coming in to you, and you don't see any evidence whatsoever of involvement, why, I just don't become concerned and I didn't. That is the truth of the matter.

Senator KENNEDY. Well, now, could I direct your attention to the July memorandum that was supplied to the White House at the request of Mr. Dean. You supplied for the committee the transmitted memorandum, and the cover letter, I believe, did you not?

Mr. GRAY. Yes sir; we did.

Senator KENNEDY. Are there any other materials besides that cover note and memoranda that was supplied?

Mr. GRAY. That was going to be supplied, sir? I had originally intended to supply the opinion of my office of legal counsel. I believe that we did not supply it. Yesterday it was requested, and then I testified that it was my intent that it be included and certainly it will be included.

[Mr. Gray subsequently submitted the following document for the record:]

Senator, I find that we previously supplied the memorandum concerning the opinion of the Office of Legal Counsel to the Committee.

Senator KENNEDY. But I am correct in assuming that the only other material that was added or appended to the memorandum to Mr. Kleindienst was the cover sheet that was transmitted, I think the one that you supplied, that single page?

Mr. GRAY. Yes; that is correct. It is my very definite recollection of getting that back and writing my initials, LPG there to the left, right there where the line is from the Acting Director.

I could check again but I am absolutely positive that the only thing that went up there was the letter of transmittal and the letterhead memorandum itself. I am sure that is correct testimony.

Senator KENNEDY. Do you have a copy of that?

Mr. GRAY. Of which, sir?

Senator KENNEDY. Of the transmittal memorandum.

Mr. GRAY. I don't have it in front of me. I know Mr. Flug asked for it and we provided it.

Mr. KENNEDY. Could I just be very brief and read it into the record and see if that is accurate. [Reading]:

JULY 21, 1972.

To: The Attorney General.

From: Acting Director, FBI.

Subject: James W. McCord, Jr., and others; Burglary of Democratic Party National Headquarters, June 17, 1972; interception of communications.

There is attached for your information a letterhead memorandum setting forth the highlights of investigation conducted to date in captioned matter.

Copies of all investigative reports in this matter are being furnished on a continuous basis to Henry E. Petersen, Assistant Attorney General, Criminal Division.

CB jak (10)

Is that your memory of the memorandum?

Mr. GRAY. Yes sir; Senator Kennedy, that is. I can recall absolutely nothing else that went up with this.

Senator KENNEDY. Well, how was the recipient, the Attorney General, supposed to know that this was to be transferred over to Mr. Dean?

Mr. GRAY. To the best of my recollection, I had a telephone conversation with the Deputy Attorney General. I told him that Mr. Dean had made this request of me. I explained to him the steps that I was taking and that I would cause to be prepared, if the legal opinion was satisfactory, a letterhead memorandum as requested and that I would send it to the Attorney General.

Senator KENNEDY. Could you tell us any more of that conversation with the —

Mr. GRAY. No; because I think that is all that the conversation involved, Senator Kennedy.

Senator KENNEDY. So there was nothing on the transmittal memo that would anywhere indicate this was the one going to Mr. Dean?

Mr. GRAY. No sir; because, as I have testified earlier, what I am trying to do in the Federal Bureau of Investigation is to get this procedure stabilized, to deliver written materials through the Attorney General. I testified to that effect earlier. This is what I am trying to do.

Senator KENNEDY. There were just two copies then, one for the Deputy Attorney General and one for the Assistant Attorney General?

Mr. GRAY. I believe that is all but I would have to actually check to make certain what was appended to it. If you read the transmittal memorandum, that is what it would indicate and that is normally what would go.

Senator KENNEDY. You were supposed to transfer his copy over to Mr. Dean?

Mr. GRAY. No, sir; I don't know what those arrangements were I just have no information on that, sir.

Senator KENNEDY. You really don't have any direct knowledge as to whether it actually got to Mr. —

Mr. GRAY. No, sir; I cannot testify as a fact under oath that that next step was taken. I do not know.

Senator KENNEDY. Is that a usual way of proceeding, where you would have some directive from the White House for certain material and that it would be sent over to the Attorney General?

Mr. GRAY. No sir; that is not the usual way. In fact, an examination of the memorandum from my legal counsel would show that. It hasn't been that well defined and that well stabilized and that is what I am trying to do. That is my ultimate objective. But it seems to be, and I testified to this before, when the late Mr. Hoover was the Director, that very often the Director would say, "I am going to send a copy of this to the Assistant to the President" or to whomever, and it would be sent. There was not a regularly established way of doing this. Even today in many areas we respond directly, as in name checks for example. In very quick background investigations, we respond directly.

But I am trying to formally structure it so that I report through the Attorney General. He is my boss in the chain of command.

This was the whole purpose of that exercise, really, Senator, and it was also to make sure that I was on firm ground.

Senator KENNEDY. Would the FBI records indicate that at least a note was made that this was the procedure which was being followed that the memorandum was being given to Mr. Kleindienst and was to be later sent over?

Mr. GRAY. I doubt it very much.

Senator KENNEDY. You mean once a memorandum leaves the FBI, there is no indication within your own files as to what has happened to it, where it is going?

Mr. GRAY. We sent it to the Attorney General, yes sir; we would show it—

Senator KENNEDY. Where, in a buck slip or an entry in some—

Mr. GRAY. No, I would have to check the mechanism of reporting back to know whether we have any record which shows the actual delivery. I am thinking of the regular way now. The procedure would be to carry this directly to the Attorney General's office and the Attorney General's office would log it in, at either the executive assistant level or the personal secretary level.

Senator KENNEDY. I asked you the other day about the Time Magazine wiretapping allegations.

Mr. GRAY. Oh yes, you asked me that question, four, five or six times, Senator, and I answered. My testimony is really a matter of record in that area—

Senator KENNEDY. Well, let's stop here. If it is a matter of record I think the record would indicate that you did not talk to the Attorney General.

Mr. GRAY. Oh, that particular thing, no I did not talk to him.

Senator KENNEDY. Well, I received a communication from the Attorney General, that I will ask to be made a part of the record, in response to a letter I wrote to him as chairman of the Administrative Practices Subcommittee, which was a parent committee for the 1968 electronic device legislation, I had sent a letter over to the Attorney General asking for a reaction to the Time allegations, and I will ask it be made a part of the record as well.

U.S. SENATE,
February 27, 1973.

HON. RICHARD G. KLEINDIENST,
Attorney General, Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The allegations in this week's Time magazine regarding electronic surveillance of newsmen and White House staff raise extremely serious questions of policy and procedure in this field. As you know the Subcommittee on Administrative Practice and Procedure, which was a parent of the 1968 law on electronic surveillance, maintains a continuing interest in this subject.

In view of the deep concern of members of the Subcommittee and other Senators about the Time allegations, I think it is important that we have a detailed and comprehensive response from you covering both your personal knowledge and the information you can obtain with regard to the specific matters alleged, as well as any related or similar activities, facts, or discussions which might have given rise to, or might explain, the allegations.

It would be very helpful if we could have your reply as soon as possible this week.

With best regards.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 1, 1973.

HON. EDWARD M. KENNEDY,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR: I have your letter of February 27, 1973, concerning the allegations in the March 5, 1973 issue of Time magazine, regarding electronic surveillance of newsmen and members of the White House staff.

I appreciate and share your concern regarding these very serious allegations. As a consequence, I immediately investigated Time's allegations and personally contacted the Acting Director of the Federal Bureau of Investigation, Mr. Gray, and former Attorney General Mitchell. On February 26, 1973, the same day that Time magazine's story appeared, I issued a statement categorically denying the allegations in the Time magazine article. Apparently, my statement to the press was published after your letter to me. I am enclosing, for your information, a copy of my statement.

I would like to reiterate that Time's story has no basis in fact. During the period of the alleged wiretapping, a search of the Department's records reflects that neither my predecessor, Mr. Mitchell, nor I, authorized any electronic surveillance of newsmen, as reported by Time, nor of any members of the White House staff.

Sincerely,

RICHARD G. KLEINDIENST,
U.S. Attorney General.

Now what the Attorney General wrote me was: "I have your letter of February 27, 1973, concerning the allegations in the March 5, 1973 issue of Time magazine, regarding electronic surveillance of newsmen and members of the White House staff. I appreciate and share your concern regarding these very serious allegations. As a consequence I immediately investigated Time's allegations and personally contacted the acting director of the FBI, Mr. Gray, and former Attorney General Mitchell".

MR. GRAY. He did talk to me, but it was after the fact, Senator Kennedy. It was after this occurred.

SENATOR KENNEDY. I asked after the fact, too. What did you think my questions last week were about?

MR. GRAY. I answered your questions and I will stand on that testimony.

SENATOR KENNEDY. I asked you whether you talked to the Attorney General and you said you talked to the public information officer.

MR. GRAY. That is right. That was right at the inception and I talked to the Attorney General after the fact, after the press release had gone.

SENATOR KENNEDY. After? He said "immediately" "As a consequence I immediately investigated, and personally contacted the acting director, Mr. Gray."

Now, I asked you last week whether you talked to him.

MR. GRAY. That is right, you did, and I told you with whom I talked. The questions are here. I have them. Jack Hushen called me twice. That is the man to whom I talked on the telephone.

SENATOR KENNEDY. I asked you about whether you talked to Mr. Kleindienst, didn't I?

MR. GRAY. That is correct, sir.

SENATOR KENNEDY. You told me, Mr. Gray, you told me there is this article—well let's start at the top.

SENATOR GURNEY. Could we have the page number?

SENATOR KENNEDY. Page 274 [of the typewritten transcript].

I said: "That is the only contact you had with the Justice Department?"

"MR. GRAY. On this?"

"SENATOR KENNEDY. On this issue.

"MR. GRAY. Yes. I haven't talked to Assistant Attorney General Olson on this at all, I have not discussed this with the Attorney General at all." It says "at all."

MR. GRAY. That is correct, sir. That is correct, that is my testimony. I think what the Attorney General is referring to is the conversation that I had with Jack Hushen, because I did not speak—

SENATOR KENNEDY. That is not what the letter says. That is why I say we are going to bring it up again when you say we have been over it four or five or six times.

MR. GRAY. I didn't know anything about that letter.

SENATOR KENNEDY. That is why I just asked about it. He says he personally investigated Time's allegations and "contacted the Acting Director of the FBI, Mr. Gray, and former Attorney General Mitchell. On February 26, 1973, the same time that Time magazine's story appeared, I issued a statement categorically denying the allegations in the Time magazine article. Apparently my statement to the press was published after your letter to me."

He concludes:

"I would like to reiterate that Time's story has no basis in fact. During the period of the alleged wiretapping, a search of the Department's records reflects that neither my predecessor, Mr. Mitchell, nor I, authorized any electronic surveillance of newsmen, as reported by Time, nor of any members of the White House staff."

MR. GRAY. That is my testimony, Senator Kennedy. I did not discuss it with the Attorney General until after the fact. I did report to him after this day of testimony regarding the questions that were asked. I did discuss it with him then, but I did not discuss it with him prior to coming up here to testify. I talked with Mr. Hushen.

SENATOR KENNEDY. This is dated on March 1, the day of your testimony. You mean I am supposed to assume from this that the day he talked to you was after the hearings that afternoon?

Mr. GRAY. Senator, I am——

Senator KENNEDY. I am just trying to understand.

Mr. GRAY. I am telling you what I testified to. This is the first time I have seen this letter, the first time I have heard it read, and I am merely saying what my testimony of record is under oath. The only possible thing that I think could have happened would be that the Assistant Attorney General, Internal Security Division, could have checked with the working people within the FBI. That is the only thing. I don't understand that letter to mean he discussed it with me personally, because my recollection, my remembrance, and my testimony under oath is that I did not discuss it with him at that time.

Senator KENNEDY. You only talked with the Public Information Officer?

Mr. GRAY. Who called me on the telephone; yes, sir.

Senator KENNEDY. He was the only one?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. Now, on the substance of the Time allegation, you said that you had no basis for believing that the Time story had any basis in fact; is that correct?

Mr. GRAY. That is correct, sir. I said I personally checked the record and that has been my testimony consistently. That is my testimony today.

Senator KENNEDY. And in reviewing the record, at least you said in response then, your disclaimer referred to the way it was written. There is no implication or——

Mr. GRAY. There is no implication in that at all. I didn't have the article in front of me and it refers to White House officials and news reporters.

Senator KENNEDY. So no indication should be drawn from that?

Mr. GRAY. No, sir.

Senator KENNEDY. No qualification?

Mr. GRAY. No, sir.

Senator KENNEDY. Because in the Attorney General's letter he also says neither he nor John Mitchell "authorized any electronic surveillance of newsmen, *as reported by Time*, nor of any members of the White House staff." "As reported by Time" appears to be a qualification in Mr. Kleindienst's letter, but you don't draw any kind of qualification or implication from that?

Mr. GRAY. I don't draw any kind of qualification or implication from that at all, Senator.

Senator KENNEDY. Is it your understanding that the utilization of existing telephone equipment or switchboards in buildings, or extensions in Government buildings, to intercept conversations would constitute electronic surveillances which would be covered by title III and would require a court order or the Attorney General's approval?

Mr. GRAY. I don't really know what you are talking about—that we are tapping our own telephones, is that really the thrust of this question?

Senator KENNEDY. Using extensions without installations of perhaps an additional device, but monitoring of conversations through extension phones, for example; that would even involve switchboards or——

Mr. GRAY. That practice has never come to my attention. I am trying to imagine how you do it. Like my secretary could listen in on my phone, is that the kind of thing you mean?

Senator KENNEDY. I suppose so, or the switchboard, someone could plug in the switchboard and listen to different conversations going on.

Mr. GRAY. It is really the first indication, the first time I have ever considered that. I have never considered someone would be doing that on a party line type of thing.

Senator KENNEDY. That is possible, isn't it?

Mr. GRAY. Oh, it is. Sure it is possible. Your secretary can listen when you are talking.

Senator KENNEDY. If the secretary can listen, FBI agents could listen to conversations?

Mr. GRAY. That is correct, but FBI agents do not do that kind of thing. They have to have a specific order in accordance with law and supported by paper and made a matter of record, and that request must come through the Director's office.

Senator KENNEDY. You would be willing to check and—

Mr. GRAY. No, I am not going to check in that area, Senator. If there are any grounds for checking, a complaint has to be made. I am not going to check in that area because I could be on a real wild chase trying to check on who is listening in on whose party phones. I don't think that is a proper function for the FBI to be checking.

Senator KENNEDY. Those allegations and charges of Time magazine are not frivolous and spurious and empty?

Mr. GRAY. I don't know. I wouldn't characterize them in any way, Senator. I have stated what I have done and that is my testimony of record. That is my testimony under oath. I just don't think it is a proper function for the FBI to go all around and start trying to ascertain throughout the Department who listened in on somebody's party line telephone or who tapped into a switchboard.

You know, we do a lot of electronic sweeping all the time on these offices just to make sure that this kind of interception, the creation of a two-party line out of a one-party line, isn't done. We do that as a matter of course.

Senator KENNEDY. Well, it isn't that extraordinary a procedure, Mr. Gray. I dare say it is possible that it can be done rather easily and these charges that were raised in the magazine I think are exceedingly serious charges. It would certainly appear to me that in reviewing and investigating these allegations and charges there should be a complete investigation as to whether there is any possibility this might have been done. But your testimony is that you do not feel that those charges or allegations warrant such investigation?

Mr. GRAY. I don't feel they warrant this additional step. I have taken the step that was necessary, checking that very restricted access material.

Senator KENNEDY. You have checked the record and made a phone call over to the Justice Department and that is the extent of your investigation, as I understand it.

Mr. GRAY. I checked the record, yes, sir; and I had two telephone conversations with Mr. Hushen, as I recall.

Senator KENNEDY. And that is the extent of your investigation?

Mr. GRAY. That is right, Senator.

Senator KENNEDY. That is the extent?

Mr. GRAY. That is correct, Senator Kennedy.

Senator KENNEDY. Remember that device that was in the Democratic Headquarters, on Mr. Oliver's phone?

Mr. GRAY. I would have to look at the laboratory report on it. I don't remember the technical description.

Senator KENNEDY. It was discussed yesterday that the device was on Mr. Oliver's phone. It was mentioned that was known or at least swept by the FBI.

Mr. GRAY. That is correct, and I believe it was also swept by the C. & P. Telephone Co., Senator, if my memory is correct.

Senator KENNEDY. Do you know what it was doing still on the phone in September?

Mr. GRAY. We didn't find anything there on the phone in June, sir.

Senator KENNEDY. It wasn't there in June?

Mr. GRAY. No, sir. The C. & P. Telephone Co. also reported that they found nothing. They came in there, of course, on June 17, 1972, and they reported that they found absolutely nothing. They dismantled handsets, terminal boxes, speakers, and wiring in the framework to which the incoming trunklines were wired for further distribution. They found nothing.

Senator KENNEDY. Did they look into Mr. Oliver's phone, do you know specifically?

Mr. GRAY. I didn't ask about that specifically, but they stated—I did ask, "Does this dismantling of handsets mean you actually dismantled the telephone into which we speak?" and the answer to that was "Yes."

Senator KENNEDY. You don't know just from your report there whether that included the Oliver phone?

Mr. GRAY. No; but I certainly read it to include all handsets in that particular area.

Senator KENNEDY. Could we go to the time when you first heard about the Watergate affair, Mr. Gray?

Mr. GRAY. Yes, sir, that was—

Senator KENNEDY. You talked about that a bit on your first day here. I understand you have a chronology of events that you refer to. You described generally how you first learned about the Watergate break-in.

Could you just review briefly with us the approximate time when you first heard about it?

Mr. GRAY. Yes; I was in California, as I have previously testified. I was there to give the commencement address for the law school of Pepperdine University. I was on my way from Los Angeles to Santa Ana.

Senator KENNEDY. What time did you leave Los Angeles?

Mr. GRAY. I left about 9:30, went by automobile, 9:30 a.m.

Senator KENNEDY. Did you have any conversations with anyone in Washington before you left?

Mr. GRAY. No, sir, not that I recall.

Senator KENNEDY. You didn't have any conversations about the Watergate affair before you left?

Mr. GRAY. No, sir, my records show that the first indications of calls coming to me were at the times that I have previously testified to.

Senator KENNEDY. Did you make any phone calls that morning before you left?

Do the records show?

Mr. GRAY. I didn't look to see if I made any phone calls that morning before I left.

My recollection is that after we got up, I went to Mass with two of the agents. This I specifically remember because we got lost trying to walk to Mass and they had to come find us in a Cadillac. Then I came back and I am almost positive that I made no phone calls. There would have been no reason to make a phone call, Senator, but I will have to check so I can testify under oath as to whether or not I did. I have no recollection of making phone calls.

Senator KENNEDY. Could you check that for us?

Mr. GRAY. Surely.

Senator KENNEDY. Whether you made any phone calls that morning, or do you know whether you received any that morning?

Mr. GRAY. I am almost certain I did not.

Senator KENNEDY. Could you check that?

Mr. GRAY. Sure, sure. I will be happy to do that; yes, sir.

[Mr. Gray subsequently submitted the following document for the record:]

Senator Kennedy, I have checked my records and I find that no telephone calls were made or received by me during this time.

Senator KENNEDY. So your first information was sometime around 11, 11:45?

Mr. GRAY. The indication was that this information was furnished to the Los Angeles field division office between 11 and 11:30 a.m. for transmittal to me.

My earlier testimony was that somewhere between 11 and 11:30 a.m., Pacific time, as I recall it, I first had an indication that this information was in from Los Angeles. I did not actually get briefed on it until after I had completed the commencement ceremony and we were in the automobile going from Santa Ana over to the Newport Inn where we were to have a luncheon with the Pepperdine people.

Senator KENNEDY. So the first you heard about it was 11:30, 11:45?

Mr. GRAY. No; I would say just about noon. I got the first indication there was a message for me from Los Angeles and it involved a break-in at the Democratic National Headquarters. I was briefed on the early information. We were at that time in the automobile going over to Newport Beach.

Senator KENNEDY. That is about 3 o'clock, Washington time; is that correct?

Mr. GRAY. It would be about 1500, 3 o'clock, yes.

Senator KENNEDY. Did you ever ask why it took so long for them to notify you?

Mr. GRAY. No; I didn't ask because I feel that what they were doing in this situation was trying to clarify it. The reports as they gradually came in to me were first, a break-in, then a bombing, then—

Senator KENNEDY. When did those reports come in?

Mr. GRAY. Those reports came in to the FBI in the early morning hours.

Senator KENNEDY. So what time, the early morning hours, 2 or 3 in the morning?

Mr. GRAY. No; it was later than that. I am relying on recollection now that it was somewhere between 4:30 and 6:30. There were two of them. The notification first came on the burglary and then we were called down, as I recall it, and three agents went to examine what was reported to be a bomb in Metropolitan Police District Headquarters at about 6:30 in the morning.

Then it was later—I will have to supply the exact time frame for the record so that the record is complete and accurate, because I am testifying from memory. I think it is pretty close to being accurate.

[Mr. Gray subsequently submitted the following document for the record:]

Senator, I have checked the record and the following is a chronology of the early morning reports received by the FBI concerning the burglary, alleged bombing attempt and the Interception of Communications violation.

Our Washington Field Office (WFO) Duty Agent received the initial telephonic notification from Inspector James Munroe of the Metropolitan Police Department (MPD) at about 4:30 am on 6/17/72. This notification was simply of the brief facts of the burglary then known. The burglary presented a possible Interstate Transportation of Stolen Property violation if the value of the stolen property amounted to \$5,000 or more. At approximately 6:30 am on 6/17/72, MPD detectives in viewing the evidence recovered, thought one of the items was a bomb or an incendiary device. Shortly thereafter, MPD informed WFO by telephone that the five men who had been arrested at the Watergate in the office of Democratic National Headquarters were possibly attempting to place a bomb in it. The Special Agent in Charge was thereafter advised by WFO Duty Agent and Agents were dispatched to the Second District Headquarters under the assumption that an attempted bombing had taken place. When FBI Agents arrived at the police station between 8:45 am and 9:00 am, they were informed by the MPD Bomb Squad that the device did not appear to be a bomb as originally reported. Examination of the device by FBI Agents determined it was part of what appeared to be a self-made electronic listening device. This was an immediate indication of a possible violation of the Interception of Communications statutes, which are within the primary investigative jurisdiction of the FBI.

Senator KENNEDY. So that the bomb threat was 6:30 or 7:30 in the morning?

Mr. GRAY. That is my recollection. I could be in error, but I think it was about that time.

Senator KENNEDY. And they didn't feel, at least at headquarters, that they had to notify you until 3 o'clock in the afternoon, 2:30 in the afternoon?

Mr. GRAY. No, I think I testified that the calls were made earlier than that: 9:30 a.m. to 10 a.m., Pacific Daylight Time, 12:30 p.m. to 1 p.m. Washington time. "FBI Headquarters called the Los Angeles office and furnished them information concerning the Watergate incident for immediate release to Mr. Gray."

Senator KENNEDY. What is this you are reading from?

Mr. GRAY. I am reading from a summary that I caused to be prepared.

Senator KENNEDY. Of what?

Mr. GRAY. Of the telephone calls to and from me, regarding the particular event we are talking about. I knew I would be asked about the specific times and I asked that it be prepared.

Senator KENNEDY. On that phone list there are no calls going out on Saturday morning and no incoming calls?

Mr. GRAY. No, sir. I will have to check to see what I made, if I made any from the hotel.

Senator KENNEDY. Why wouldn't the agent in charge have communicated to you early in the morning that at least something was up?

Mr. GRAY. Because they have learned, in dealing with me, that it is better to have some information to give me. Otherwise what they are going to get back are 10 to 25 questions. So they like to have a complete report to give me that is going to make some sense. I believe this is the reason.

I haven't asked them. I just know this from the way I have worked with them, that I always have a lot of questions.

Senator KENNEDY. On an item as hot as this, they don't let you know right away? They wait until they have a lot of material? They don't let you know?

Mr. GRAY. I think in this case I see nothing wrong with their procedure. I read no ulterior motives into it or anything like that, sir. It was the FBI working as fast as they could work to generate answers. They needed to develop information that they could transmit to me.

Senator KENNEDY. Do you know whether you talked to Mr. Mitchell that day?

Mr. GRAY. I know absolutely and positively and beyond peradventure of doubt that I did not talk to Mr. Mitchell and have not talked to Mr. Mitchell.

Senator KENNEDY. On that Saturday?

Mr. GRAY. Absolutely, Senator.

Senator KENNEDY. Or subsequently?

Mr. GRAY. Or subsequently.

Senator KENNEDY. The other day, I asked you about Mr. Mardian and the destruction of certain records in the Committee to Re-Elect the President, and I think that you responded at that time that he was taking the lawyer-client relation. Do you remember those series?

Mr. GRAY. Yes, I remember the exchange between you and me, Senator Kennedy. Then I filed an insert for the record as you requested, and I expanded upon that and went on to say that we had no allegations whatsoever at any time that Mr. Mardian had engaged in any paper destruction activity.

Senator KENNEDY. Did you ask him whether he had been there or whether he had destroyed any material?

Mr. GRAY. Senator, you know, at my level I don't ask the questions and I don't tell the agents what questions to ask. I just don't know.

We have got to rely on the superb training of these men to probe the areas in which an individual might be involved.

I specify the general areas when it comes up to me for a decision, but I don't know. I would have to ask if they asked the specific question.

Senator KENNEDY. Wouldn't you assume that they would have?

Mr. GRAY. I wouldn't make that kind of an assumption because I am not going to assume any type of question a trained investigator is going to ask. They have their own ways and means and techniques of eliciting information and matching information received from other sources received—

Senator KENNEDY. What do you assume an investigator would do if there is an allegation or charge, that they have been informed of, about a housecleaning where records were destroyed by Mr. Mardian and Mr. La Rue. They talk about destruction of records. Weren't your people trained to ask about—

Mr. GRAY. Of course, they are trained. But there were no allegations to the effect that Mardian and La Rue were involved in it. We interviewed, roughly, about 60 people over there at that committee.

Senator KENNEDY. What is your—

Mr. GRAY. We didn't get any allegations that Mardian and La Rue were involved in the destruction of records.

Senator KENNEDY. What do you mean, involved? Directed it, or knew about it? During your investigation, did they acknowledge knowing about it?

Mr. GRAY. I would have to ask. The information that I have here is that we interviewed about 60 people at the committee, including Mardian and La Rue. And the only positive information relative to the destruction of records is that which was set forth in some of those confidential interviews—but without pinpointing the individuals with any specificity.

Senator KENNEDY. In your remarks you said those questioned included, and then you give 12 or 14 names. Do you remember the memorandum that was provided?

Mr. GRAY. You said people interviewed at the White House, Senator?

Senator KENNEDY. Yes, sir. You have indicated Magruder, Porter, Stans, Sloan, Barrick, Nunn, Sally Harmony, Judith Hoback, Robert Odle, Robert Houston, Panarites, Gleason and Duncan. Those are the names.

Do you remember those?

Mr. GRAY. Yes, sir. Those are the people we interviewed at the Committee To Re-Elect the President.

Senator KENNEDY. What about Mardian and La Rue?

Mr. GRAY. We interviewed Mr. Mardian and Mr. La Rue.

Senator KENNEDY. About this allegation?

Mr. GRAY. I cannot testify under oath that we specifically asked them that particular question. That I am going to have to ascertain for you and supply it for the record.

I can't testify to the questions. There are over 2,300 people we interviewed, and no Director of the FBI or any criminal or intelligence service in the world, Senator Kennedy, knows specifically what an agent asks on an interview. I just do not know.

The CHAIRMAN. How many agents did you have working on this?

Mr. GRAY. Over 300; 340 to 350 agents working on this case.

Senator KENNEDY. Actually, you have answered that. At page 298 [of the typewritten transcript], you said: "I would like to state that Mr. Mardian was not questioned concerning what records existed prior to April 1972 nor was he questioned concerning any destruction of records. The investigation did not develop any allegation that Mardian had been involved in the destruction of records." And yet the Washington Post story clearly accuses Mardian of this.

Mr. GRAY. Senator, I stated we interviewed 60 people. We had no indication of this. I am not going to start all over again and do the Watergate again. Nearly all the Committee To Re-Elect the President people testified before the Federal grand jury. I don't know how many of them testified at the trial, but this is something about which I am just not going to gear up the FBI every time somebody writes something in the newspaper.

Senator KENNEDY. Well, it was a pretty serious charge, was it not, Mr. Gray?

Mr. GRAY. Not in view of the fact that we had already interviewed 60 people.

Senator KENNEDY. The charge, the allegation talks just about Mr. Mardian and Mr. La Rue; and those two were not questioned about it?

Mr. GRAY. We did plenty of questioning there and we didn't have any leads at all about their involvement in this questioning.

Senator KENNEDY. The newspaper allegation was that they were involved; that they did preside over the destruction of it, and that is all I am questioning. You are saying that the FBI interviewed 60 people but didn't interview the two that were—

Mr. GRAY. We did interview those two, but I don't know if that specific question was asked.

The CHAIRMAN. Your testimony has been all the time that you did interview Mardian and you did interview La Rue?

Mr. GRAY. It has consistently been that, Mr. Chairman, yes.

Senator KENNEDY. But not about—

The CHAIRMAN. So you have a charge in the newspaper, but you have your investigation on the other side?

Mr. GRAY. That is the way I look at it, Mr. Chairman.

Senator KENNEDY. But, Mr. Gray, as I understand your testimony, you investigated whether there was a destruction of records prior to April 7, but you never asked any questions about the destruction of any of the materials that might have been in the CRP files?

Mr. GRAY. I believe that we did but I will have to check the record on that. My recollection is that we did. We investigated both series, pivoting about the date of April 7, Senator.

Senator KENNEDY. Could you do that?

Mr. GRAY. Yes, sir.

Senator KENNEDY. Could you find that out, because that was not covered; and that is part of the allegations in the newspapers, that there was material that was destroyed. I think the newspapers have also suggested that the results of some of the wiretap material had been destroyed as well. I am trying to find out whether your investigation of that consisted only of whether they destroyed the financial records prior to April 7, or whether you got into the other material, and what that response was?

Mr. GRAY. Yes, sir, I will check the record and supply a full answer to that question.

[Mr. Gray subsequently submitted the following document for the record:]

After checking, I find that there are two situations in which records at the Committee to Reelect the President were allegedly destroyed. The first of these relates to financial records of contributions before April 7, 1972, when the new Disclosure Act took effect. The second involved alleged destruction of records at the Committee offices after the arrests of the five men at the Democratic Headquarters on June 17, 1972. Our Agents contacted a number of people at the Committee concerning these points, and during the Federal grand jury inquiry a number of people were also questioned concerning the records destruction. Those questioned included Jeb Magruder, Herbert Porter, Maurice Stans, Hugh Sloan, Paul Barrick, Lee Nunn, Sally Harmony, Judith Hoback, Robert Odle, Robert Houston, Sylvia Panarites, Millicent Gleason and Martha Duncan.

The responses to these inquiries involve the substance of the Watergate investigative file, which is already available to the Senator, as well as grand jury testimony, which I am not at liberty to place in the public record.

Senator BURDICK. Mr. Chairman, I have a few short questions at this time.

Mr. Gray, I have been involved in other hearings and have not heard all your testimony. Therefore, my questions may be a little bit repetitious. I hope not.

Mr. GRAY. I will be happy to try to answer.

Senator BURDICK. Last year, we held hearings on the confirmation of Mr. Kleindienst and the Dita Beard memorandum became the center of controversy. The chairman of the committee sent the memorandum to the Federal Bureau of Investigation for an examination. Is that correct?

Mr. GRAY. I believe it is correct to say that it was delivered to the FBI. I would have to check whether it was the FBI or the Department of Justice, but I believe it would be FBI.

(Mr. Gray subsequently submitted the following document for the record:)

I believe that the Dita Beard memorandum was delivered to the Justice Department for transmittal to the FBI. This is my best recollection.

Senator BURDICK. At that time you were the Acting Attorney General?

Mr. GRAY. I was the—Senator, I was the Assistant Attorney General in charge of the Civil Division and the Deputy Attorney General designate. I think your question is directed to whether or not I was at that time acting with regard to decisions concerning papers to be delivered to this committee?

Senator BURDICK. That is correct.

Mr. GRAY. I think that occurred about March 17, somewhere in that period of time, because March 17 is the date on which I signed the first letter to this committee.

Senator BURDICK. As I recall, your testimony was that the Dita Beard memorandum was delivered by someone to Mr. Dean, attorney for the President?

Mr. GRAY. Yes, sir; Mr. Dean called me and asked me if this could be made available to him. And I made it available to him.

Senator BURDICK. Then, thereafter, that memorandum found its way into the hands of the ITT Corp.?

Mr. GRAY. That I don't know as a fact. I still don't know it as a fact. On page 804 of the confirmation hearings Mr. Abell testified the ITT had that memorandum.

Senator BURDICK. Then when we come down to this year, we find that a raw interview of Mr. Segretti was also delivered to Mr. Dean, the President's attorney?

Mr. GRAY. It was among those, Senator Burdick, that I previously testified I did deliver to Mr. Dean in his capacity, his official capacity, as counsel to the President in conducting the investigation.

Senator BURDICK. That is the same Mr. Dean?

Mr. GRAY. Yes, sir; that is the same Mr. Dean.

Senator BURDICK. Does the record establish that that raw interview wound up in Mr. Segretti's hands later on?

Mr. GRAY. No, sir; it does not establish that. I think this is with reference perhaps, Senator Burdick, to the newspaper stories concerning the affidavit that he was shown his FBI interview forms, including one conducted just 24 hours before. We only interviewed Mr. Segretti

on June 26, June 28, and showed him a picture on June 30. So we had no interview 24 hours before this particular date.

Senator BURDICK. In other words, in these several days of hearings it has not been established by direct evidence that Mr. Segretti got a copy of his own interview?

Mr. GRAY. No, sir; I think not.

Senator BURDICK. Now, let us get to a policy question. Is there any limitation upon a request by an attorney for all the information he wishes from you?

Mr. GRAY. Yes, sir; there are limitations.

Senator BURDICK. What are they?

Mr. GRAY. Those limitations I sought to set out in earlier testimony, but I will try to do it again, Senator Burdick.

In every instance, such as this, where it is a major case special, I inquire into the reasons. Even on other occasions when requests are made for information, I inquire into the reasons, and I make a judgment as to whether or not this information should be provided—not only on the basis of law but also the ethical and moral considerations involved.

Those considerations have occurred prior to this time. When some of these do occur, there are times when I may very well say, "No." I don't know whether they are going to occur but if they do and when they do, I am going to say "No." I am going to have to say "No."

I testified at great length, in response to Senator Tunney's questions, on how I feel about this. I feel pretty strongly about it, I feel very strongly about it.

Senator BURDICK. If in fact the Dita Beard memorandum did find its way into the hands of the IFT after being examined by the FBI, and if in fact the raw interview of Mr. Segretti did find its way into his hands, would not those facts be rather disturbing to you?

Mr. GRAY. They would.

I have characterized the latter as a grievous error. I think I said serious or most grievous breach of trust to the President, who has entrusted this man with the responsibility of conducting an investigation for the President. But I have no evidence whatever that this occurred. I have evidence in the story itself that, at least, it didn't occur as the story related. That is obvious on the face, Senator Burdick. It just didn't occur.

But to answer your question, it would be a breach of trust, there would be no question about it.

Senator BURDICK. Thank you, Mr. Chairman.

Senator MATHIAS. Would the Senator yield for a moment to pursue that?

Mr. Gray has referred to a breach of trust. On whose part?

Mr. GRAY. On whose part, sir?

Senator MATHIAS. Yes.

Mr. GRAY. If it were used improperly like that, I would say on the part of the individual to whom I gave the document.

Senator MATHIAS. Who was who?

Mr. GRAY. Mr. Dean. It was not something I would have expected him to do.

Senator COOK. Mr. Gray, may I inquire just a moment, because you have nothing specific to point to that Mr. Dean, or anybody in fact, made these documents available to anyone else; is that not correct?

Mr. GRAY. That is correct, Senator.

In connection with the Dita Beard memorandum, I have stated under oath here several times that I believe the intent of the committee was to get to the authenticity of that document and I have said if Mr. Dean took that additional step, which I don't know that he did, he was seeking to determine the authenticity of that document.

I also stated that the FBI had delivered a report to this committee stating that the document was possibly authentic.

In that particular case, I don't think that this committee would have turned down the information that would have been developed as a result of an alleged examination of that document by ITT, which I know now to be a fact from Mr. Abell's testimony of which I was reminded yesterday.

Senator COOK. This could be an in-house problem, because we read quite frequently, particularly in Mr. Anderson's columns, information relative to the FBI where he gives file numbers and statistics and facts within files. So this could be an in-house problem as well as a White House problem.

Mr. GRAY. No question about it, Senator Cook.

I have said, and I think even we in the FBI feel that somehow some of our materials are ending up in hands not entitled to receive them. We don't know. We try to run it down.

We don't try every time, of course. I have testified to this under oath, that we don't try every time and we don't like to discuss the methods that we are using to endeavor to run down the leaks of information which do occur.

Now, some of these other papers could come from the media, burglary, and from other files of Government agencies here in Washington who receive documents from us with our caveats on them.

I have said that during my administration, I have tightened up on the dissemination of all documents and we are sending only one to some of the agencies that had previously been accustomed to getting many copies.

As to the Dita Beard memorandum, I think what we were searching for there was truth.

As to the Segretti matter, I have no way of knowing that. I consider if documents were made available to Mr. Segretti, it was a breach of trust.

Senator COOK. Thank you, Mr. Gray.

[A brief recess was taken.]

Senator KENNEDY. The committee will come to order.

I regret the interruptions, Mr. Gray.

I am trying to chair a health hearing, so I apologize for coming in and out.

I just have a few final points that I would like to discuss with you this morning.

We were talking about the investigation of the Mardian-La Rue allegations from a front page Washington Post article about the destruction of various materials over at the Committee to Reelect the President, and in the past when you have seen other kinds of allegations about information, you have been willing to pursue it or at least try and follow up.

I mean the allegations that Mrs. Martha Mitchell did something and you outlined or reviewed what you did about that, talked to Mr. Mitchell and had some reservations about moving ahead.

But just from the fact that these appear in the newspaper, you have responded at times in following up on these allegations or reported charges, and here is a very serious allegation or charge that, as you have recognized even in your own submissions, could be unlawful.

In further response to a question that came earlier, you indicated that "Mr. Mitchell advised us," I am reading from the insert response you supplied:

"In addition, Mr. Mitchell advised us on July 5, 1972, that Mr. Mardian was with him in a political meeting in California from June 16 through June 20, 1972. Liddy's alleged destruction of records took place on June 17, 1972.

"In addition, Mr. La Rue was not interviewed regarding the destruction of records as there was no allegation that he had any such information."

Of course, those allegations were made that the destruction came after that?

Mr. GRAY. That is correct, sir. But what I would do, I wouldn't launch an investigation. I would set forth a series of questions to the effect: Did we cover this? What do we know about this? What occurred? That kind of thing.

This was done in those cases, you know, to make certain that we did cover them.

I didn't do that with every single newspaper article that came out because there were far too many of them, Senator.

Senator KENNEDY. Did you do it in this case?

Mr. GRAY. I have already supplied an insert for the record which I think—I didn't know at the time you were questioning me—that goes right to this point. It is the insert that I believe you are reading from.

Senator KENNEDY. Liddy's alleged destruction took place on the 17th. June 19 was the alleged destruction involving Mardian and La Rue.

Mr. GRAY. I am basing not on what is in the newspapers, Senator Kennedy. I am basing our statement to you on what we have in our records. That is what I have got. I have to stick with that; that is all I have. That is my bedrock.

Senator KENNEDY. What is your bedrock?

Mr. GRAY. My investigation, the investigation of the Federal Bureau of Investigation.

Senator KENNEDY. And what did the bedrock show, that there was destruction of the records on the 17th and therefore—

Mr. GRAY. There were allegations that there had been records destroyed prior to that pivotal date of April 7. There were allegations that there were records that had been destroyed after that pivotal date. We tried to find out about this in the conduct of our investigation, and we did question some 60 individuals over there.

I am not going to testify under oath that each and every one of them was asked that specific question, but we did get this kind of information.

We did look into it. We tried to ascertain whether it was true or not, and we delivered the information we obtained to the assistant U.S. attorney who, I am sure, used that at the Federal grand jury. But I don't have all that grand jury testimony.

Senator KENNEDY. Your testimony as I understand it, is that you never asked Mardian or La Rue about the destruction—

Mr. GRAY. I don't know. I said I would have to go back to ascertain whether or not we asked these specific questions of these two men, and put that insert into the record.

This is the way I understand your question.

Senator KENNEDY. The allegations on the front page of the newspaper allege this, and what I was trying to find out is whether you investigated it.

You have given a response that there were questions asked about the destruction of records prior to April 7.

Mr. GRAY. We asked questions after April 7, too, that I am sure. What I am not sure of, and I can't answer with that degree of specificity which is required here, is whether the agents who interviewed Mr. Mardian and Mr. La Rue asked them that specific question.

That is what I can't testify to because I don't have the memory of it.

Senator KENNEDY. As a matter of fact, I think we have that you indicated on the earlier insert that: "Mr. Mardian was not questioned concerning what records existed prior to April 1972, nor was he questioned concerning any destruction of records. The investigation did not develop any allegation that Mr. Mardian had been involved in the destruction of records."

Mr. GRAY. If that is our insert that is what our records will show, but I am going to check that again for you, Senator Kennedy.

[Mr. Gray subsequently submitted the following document for the record:]

Senator, at this time I would like to state that Mr. Mardian and Mr. LaRue were not questioned concerning what records existed prior to April 7, 1972, nor were they questioned concerning any destruction of records. The investigation did not develop any allegation that Mr. Mardian and Mr. LaRue had been involved in the destruction of records.

Senator KENNEDY. Is the FBI involved in any way in the investigation of the ITT affair?

Mr. GRAY. Now? At the present time, sir?

Senator KENNEDY. Let us take the present time.

Mr. GRAY. We have been in the case with regard to the submission from the committee to the Department of Justice concerning the investigation relative to perjury or obstruction of justice which I am advised came over to us on December 5. The investigation is ongoing and is nearly complete.

Senator KENNEDY. I see.

When do you expect that that will be completed?

Mr. GRAY. We have, I think, four more interviews to go on that.

Senator KENNEDY. Was one of the interviews in this investigation with Dita Beard?

Mr. GRAY. I know nothing about that investigation at all, but I believe one of the interviewees was Mrs. Beard. I believe she had some kind of illness or something like that, at the time we were interrogating her.

Senator KENNEDY. Well, you know well enough about that interview, don't you?

Mr. GRAY. No, sir; I will be absolutely honest with you. The first time I inquired about this investigation, believe me, Senator Kennedy,

was yesterday. I was briefed this morning in the automobile coming over here. That is the straight answer. The people who briefed me are sitting right here with me.

Senator KENNEDY. Was the interview with Dita Beard—was it written up in the newspapers?

Mr. GRAY. I saw it in the newspaper. I saw it.

Senator KENNEDY. When you saw it, you knew that the investigation was taking place of these obstructions of justice or perjury charges?

Mr. GRAY. Well, I had to conclude that but I have not talked to anyone about that investigation. As a matter of fact, I did not even remember that I had read that story about Dita Beard, but when we discussed it last evening, and in the car coming over here today, I did remember it.

Senator KENNEDY. But you knew there was an investigation taking place?

Mr. GRAY. I didn't know until yesterday.

Senator KENNEDY. You mean you did not know the FBI was investigating?

Mr. GRAY. No, sir; I did not, because I don't know about every investigation we have got going.

Senator KENNEDY. Who does?

Mr. GRAY. We have some 800,000 investigations going.

Senator KENNEDY. You think that a request by the Senate of the United States to review a matter as important and significant as ITT in regard to perjury and obstruction of justice, an investigation conducted by the FBI, and you wouldn't know that was taking place within the Department?

Mr. GRAY. I knew that submission was made within the Department, but what I didn't know was that the Department had submitted it to us.

It is the way we operate. We have very capable and trained people down there. I don't know every single investigation that is going on in the Federal Bureau of Investigation.

Senator KENNEDY. Is this "every single investigation," the investigation of the ITT, after request by the Senate of the United States? Is this routine? Is this one of the umteen thousand?

Mr. GRAY. If I knew it, then I might be criticized that I might be tampering with this one.

Senator KENNEDY. Why do you say that?

Mr. GRAY. Because there have been all the questions to date. No; I say this has been handled in the regular way, in keeping with the FBI's procedures, and they don't bring every one of those to me.

At this particular time, I am reminded that I was in Connecticut following my operation for an intestinal obstruction. Even though I had my executive assistant there with me after the operation, and I was working on Bureau papers, I was not informed until last night. I don't view this as a grievous error. It might be a good idea. I can be criticized either way, so we'll play it that way.

The CHAIRMAN. You were in the hospital when it was submitted?

Mr. GRAY. Yes, sir; when it come over from the Department of Justice.

Senator KENNEDY. Why would you have thought it would have been a good idea to perhaps stay out of it?

Mr. GRAY. I don't think it would have been a good idea. I am just telling you that this is the way it happened and I haven't had this information. I don't say at all that it would have been a good idea and I wouldn't want my testimony—

Senator KENNEDY. How extensive—is this one of the major investigations by the Department?

Mr. GRAY. I would say it is probably a very important investigation; yes.

Senator KENNEDY. Can you think of some that are more important now?

Mr. GRAY. There are all kinds of investigations and I can think of plenty that are more important; yes, sir.

Senator KENNEDY. Outside national security, are there any that are more important?

Mr. GRAY. Similar types. We have some very sensitive ones going on in the field of organized crime and I am not going to discuss those.

Senator KENNEDY. I am not asking you to discuss those.

I think the whole affair took a great deal of time, the many allegations and charges, and at least this committee, when it asked the Department of Justice to pursue it, thought this was a matter of very significant importance, and it quite frankly surprises me that you are not only not up-to-date on the particular details of the investigation but that you did not even have knowledge that it was—

Mr. GRAY. The main thing to be said in connection with that investigation is this: had they needed a policy decision or direction or guidance or some intervention on my part, I would have known about it.

Senator KENNEDY. Let me ask you, Mr. Gray: Do you think that perhaps at least some of the consideration might have been a feeling within the Department that because of your presence in the Justice Department during this period of time, they felt they didn't want to put you in a more difficult position?

Mr. GRAY. No; I don't think I am in a difficult position at all. I have a duty to do as Director of the FBI, and I will do it, Senator Kennedy. I don't think that thought ever entered their minds. I would hope it didn't.

Senator KENNEDY. You know a good many of these gentlemen we have talked about during the course of these hearings: Mr. Dean, Mr. Mardian, Mr. La Rue, and many of the others?

Mr. GRAY. No; I would like to be specific because I don't know them all. I don't have that kind of connection. A great many of these men, Senator Kennedy, I previously testified that I met when I came here to Washington at HEW to work with Bob Finch.

Senator KENNEDY. That is how many years ago?

Mr. GRAY. 1969, in January, when I came, and I met them for the first time then.

Senator KENNEDY. Well, then, you are familiar with them?

Mr. GRAY. I know who they are, but I didn't have too much time to get too familiar with anybody in that year in HEW. The records will show I worked there 6:30 in the morning to 9 or 10 at night every single day and that is known at HEW. There are plenty of people who would testify to that fact. I didn't even leave that place for lunch.

That is how busy I was. I wasn't doing any socializing. Whatever contact I had with them would be telephonic contact or they would be coming into my office, but I don't have that kind of a close relationship with those men and they would be the first to agree.

Senator KENNEDY. Obviously, there has been general speculation again in some newspapers that this has really placed you almost in an impossible position in terms of doing the kind of work and job that you would be called on to do, despite the association or knowledge or work relationship that you had with many of these men, yet if you didn't do it because of the appearance of either those associations or relationships that would put an unfair burden upon you.

I know you feel and commented here this morning that you didn't have any kind of problems as far as your own kind of personal willingness and desire to follow this proceeding.

Can you understand that sense of concern that others might have about having you investigate people whom you had this working relationship with, are knowledgeable of and friends with over a period of a number of years?

Mr. GRAY. Yes; indeed.

Senator KENNEDY. So to speak, have served in the trenches with. Should people be concerned about that? Do you understand this concern?

Mr. GRAY. Yes; indeed. I understand the concern, Senator Kennedy. I think it is a valid concern. But they are not people with whom I served in the trenches. I am not trying to disavow knowledge or personal acquaintance, but it is really not that close a relationship. Bob Finch, Chuck Lichenstein, and Agnes Waldron were about the only people at HEW I knew. I can't recall that there was anyone else over there I knew. In the White House, there were John Ehrlichman and Bob Haldeman and John Whitaker. Those people I knew from the 1960 campaign. I didn't have any contact with them in the interim.

But I can understand the concern. I don't think this is the first time in the history of our government that this kind of a situation has occurred, where people have been placed either in Cabinet officer positions or Bureau Chief positions. We have been able to operate this government because this government relies on people doing their job. If we begin to believe that people can't do their job, our institutions are in real trouble—and those of us who are in these jobs have got to contribute all we can so as not to default.

I view a default on the part of leadership as far more serious than some of the really major crimes that are committed today because that default in leadership can hurt this society grievously.

I appreciate your concern, and I do think it is a valid concern. But I think that it can be overcome, and we have been overcoming it, sir, in our Government for many years.

Senator KENNEDY. But it is the first time that has taken place in the FBI, isn't it?

Mr. GRAY. Oh, no question, this is the first time. But not in the Department of Justice. There have been many Attorneys General in the Department of Justice who had political connections.

Senator KENNEDY. I know of some.

Mr. GRAY. These men are going to go in there and do a cracker-jack job.

Senator KENNEDY. You are getting to me.
Thank you, Mr. Gray.

The CHAIRMAN. We will recess now to 2:15.

[Whereupon, at 12:15 p.m., the committee recessed to 2:15 p.m.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. John T. Elliff.

Stand up, sir.

[The witness was sworn.]

Senator HRUSKA. Mr. Elliff, you have filed a copy of your statement with the committee. You may either read it or highlight it as you wish. Proceed in your own fashion, please.

**TESTIMONY OF JOHN ELLIFF, DEPARTMENT OF POLITICS,
BRANDEIS UNIVERSITY, WALTHAM, MASS.**

Mr. ELLIFF. Thank you very much, Senator Hruska.

I wish to thank you for giving me this opportunity to discuss the nomination of L. Patrick Gray as Director of the Federal Bureau of Investigation.

I am currently an assistant professor in the Department of Politics at Brandeis University, Waltham, Mass. I outline in my statement some of the work that I have done in this respect.

Since 1966 I have conducted research on various aspects of the Department of Justice and the FBI. These studies have been based on interviews with past and present officials and examination of historical documents and public records. As a research fellow at the Brookings Institution in 1966 I was given limited access to Justice Department archives by Attorney General Katzenbach. In 1971 then Deputy Attorney General Kleindienst arranged interviews for me with executives of the Department and the FBI. My findings have been published in a study of the FBI and civil rights enforcement and in a book on the Justice Department in the 1960's. In addition, I presented a paper on FBI data collection to a conference on the FBI sponsored by the Committee for Public Justice at Princeton University. Subsequently, I participated in another conference on the FBI organized by Americans for Effective Law Enforcement and contributed recommendations on the FBI and domestic intelligence to the Democratic Policy Council's Planning Group on Intelligence and Security, chaired by Senator Adlai Stevenson III.

I don't know that I know very much about the FBI, but I have attempted, as a political scientist, to study both the Justice Department and the Bureau and to try and draw some generalizations from the data that is available in public; and also I have had a unique opportunity, under both the administrations of Attorney General Katzenbach and Attorney General Mitchell, to conduct interviews with officials of the Department of Justice and the FBI.

In order to evaluate adequately the qualifications of L. Patrick Gray for the position of FBI Director, I believe that this committee ought to examine very carefully both the FBI as an institution and the office of FBI Director itself. The nomination of a permanent Director for the FBI provides a truly unique opportunity for this committee to undertake congressional oversight of the FBI and to examine what Senator Hart referred to on the first day of these hearings as the structure and policies of the Bureau. So that this committee and the Senate can more fully understand the nature of the

choice that they must make, I have asked to be allowed to present some of the results of my studies of the FBI and to relate those studies to some of the material that has recently come to light about the FBI and about its particular practices, even during these hearings.

The scrutiny that Congress should undertake with regard to the FBI ought to evaluate the Bureau against the overall norms of the Constitution. If fault is to be found it should not be sought in the Bureau or its former or current or potential Director, but in the long line of past Attorneys General and Presidents and even Congresses who have given power and responsibility to the FBI, but who have failed to establish adequate controls.

Former Attorney General Francis Biddle was very concerned about this. I once had an opportunity to discuss this before his death with him. He wrote in his autobiography that the FBI Director has been given "immense authority." He believed this delegation of authority to J. Edgar Hoover was "justifiable by the record." But he raised a disturbing question about

the future of this great machine of detection, with its 10 million personal files, its reputation grown sacrosanct . . . its obvious possibilities of misusing the power it has won.

When Hoover is gone, Biddle asked,

what will happen—can the same freedom be given to another man, the virtual freedom from control? I do not believe it can.

Thus the time is now ripe for sustained reasoned dialog about the proper investigative and domestic intelligence requirements of the executive branch and the appropriate means for supervising FBI operations.

There is another reason why this committee has a special opportunity to exercise oversight. As Director-designate, Patrick Gray can reply to your questions with the knowledge he has gained over the past 9 months. In a sense he will have served as an agent of the Congress in making his examination of the Bureau's functions during that period. He brought in his own small personal staff, unencumbered by experiences of the past within the organization. And he created a planning and evaluation agency within the FBI, headed by a new Assistant Director. Thus Mr. Gray should be in a position to discuss in detail the FBI's operations and his plans for the future.

Indeed, he has invited the committee to do this. In his opening statement he has placed two appendices: Appendix A of Mr. Gray's opening statement outlines the areas of inquiry that he laid out before himself when he took office as Acting Director, last May, and appendix D in his opening statement reviews a great many changes that he has made in the operations of the FBI over this period. By presenting this material to the committee, Mr. Gray is offering this committee the opportunity to question him about the results of his own examination of FBI functions, his own evaluation of the problems that might exist or improvements that might be made in the Bureau; and he has outlined some of the steps that he has taken, which I think this committee and the Senate as a whole ought to familiarize itself with so it can know what the record of L. Patrick Gray during these past 9 months as Acting Director has been.

Some of this material has been made public on various occasions during the past 9 months. Mr. Gray has either directly in interviews

with newsmen or indirectly through stories that have appeared in the newspapers revealed some of the changes that he has made. But it seems to me it would be quite important to review with him these changes, to understand how he thinks about the Bureau so that both the Senate and the American people can understand what Pat Gray will mean as permanent FBI director.

1. AN OVERVIEW OF THE ISSUES

I would like first to suggest some of the issues that do come up in any attempt to understand the FBI. The FBI is a powerful and complex institution, combining as it does both criminal law enforcement work and internal security intelligence functions. Yet few other institutions of comparable importance in the American political system have been so completely ignored by scholars and students of government. Consequently, major changes in the FBI's missions and methods are not fully understood, and new disclosures about the Bureau are often distorted because they enter an analytical vacuum. The Congress bears considerable responsibility for such misunderstanding since its committees have not previously examined FBI policies in depth or detail. Instead, fragmentary news stories, second hand accounts, documents taken out of context and unverified charges frequently produce more confusion than enlightenment. As former Special Agent Jack Shaw has written:

Many critics just don't possess enough material facts about Bureau policies to critique them effectively or argue intelligently and thus resort to invective or vilification.

In recent years thoughtful FBI executives have themselves been aware that their assignments are widely misinterpreted. During the 1960's the FBI confronted new problems, difficult to define in a way that would secure general acceptance for its response. Bureau executives became concerned that increasing doubts about its legitimacy might result in less public cooperation, to the detriment of its operations. After the publication of stolen FBI documents in 1971, Attorney General John Mitchell acknowledged a need for better public understanding of the FBI's standards, so that the American people would not feel they were "being disturbed by Government activities." Yet no such clarification occurred and misgivings continue to grow.

Responsible FBI officials have seen another, perhaps more fundamental, issue emerging. The FBI is in large part an arm of the Presidency. The primary foundation for the Bureau's domestic intelligence role is inherent executive power. Later on my statement will go into this in greater detail. I have undertaken to analyze the source of authority for the Bureau's domestic intelligence activities. I have examined the records in the Roosevelt Library and attempted to review the Bureau's own statements in which it sets forth what its authority is. Only very recently, though, have Congress and the courts begun to explore the ramifications of this inherent executive power basis. Disregarded for decades, this overall question should now be seriously considered. Should the President direct an agency to conduct intelligence operations without explicit authorization from the Congress?

There has been other criticism of the FBI prior to Mr. Gray's taking office, criticism suggesting that the Bureau was hampered by bureaucratic rigidity and misplaced priorities. After retiring from the FBI in 1971, former Assistant to the Director William C. Sullivan condemned the Bureau for "fossilized bureaucratic traditions and obsolete policies."

Other members of the national intelligence community claim that the FBI has done a poor job in dealing with foreign agents in this country because of its orientation as a criminal investigative agency. Special agents trained in criminal procedures may fail to grasp "the subtleties of intelligence work."

In recent weeks there has been more evidence of this problem. It was disclosed that New York City and its police department had turned, not to the FBI, but to the Central Intelligence Agency for advice on improving intelligence capabilities. I think we should ponder the reasons why the Central Intelligence Agency, which is by statute barred from exercising any internal security functions in the United States, was the agency called upon to help the New York City Police Department reorganize its data maintenance facilities. Indeed, the CIA provided advice which apparently made it possible for the New York City Police Department to eliminate 80 percent of the information that they had in their intelligence files. Apparently the FBI was not in a position to provide assistance of this sort.

So there are problems regarding the operational quality of the FBI, and, of course, equally serious charges come from civil libertarians who express apprehension that overzealous FBI activity may involve unacceptable invasions of privacy and have an intimidating impact on political freedoms. They question the Bureau's power to label groups publicly as "subversive" or "extremist," to infiltrate such groups for the purpose of fragmenting and destroying them, and to maintain special surveillance files on every suspected "subversive" or "extremist" individual covering his activities, beliefs, and associations.

In fact, if I might add here, the special staff study done by Senator Ervin's Subcommittee on Constitutional Rights and published this past summer entitled "Army Surveillance of Civilians: A Documentary Analysis," concludes that the Army's surveillance files were composed of from 20 to 60 percent FBI material. The criticism that has been made of much of the contents of Army surveillance files could also be directed, insofar as it suggests that they are unnecessary for any purpose whatever, at the FBI which served as the source of a considerable amount of this information maintained by the Army.

In addition, other committees of Congress have been concerned about the FBI's collection and nationwide dissemination of criminal history data, especially the development of the computerized facilities of the National Crime Information Center. This has provoked heated controversy, a controversy that has illustrated the weak statutory foundation for FBI activities. The courts found recently that the Bureau's authority to disseminate arrest records in certain cases was not adequately founded on statutory authority. It was thus necessary to pass new legislation to authorize what had been insufficiently authorized programs of the FBI.

Finally, in the area of civil liberties, the recent disclosure that the Bureau prepared special memoranda summarizing everything in its files about each newly elected Congressman, Senator, and Governor is only one in a startling series of revelations about previously secret FBI practices.

In giving an overview of the issues, there is one more very delicate matter, and that is the fact that Congress has made no attempt to define or even explore in great detail the relationship between the FBI and the Department of Justice. Although responsibility for the FBI's overall assignments rests with the Attorney General—as Mr. Gray has acknowledged—neither the Attorney General nor his subordinates have exercised administrative supervision over the Bureau's internal regulations. Occasionally, experienced Justice Department career executives in the internal security and criminal and civil rights divisions have served as "Burologists" for the Attorney General. But generally, the FBI and the Department have dealt with each other at arm's length, with frequent misunderstandings resulting from poor communication. Similar isolation has occurred at times in the field.

In the hearings so far, there have been some serious questions raised about this delicate relationship between the Attorney General and the FBI Director. For example, on the first day of these hearings, Mr. Gray offered to any Senator, to any member of the U.S. Senate, the opportunity to examine the entire file on the Watergate case. This was an extraordinary, and as he said, unprecedented offer. I have written to the Attorney General and Mr. Gray about it and sent copies to the Chief Counsel of this committee.

But the important thing for what I am considering here is that Mr. Gray admitted he had not consulted the Attorney General in making this extraordinary offer. I think it is vitally important for this committee to try and explore under what conditions the Attorney General should or should not be consulted.

BRANDEIS UNIVERSITY,
Waltham, Mass., March 2, 1973.

HON. RICHARD KLEINDIENST,
Attorney General, U.S. Department of Justice,
Washington, D.C.

DEAR MR. KLEINDIENST: In the past you have been kind enough to arrange for me to conduct research on the Federal Bureau of Investigation through interviews with Justice Department and Bureau officials in the summer of 1971. I have continued my writing since then; and I shall soon testify before the Senate Judiciary Committee hearings on the nomination of Mr. L. Patrick Gray, III, as permanent Director.

On the first day of those hearings, Mr. Gray made an extraordinary and, as he admitted, "unprecedented" offer to the individual members of the United States Senate. He volunteered to allow any Senator to examine the entire FBI file on the Watergate investigation. This offer raises a serious question of possible invasion of the rights of privacy of those persons about whom information, charges, rumors, and accusations appear in the reports. The Senate as a whole has specifically weighed the values of individual privacy and its own legislative needs; and it has concluded that these files should be examined only by a small, carefully selected number of Senators and their staff counsel.

According to Mr. Gray's testimony, the White House requested last year that Presidential aide John Dean be provided with similar information. Mr. Gray said that he asked his own legal counsel about the request and that they advised him that, while the FBI should not volunteer such information to the White House, it had an obligation to provide it if it was requested. Nevertheless, Mr. Gray has now decided that he *can* volunteer such data to individual Senators. It is not clear why there is a difference between the two situations and why the Acting FBI Director should be able to go beyond the bounds of the explicit request made by the Senate.

Since Mr. Gray admitted that he had not consulted you in making his decision to open the files to every Senator, I would like your views as Attorney General and head of the Department of Justice as to whether Mr. Gray's offer is consistent with proper Department policy and the applicable legal requirements. Why is it appropriate for the Acting Director of the FBI to so volunteer Bureau files in the absence of, at the very minimum, a Senate resolution or other formal Congressional authorization?

I hope you will give this matter the closest possible immediate attention.

Sincerely,

JOHN T. ELLIFF,
Assistant Professor of Politics.

This morning there was discussion of the charges in Time magazine regarding the wiretapping or electronic surveillance of journalists. Mr. Gray has explained that the only discussion he had with the Justice Department over this matter was with Mr. Hushen, the public information officer. We have the conflict here with the letter that Senator Kennedy received from the Attorney General, saying that he had personally contacted Mr. Gray. Mr. Gray's reply was that this possibly meant the Assistant Attorney General could have discussed this matter with lower level FBI officials.

I think these are examples of the difficulty of trying to define these relationships.

One other example: What are the standards used by the Attorney General, or the FBI Director, or both, in designating a case a major special case, a case that, as Mr. Gray has said, requires the FBI to undertake a "full court press"? How is this determined? Is it the Attorney General who designates cases as major specials? Apparently not. Apparently Mr. Gray immediately upon discovering that the Watergate case had the ramifications it did, designated it a major special for a "full court press."

What kind of criteria are used? Is this something where one has to rely on the informal sensitivity of the FBI Director to the attitudes of the Attorney General or the attitudes of the Congress or the public? Apparently, the ITT investigation just being concluded was not a major special from the Bureau's point of view. It was an important case, Mr. Gray admitted, but not a major special.

Now, this decision as to whether a case is a major special is crucial to the allocation of the priorities of the FBI's skills and resources. It determines whether or not men and expertise are taken away from a whole range of other cases and thrown into the investigation of a major special. I think it is going to be very important for the Congress to understand, if not explicit rules and guidelines, then some of the considerations an FBI Director might have in his mind when he declares a case a major special.

Of course, there are risks in making the FBI completely subservient to the Attorney General. Mr. Gray has acknowledged the difficulty in defining this responsibility. When he was asked by Senator Bayh last week, he said it was a "tough question" in answering to whom he was responsible; but he pointed out that Congress, by statute, made him responsible to the Attorney General.

In following these hearings over the past 2 weeks, it has been my impression that Mr. Gray seems committed to making the FBI more subordinate to the Attorney General in the chain of command as he describes it. For example, his ultimate objective, he said, in the dissemination of information or responding to requests for information

from the FBI, was that the Attorney General ought to be the man who makes these decisions. But there is a problem that this can be a way to avoid responsibility that the FBI and its Director should exercise independent of a politically appointed Attorney General and his assistants. Mr. Gray has seen this problem and he promises to exercise his own judgment, but he may be establishing new patterns of administrative procedure that in a day-to-day way may be an abdication of the Bureau's independent responsibilities.

I think it is important for the Congress to play a constructive role in protecting the Bureau from illegitimate political influence while at the same time making it accountable to competent authority. The Bureau has immense resources both on its own and through local law enforcement agencies for gathering information. And information is an extremely valuable resource for the exercise of political power.

With the death of J. Edgar Hoover, there may be a very real danger of the FBI becoming an instrument for partisan political advantage. Despite the high degree of professionalism among its special agents, the risk of possible abuse of power under a future Director makes new controls all the more imperative.

2. FBI CONGRESSIONAL "DOSSIERS"

To explore what some of these matters involved and how the committee may want to examine Mr. Gray's own performance in recent months, I would like to look at the question of the so-called congressional dossiers. Mr. Gray has described in some detail how the FBI used its data retrieval system to uncover any and all information in its files about newly elected Congressmen, Senators, and Governors. Besides conducting research in "sources readily available to the general public," the FBI field office in each candidate's district or State prepared—

a summary of any data (already in the files) of the field office. This might include correspondence exchanged with the candidate; memoranda concerning personal contacts; results of investigations involving the candidate either as a subject, a victim, a witness, or a reference; or information voluntarily submitted to the FBI.

If the candidate was elected, the FBI's Crime Records Division put together "a brief abstract of any information already contained in the files at FBI headquarters." Memoranda summarizing the results of this search of field office and headquarters files were then "incorporated into FBI files."

Director-designate Gray's disclosures confirm that the Bureau's special files (or special memoranda) on Congressmen did not contain only "biographical data" from published sources. The Crime Records Division extracted all references to congressional candidates that appeared in FBI files on criminal investigations or domestic intelligence coverage. Thus FBI executives had at their disposal whatever derogatory information had come to the Bureau's attention prior to the Congressman's election. Since "no investigation was conducted to secure this information," according to Mr. Gray, then the Bureau apparently made no attempt to reconfirm the accuracy of whatever information might have made its way into the files over the years.

I commented in my prepared statement that the potential for political use of this data is obvious.

The potential for political use of the data in these special memoranda is obvious. As long as such information remains in the field office or headquarters files on other subjects, the opportunities to use it for purposes other than law enforcement are limited. But as part of a special centralized file on Congressmen, Senators, and Governors, it becomes a convenient resource for the exercise of political influence. Whether it is so used or not depends too greatly on the self-restraint of FBI executives. Therefore, it is vitally important to know what procedures limit access to the FBI's data retrieval system. Specifically, under what conditions may a Bureau official initiate or conduct a review of file indexes for information about a Congressman, a Governor, a public figure, or even an average citizen in investigative or intelligence files?

Mr. Gray has said he has been tightening up on data dissemination. For example, he mentioned that only one copy of a letterhead memorandum was being sent to agencies that used to get a great many copies. They also have xerox machines, though, and the problem is not entirely one that is the FBI's fault, as Mr. Gray has stated several times. Nevertheless, Mr. Gray in his letter to Senator Ervin about the congressional special memoranda states:

All FBI personnel have access to information in the files of the FBI if they need the information in connection with their official duties.

Now, that is a very broad statement, "if they need information in connection with their official duties." The question is under what specific conditions is a review of indexes conducted? Is there information in the manual of rules that this committee could examine that could help explain how the Bureau proceeds? Is, for example, this review of indexes subject to White House requests? It seems that when name checks come over from the White House, the Bureau conducts them. Who now can see the special memoranda that still exist? Mr. Gray says they have been placed under lock and key, no one is ever going to see them again, but they have not yet been destroyed.

This is the first set of questions for the future that is posed by the congressional dossiers.

The second involves a matter that Mr. Gray has been very forthright about. He said during the 1972 campaign last year he received some information about someone that he thought never should have come up through the information channels of the FBI, and he told his subordinates never do this again. He has acknowledged that under his predecessor it was at times a procedure used to send information of this sort to the Director. This procedure has been described by Edwin Guthman, now with the Los Angeles Times in his account of his years as aide to Attorney General Robert Kennedy. He wrote that it was:

Standard procedure in the FBI for the special agents in charge of FBI field offices around the country to report to J. Edgar Hoover intelligence not necessarily having to do with national security or law enforcement but which nevertheless may be of special interest to him.

It is conceivable that those alternate channels might also be used to send reports on information obtained about a Congressman in the course of criminal investigations or intelligence coverage directed at another subject. Subordinates, seeking to win favor with the Director, have a great incentive to make such use of their position unless the Director makes clear he does not want them to do so.

Mr. Gray said he discontinued the dossier program orally and not by written order. He has not mentioned, or at least he did not in his letter to Senator Ervin, whether or not the collection and maintenance of such special files on governors and local and State officials has been discontinued. I assume that it has been, but I believe Mr. Gray should be on the record in that respect.

Finally, he should be asked why there have not been established written directives rather than oral expressions of outrage to prevent future reestablishment either of the special memoranda on public officials or of the procedures and practices in which information unrelated to law enforcement or internal security were passed up through FBI channels.

So that is the second problem posed by these congressional dossiers.

The third problem has to do with how they were used by the Bureau in its Congressional relations policies. Mr. Gray says that it was briefing material for use by FBI officials "making a call on a newly elected Congressman or Senator."

Congressional liaison officials decided it would be most beneficial to them if they had some biographical data on newly elected members and a knowledge of any prior contacts by FBI representatives with these new Congressmen and Senators.

One former aide to J. Edgar Hoover told journalist Walter Pincus that the data was collected—

so that Hoover would know of anything in a new legislator's background that would make it inadvisable to send what became a traditionally congratulatory letter. If anything negative turned up, the inquiry would usually go no farther than a check of police records. The file would be kept in Washington and chances were that no letter would be sent. In no case, however, would such information be exploited for partisan gains.

These are two explanations.

In my interviews I have learned that the Bureau's congressional relations practices were more elaborate than this. A former FBI executive has described more fully the Bureau's policies for approaching Congressmen and cultivating their political support. The public relations program of the FBI sought first to identify those Congressmen and Senators who might be sympathetic to the FBI. The next step was to develop informal, amicable relations with those legislators through individual agents and former agents who were friends or relatives. On the other hand, any Congressman or Senator found unsympathetic or critical of the Bureau was not cultivated and might be cut off from any unnecessary dealings with the FBI. The Congressman might be placed on a "no contact list" containing the names of persons not to be approached by FBI agents without special clearance from headquarters.

According to Time magazine, some agents charge Director-designate Gray with "the perpetuation of Hoover's notorious 'blacklist' of people to be shunned, socially and otherwise by FBI agents." Therefore, the next question is to what extent the Office of the Director will continue these practices after its recent assumption of congressional relations duties from the Crime Records Division.

Another area that must be explored with respect to the congressional special files is the relationship of this data to the President. An argument can be made that the FBI Director should be notified whenever derogatory information about a Congressman appears in investigative

or intelligence reports. For instance, the President may wish to know whether a Congressman has been associated in one way or another with suspected criminal or subversive or extremist activity. The so-called Earth Day report obtained by Senator Muskie in 1971 could have served this purpose. This FBI intelligence memorandum on "National Environmental Actions, Washington, D.C., April 22, 1970," linked the rally which the Senator addressed to two ecology activists previously associated with the Communist Party and Students for a Democratic Society. The primary function of the report was probably to keep track of organizations that engaged in protest demonstrations in the Nation's Capital. But it is conceivable that the White House might receive the memorandum to inform it of the possible role of extremists in efforts to influence environmental policy.

Now, this is a very difficult question to get a handle on. The dissemination of FBI information is oftentimes not in the hands of the FBI. Mr. Gray has replied to a question by Senator Tunney that the summary memoranda on Congressmen were not sent to the White House, and he has asserted he would not be a party to any partisan use of FBI information, but he admits that FBI data is provided to the White House, "if there is a reason." Mr. Gray adopts a "presumption of regularity" in dealing with the White House.

Questions arise not only about the special requests that may come from the White House for information from the FBI which the FBI Director may resist in exercising his judgment, but also about the regular day-to-day dissemination of information, particularly in the domestic intelligence field. Does the White House receive letterhead memorandums to inform it of the possible role of extremists in efforts to influence Government policy? Perhaps these memorandums are not directly transmitted by the Bureau, but by the Internal Security Division of the Department of Justice. Does the Justice Department pass these letterhead memorandums on to the White House, or—and this has become much more significant, in recent weeks—might it pass such information to a political campaign?

In the records of the district court here on the *Watergate* case, there is information which has been published by Journalist Walter Pincus that the Committee for the Reelection of the President received what appears to be an FBI letterhead memorandum. Mr. Pincus, in his article in the *New Republic*, February 24, 1973, writes:

During the Watergate trial Robert Odle, who served as administration director for the reelection group, testified he hired James McCord, Jr., (one of those convicted at the trial) to serve as the organization's security chief. McCord, who had worked for the FBI and CIA, was a part-time committee consultant in late 1971 and became full-time in January 1972. In describing McCord's function in preparing security measures for the committee's offices and speakers, Odle said McCord was "plugged in" to the FBI as well as the Secret Service. The "plugged in" to the bureau aspect was developed during McCord's brief defense. One of his former assistants on the Nixon committee, Robert Lee Houston, was asked to describe his duties under McCord's supervision. "Part of my instructions were to receive and record information from outside police sources," Houston testified. What sources he was asked? "The information I got came from the Federal Bureau, the Internal Security Division [of the Justice Department]" and various police forces. McCord's attorney then submitted for the trial record a handful of reports McCord filed with his superiors, including several dated in May 1972, shortly after Gray took over the FBI. The reports selected, apparently, from a hundred or more McCord wrote, focused on the potential for violence against Nixon headquarters facilities. But a "confidential" memo dated 30 May 1972 on

the Vietnam Veterans Against the War began in traditional FBI summary form: "A confidential source of known reliability has advised this date that an unidentified representative of the McGovern for President Committee attended a meeting of VVAW recently and advised that the McGovern Committee is leasing a station wagon for the VVAW" to use for campaigning purposes. The memo also carried a short summary of the background of the VVAW—again the type of material found in an FBI summary. Houston, who still works for the reelection committee would not comment further on his testimony. Another reelection committee official, who was in direct contact with the security operation during the campaign, confirmed that McCord regularly dealt with an FBI agent who gave the committee information on groups or individuals who at some point might pose a problem to the Nixon campaign organization.

The specific memorandum, though, had apparently no relationship to the security of the Nixon campaign. It discussed instead the tie of the McGovern campaign to the VVAW and had no relationship to any specific danger to the Nixon campaign.

I am not suggesting that Mr. Gray specifically authorized this dissemination. What I am suggesting is that there are routine procedures in the Bureau in its domestic intelligence operations that may result in the dissemination of such information, and it is vitally necessary for the Bureau and those immediate recipients of Bureau reports, such as the Internal Security Division of the Justice Department, to be scrutinized by this committee and the Congress for their standards for disseminating material of high sensitivity that could have explosive political potential.

One other problem relates directly to the nature of the White House's relationship with the FBI with respect to appointee background inquiries or name checks. Director-designate Gray declared that a Congressman is investigated when he "is being considered for a top-level Government appointment." This statement brings to mind the 1971 incident involving CBS reporter Daniel Schorr, which showed that the White House could order the FBI to begin such an investigation without the subject's knowledge. Presumably the President's staff can start similar inquiries about a Congressman—perhaps limited to a quiet search of FBI files rather than a more visible full field investigation—to learn more about a Congressman's background.

I don't necessarily question this practice, but it seems to me that the risk of possible improper requests may justify requiring at the very least a Congressman or other subject's personal consent before such data retrieval is begun. Again, the presumption of regularity may well govern dealings with the White House when it comes to name checks and appointee background inquiries but nevertheless the risks of irregularity, which the Schorr incident did at least highlight if it did not entirely confirm, suggest that some safeguard, perhaps the minimal safeguard of requiring the subject's consent, might very well be imposed to deal with this sort of difficulty. As Senator Eastland said, he had seen many FBI reports and there is a lot of rot in FBI reports about people. The use of the FBI's data retrieval system to retrieve data appearing in its files ought to be a very sensitive matter. I know Mr. Gray believes it is, but I think there are suggestions that this committee might make to improve the FBI's ability to handle these matters.

In any event, the congressional dossier incident, so-called, demonstrated one thing and that is the FBI's ability to escape scrutiny over the years with respect to this practice. It was totally secret. Nobody

had ever heard of it before. Indeed, it remained secret from Mr. Gray for many months. Another thing this congressional special memorandum demonstrates is that the FBI did not use it for overt intimidation of anyone. It was a matter of bureaucratic politics, of cultivating congressional support, of cutting off from contact congressional critics. But is bureaucratic politics a justification for this kind of gathering together of information from the Bureau's files with its attendant invasion of privacy and potential for intimidating use?

This committee, in considering the future of the FBI's data collection, has two alternatives. It can, as I think has been intimated at times, adopt a criminal statute to make it a crime to disseminate or disclose in an unauthorized manner FBI reports, so that it would be a crime to disclose the interview report to Mr. Segretti if in fact that was done. But there are those of us who believe such a criminal statute would smack too much of an Official Secrets Act.

Instead, this committee has the opportunity to encourage the Bureau and to authorize the Bureau by statute, to adopt administrative policies to curtail the dissemination of information and to eliminate unnecessary information from its own files. Too many agencies of this Government are authorized to receive FBI data. The Army intelligence files demonstrated that. But the FBI even lacks authority, it claims, to destroy these special memoranda. It has to go through some complex procedure with respect to review of this material with the National Archives, according to Mr. Gray's testimony, and yet he has said in his opening statement that he could eliminate the identification and fingerprint files on all persons over 80 years of age. There apparently was authority for him to do that in terms of eliminating material from Bureau files.

In any event, there was discussion earlier in these hearings as to whether or not Congress ought to adopt a statute to authorize the Bureau immediately to destroy these special memoranda on Congressmen. But it seems to me this committee and the FBI need to consider even more fully statutes that would permit the FBI to weed out unnecessary files. If the New York Police Department's intelligence program can eliminate 80 percent of its intelligence files and still believe it can be an effective intelligence agency, dealing with the difficult problems one must face in maintaining security in the city of New York, then it seems to me possible for the FBI, in consultation with this committee, to be able to arrive at an appropriate legislative framework and administrative standards to begin the process of weeding out FBI files.

Finally, the problem of maintaining a no-contact list ought to engage this committee's attention. Is Mr. Gray maintaining this practice of the FBI? Does the risk of embarrassment to the Bureau that comes from making contact with a critic outweigh what I believe are more serious risks in having a document or procedure that identifies the FBI's critics in order to cut off contact between the Bureau and those critics? As a matter of principle, above all else, should not the Federal Bureau of Investigation treat all public officials, all Congressmen, all citizens alike with no preferential treatment on the one hand and on the other no isolation on a no-contact list?

As you see, just exploring the issue of congressional dossiers, as they are called, opens up a whole range of questions regarding the FBI as an organization, not just in the past but in the future, matters

that this committee at this point in the FBI's history has a unique opportunity to explore. But the issue of congressional dossiers is rather minor in comparison to what I believe is the single most fundamental issue confronting the Congress with respect to the Federal Bureau of Investigation, and that is its role as a domestic intelligence agency.

3. FBI DOMESTIC INTELLIGENCE AND PRESIDENTIAL POWER

Since the 1930's succeeding Presidents have assigned internal security intelligence functions to the FBI. Indeed, every major nation in the world today has some form of "political police" that serves as a domestic intelligence agency. In Great Britain the two roles of countering foreign espionage and watching domestic unrest are separated. There, in rough terms, M.I. 5 catches spies and Scotland Yard's Special Branch follows radical activities. Other nations combine these tasks in a single security agency or, like the FBI and the Royal Canadian Mounted Police, unite intelligence duties with broad criminal investigative and law enforcement service responsibilities.

Nevertheless, the FBI's prestige has made it possible for Congress to avoid the difficult decision specifically to establish a "political police" in the United States. When President Franklin D. Roosevelt wanted someone to gather intelligence about foreign agents and Communist or Fascist movements, he turned to J. Edgar Hoover's criminal investigators. And Congress acquiesced in the President's choice without ever deliberating formally on the scope and constitutional basis for the FBI's intelligence authority.

This is unlike the Central Intelligence Agency, our chief foreign intelligence agency. In the National Security Act of 1947, Congress explicitly deliberated on the need for and the basis of the establishment of a foreign intelligence agency in the CIA. They never did anything like that with respect to the FBI. Gradually over the years after Roosevelt's initial decision, the Bureau accumulated more responsibility as Mr. Hoover retained the confidence of later Administrations and as the dangers to internal security evolved from "subversion" in the 1940's and 1950's to "extremism" in the 1960's and 1970's. As long as Hoover was Director, no attempt was made to define clearly the FBI's proper intelligence role. It was easier to sidestep the hard questions of policy and constitutionality by relying on the Director's reputation for integrity and restraint. Thus inherent presidential power has been the prime source for the Bureau's authority in the intelligence field.

Let me try to explain this more clearly. Congress has passed statutes on espionage, on subversive activities, on domestic violence, and these statutes do define the FBI's investigative jurisdiction, but they do not define the scope and rationale for intelligence coverage. There is a significant difference between criminal investigations, regular closed-end criminal investigations, and continuing intelligence work. Criminal investigations and Federal employee background inquiries have a beginning and an end, but the Bureau's intelligence missions involve an on-going process of "developing" information about events, persons and groups and even the attitudes of large segments of the American people. Moreover, intelligence work involves a variety of covert activities. These departures are based on a broad mandate of delegated executive authority.

One can trace this authority back to 1936 when FBI Director Hoover instructed the FBI field offices—quoting from Don Whitehead's "FBI Story," based on FBI records—

Obtain from all possible sources information concerning subversive activities being conducted in the U.S. by Communists, Fascists and representatives or advocates of other organizations or groups advocating overthrow or replacement of the government of the U.S. by illegal methods.

At that time there was no Smith Act. And advocacy of revolution was not a Federal crime. The Bureau's mission was based, instead, on President Roosevelt's desire for "a broad intelligence picture of Communist and Fascist activities alike in relation to the economic and political life of the country." This directive was made public in 1939 when the President asked local law enforcement agencies to turn over to the FBI "any information obtained by them relating to espionage, sabotage, and subversive activities."

I might note that at that time President Roosevelt declared a national emergency, and one of the four Executive orders that he issued in connection with that national emergency was an order that directed the expansion of FBI intelligence operations. Executive Order No. 8247, September 8, 1939, directs the Attorney General to:

Increase the personnel of the Federal Bureau of Investigation, Department of Justice, in such number not exceeding 150 as he shall find necessary for the proper performance of additional duties imposed upon the Department of Justice in connection with the national emergency.

Now, are these Executive orders by President Roosevelt, especially the September 8, 1939, Executive order that has been referred to by the FBI in explaining the source of its authority, still the source of its jurisdiction in intelligence matters? The annual reports of the FBI over the years refer explicitly to those Executive orders. Mr. Gray in his opening statement stated that the Bureau stayed within its jurisdiction as defined by the Congress and the President. The President is a separate source of jurisdiction for the FBI. Now, one may think a 1939 Executive order must have been superseded over the years, but Charles Brennan, then head of the FBI's Domestic Intelligence Division, told the Scranton Commission on Campus Unrest in 1970 that the Bureau's authority went back to Roosevelt's 1939 order to investigate subversive activities and that it was:

Within the framework of this executive order that basically the FBI over the years has tried to fulfill these responsibilities.

Congress, I believe, has not fully faced up to the fact that the FBI's intelligence function is rooted in Executive power and that Congress has abdicated its responsibility or at least deferred exercising its responsibility to authorize such significant Government programs.

There are other Executive orders establishing the Federal employee security program defining FBI intelligence duties. The original order specifically required the FBI to maintain records of persons concerning whom there is substantial evidence of membership in or sympathetic association with any group that might be conceivably designated on the Attorney General's list as it existed from 1947.

President Nixon in July of 1971 issued a new Federal employee security order and that order serves as a reference point for the executive criteria for FBI intelligence. Besides defining Communist, Fascist, and totalitarian groups more fully, the Nixon order extends intelligence coverage to any group that:

Engages in, unlawfully advocates, or adopts as a means of obtaining any of its purposes * * * the unlawful damage or destruction of property; or injury to persons; or * * * the commission of acts which violate laws pertaining to * * * riots or civil disorders * * * obstructing the recruiting and enlistment service of the United States, impeding officers of the United States, or related crimes or offenses.

The FBI continues to develop and maintain records of persons associated with organizations that may fit these standards.

The Senate has been concerned specifically about the relationship of President Nixon's order to the Subversive Activities Control Board, but it is not generally recognized that this order serves as a point of reference for the FBI's authority in the intelligence field. There have been other directives that have been less formal relating to ghetto riot activity, relating to demonstrations. I think it is interesting to note that in 1964 President Johnson was able to prevail upon the FBI over the reluctance of some of its highest officials to conduct an investigation of the riots of the summer of 1964 and to do more than just find facts, but to make evaluations of that data and to make policy recommendations from that data. I don't know that it was coincidence that the FBI acceded to this request from the President, a highly unusual request, during a Presidential election campaign when the opposition candidate was stressing the breakdown of law and order.

I commented further in my prepared statement.

In September 1967 Attorney General Ramsey Clark advised the Bureau of the importance of using "the maximum available resources, investigative and intelligence, to collect all facts bearing upon the question as to whether there has been or is a scheme or conspiracy of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity." Clark emphasized that "this is a relatively new area of investigation and intelligence for the FBI" and that the activities of persons "who make the urban ghetto their base of operations . . . may not have been regularly monitored by existing intelligence sources." To improve the Justice Department's capacity for analyzing FBI intelligence reports, Clark created an Interdivisional Intelligence Unit (IDIU) "responsible 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 purposely or not, either in instigating or spreading civil disorders, or in preventing or checking them." The IDIU secured computer facilities to collate FBI intelligence data and assist in the preparation of reports for the Attorney General. One estimate was that in December 1967 the Department received "more than 150 FBI memoranda and reports relating to this area of interest . . . on an average day." These reports were submitted "in the form of letterhead memoranda that are written in the various Bureau field offices." They were "variously styled, and most often either about an organization, an individual, or an event." In addition, the field offices prepared "periodic reports on the racial situation in various urban areas and on organizations."

Since 1971 the IDIU has been known as the Research and Evaluation Unit of the Justice Department's Internal Security Division. Its functions have widened to include analysis of FBI intelligence reports regarding protest demonstrations, campus unrest, political violence, and bombings. In addition, the FBI "obtains information from State and local sources" and transmits it to the unit. Asked in 1971 whether the Justice Department was satisfied with the Bureau's ability to get the data needed to prepare for civil disorders, Assistant Attorney General Robert C. Mardian replied, "We always want more information."

The administration itself has been forced to rely on inherent executive power in defending these intelligence functions of the Federal Government. In testimony before the Subcommittee on Constitutional Rights in 1971, the Justice Department asserted formally that domestic intelligence operations are based on inherent executive powers.

Citing a 19th century Supreme Court decision interpreting the President's constitutional duty to "take care that the laws be faithfully executed," Department lawyers declared that the Government may gather any information "legitimately related" to the chief executive's responsibilities for "our international relations, and all the protection implied by the nature of government under the Constitution." In addition, they relied on the constitutional provision guaranteeing every State "against domestic Violence" as another basis for the "information gathering authority of the executive branch * * * directed to determine the possibility of domestic violence occurring at a particular place or at a particular time." According to these interpretations, the domestic intelligence programs of the executive branch "are not dependent upon any grant of legislative authority from Congress, but derive from the Constitution itself."

This was Assistant Attorney General Rehnquist's testimony in 1971. In short, the FBI's charter comes from the President. If Congress is not to abdicate entirely its role in our constitutional separation of powers, it should establish a firmer legal foundation for domestic intelligence activities. Reliance on assertions of inherent executive power, no matter how candid, may undermine the legitimacy of the FBI at a time when distrust of Government is widespread. A legislative framework authorizing the most vital functions might serve as a basis for periodic congressional review to insure that the lawmakers' intentions are being carried out. Therefore, one of this committee's major duties at this point in the FBI's history is to begin developing workable and realistic legislation.

Appropriate measures cannot be drafted without thorough scrutiny of FBI functions. Besides devoting a portion of its own resources to the task, this committee should secure a commitment from the new Director that he will cooperate fully in providing necessary information and staff liaison. Only under that condition can a select group of responsible legislators undertake the long and careful study required for well-considered statutory enactments. In 1971 the Justice Department expressed willingness to consider "legislation which is carefully drawn to meet demonstrated evils in a reasonable way, without impairing the efficiency of vital Federal investigative functions." Such an enterprise is not beyond the capacity of Senators chosen for their integrity, conscience, and judgment.

In immediate terms, the statute with respect to arrest records expires at the end of fiscal 1973. But the point is that the problem with lack of statutory authorization is not limited to the narrow area of identification records. It extends beyond to the whole range of intelligence functions.

4. FBI DOMESTIC INTELLIGENCE OPERATIONS

Finally, let me talk a bit about FBI domestic intelligence operations, because it is there that Mr. Gray appears to have committed himself to the continuation of policies and programs that do not entirely take into account many of the criticisms over recent years with respect to the effectiveness of the Bureau's intelligence policies and with respect to the impact of those policies on privacy and civil liberty.

The FBI has been confronted with new problems during the 1960's; new-left and racial extremism, so-called, and civil disorders and mass demonstrations have become major subjects of intelligence work. Consequently, this committee ought to consider seriously certain important questions about what Mr. Gray's plans are for the handling of FBI intelligence data, the scope of its intelligence gathering, and its use of sensitive intelligence techniques.

Electronic surveillance and infiltration by informants have been the most intensive forms of FBI intelligence coverage. They produce information about the activities of persons or groups targeted for surveillance and about other individuals who have contact with them. Informant reports and electronic surveillance logs serve as integral parts of the FBI's data collection system. Upon becoming part of each field office's files on specific persons and groups and subjects, surveillance data are available for preparing intelligence reports. These reports, known in Bureau parlance as letterhead memoranda (LHM's), are the primary vehicle for disseminating intelligence outside the FBI. When field offices prepare LHM's they accompany them with internal administrative memos for use within the Bureau. These memos identify the specific sources. However, the Justice Department and other executive agencies receive intelligence reports only in the form of LHM's, with the result that they may be unaware of how the information was obtained. Neither the Attorney General nor his subordinates within the Justice Department exercise administrative supervision over the FBI's internal regulations for preparing and disseminating LHM's.

Besides lacking outside supervision, the FBI's practices appear to lack special safeguards for the security and strict confidentiality of highly sensitive intelligence information. In the course of routine operations the Bureau has the capacity to retrieve and disseminate any information in its possession about specific individuals. All names are indexed at the field office level or at headquarters, so that all memoranda in which a person is mentioned can be recovered even if the individual does not have his own file. Requests to "check indexes" and "review indexes" may come from Bureau headquarters or from another field office. No distinction is made between security intelligence files—which include highly sensitive electronic surveillance logs and informant reports—and ordinary criminal investigative files.

Besides electronic and informant surveillance and agent observation, the FBI relies on a wide variety of "established sources" in the community—State and local law enforcement officials, civic leaders, officials and members of voluntary associations, businessmen, college administrators and security personnel, and other persons believed reliable and willing to help the Bureau on a continuing basis. FBI intelligence uses these sources to make sweeping surveys designed to uncover any indications of extremist activity.

When the FBI's Domestic Intelligence Division in Washington determines that a category of persons or groups is the object of attempted influence from extremists, a preliminary survey is made of every organization in the targeted class. The net is cast widely to capture any evidence of contact with extremists. Even where no signs are discovered, apparently innocent group leaders are singled out for background inquiries and indexing purposes on the remote possibility that some evidence will turn up in the future. Moreover, LHM's are

prepared describing the group's origins and activities for possible dissemination outside the Bureau.

These data collection and dissemination methods are not new. They were formulated decades ago to deal with Communists and Fascists whose fifth column activities appeared to present a serious danger to national security. FBI intelligence coverage had a certain generally accepted logic in that era. As Attorney General Robert Jackson explained in 1940, the Bureau's mission involved "steady surveillance over individuals and groups within the United States who are so sympathetic with the systems or designs of foreign dictators as to make them a likely source of Federal law violation." J. Edgar Hoover emphasized that advocates of foreign "isms" had "succeeded in boring into every phase of American life, masquerading behind 'front' organizations."

During the past decade the FBI has attempted to apply this system to new problems that have little relation to the fifth column model. The passion for comprehensive data still dominates intelligence operations. In preparing what the Bureau calls its security index, field offices are instructed to identify every individual who is a leader of an extremist or subversive group, a key activist in the organization, or a member or sympathizer who shares the group's subversive or extremist aims. Maintenance of a comprehensive security index imposes heavy burdens on the field offices. They must trace down every hint that an individual is sympathetically associated with subversives or extremists. Substantial resources of time and manpower must be devoted to compiling this data.

What is wrong with the FBI's system is not that it singles out certain persons and groups for intelligence coverage because of their illegal activities, although it is questionable whether the Bureau should define "extremism" on its own without supervision. Rather, the weakness lies in the FBI's effort to apply the fifth column model of front organization activity to contemporary groups who may use violence and other illegal means to achieve their political ends. By assuming that such organizations normally seek, in traditional Communist Party fashion, to infiltrate and control other groups, the Bureau distorts reality to fit its preconceptions. As a result, intelligence inquiries fall into the old pattern of sweeping surveys of broad categories of people. The bureaucratic momentum of the past produces intelligence reports and files that not only describe legal activity and index innocent persons but also overwhelm the field offices with paperwork.

Critics frequently charge that the FBI compiles "political dossiers" on people not reasonably suspected of violation of law. They claim the Bureau gathers information about the political beliefs of American citizens. In reply, FBI officials state that they are not interested in ideas and viewpoints of individuals. Unfortunately, both sides are talking past each other. The Bureau's prime interest may well be "in the realm of action." Former Assistant to the Director William C. Sullivan was probably candid when he told the Scranton Commission on Campus Unrest, "All we are concerned about is the violation of the laws in one form or another, whether it be interfering with the rights of students or burning a building or trying to demolish the country by force and violence." Nevertheless, the methods used to uncover potential illegal behavior are so extensive in scope that they result in the collection of unnecessary information about political

opinions. The files opened on leaders and "key activists" of innocent groups may not be "political dossiers," but are such background inquiries and indexes essential to effective intelligence operations?

Indeed, there is always a danger in intelligence work that information overload may create so much "noise" that truly vital data are not perceived. The sheer bureaucratic bulk of the FBI's intelligence information system may be counterproductive.

The conclusions of the staff report for the Subcommittee on Constitutional Rights, with respect to Army surveillance, I believe are relevant to FBI data collection as well. These conclusions are as follows:

The collection of information, and its attendant infringement on the constitutional rights and privacy of American citizens, has sometimes been justified on the ground of necessity, chiefly of public safety. Yet, it appears that the vacuum-cleaner approach of collecting all possible information resulted in great masses of data on individuals which was valuable for no legitimate—or even illegitimate—military purposes. These vast collections of fragmentary, incorrect, irrelevant information—composed of vague conclusions and judgments and of overly detailed descriptions of insignificant facts—could not be considered "intelligence" by any sense of the word. They reflect an unfortunate tendency within the Government to react to the problem of civil disturbances by conducting widespread and indiscriminate and duplicative surveillance. The result is a great collection of information which gives the illusion of knowledge, but which hampers the ability of responsible officials to make intelligence decisions.

Senator HRUSKA. Would you give us a reference to that document?

Mr. ELLIFF. "Army Surveillance of Civilians," by the staff of the Subcommittee on Constitutional Rights, Committee on Judiciary, page 97.

Senator HRUSKA. And the page, please?

Mr. ELLIFF. "Army Surveillance of Civilians: A Documentary Analysis," page 97.

Senator HRUSKA. I thought you were referring to FBI files. However, it is an Army file?

Mr. ELLIFF. That is right, and I wanted to point out that 20 to 60 percent of the Army's files were received from the FBI in these various data banks that the staff examined. The source material for Army files was often material passed to Army intelligence by the FBI and what the staff has done is make some overall general indications.

Senator HRUSKA. In all fairness, we ought to note that we are talking about Army files.

Mr. ELLIFF. Right.

Senator HRUSKA. But you cite it in the context of a discussion of FBI files.

Mr. ELLIFF. Yes, sir. The problem I am trying to identify is the problem of information overload, when you have so much information that responsible decisionmakers can't really make use of it.

Now, of course, the other danger is that despite the FBI's attempts to be discreet, and they do make serious attempts to be discreet, their inquiries into political activity may have an impact on free speech.

Former Assistant Director Charles Brennan admitted to the Scranton commission "that there is perhaps a great idea throughout the country and particularly in the academic community and on the part of many students that the FBI constitutes an overwhelming police state looking over everybody's shoulder." To counter this impression Brennan pointed out that the Bureau had only 8,000 agents and a broad variety of investigative duties. He thought it obvious that the FBI "would be extremely limited in our capacity to look over everybody's shoulder." Yet, given its reliance on informants and on widespread established sources in other law-enforcement agencies and in the community, the Bureau's capacity is much greater than the number of agents suggests.

Doubts about the FBI's operations are reinforced by disclosures that the Bureau has engaged in covert political activity to combat extremism. In 1968, field offices were instructed to mail reprints of an article on campus unrest "anonymously to college educators who have shown a reluctance to take decisive action against the 'New Left'." In 1969, the head of the FBI's Domestic Intelligence Division addressed a closed meeting of New York businessmen to plan strategy against the plans of Students for a Democratic Society for summer work among factory workers. These examples indicate that the Bureau at times sees its role as demanding more than intelligence gathering, and Mr. Gray's own public speeches, I believe, have raised some questions in this regard.

I accept Mr. Gray's characterization of these speeches as patriotic, but what concerned me is his condemnation of certain ideas and points of view as extremist when he is head of an agency that exercises the powers of government to control extremism. It cannot help but have an intimidating effect on those persons whom he chooses to consider and label extremists that the weight of his office and agency is being put behind such a condemnation. I am not saying the Bureau is seeking to intimidate people from gaining access to certain ideas. Mr. Gray is attempting to refute extremist points of view, but it seems to me that that obligation is not one that the Director of the FBI ought to carry out. It is for the American citizen, Americans in political life, elected officials generally, to enter the marketplace of ideas and refute the extremist in our midst. But for the Director of the FBI to undertake to condemn ideas as extremist, no matter how abhorrent they may be, seems to me to put behind that condemnation a weight that is unjustified and has what may be called a "chilling effect" on freedom of speech.

Special problems arise from the use of informants to infiltrate extremist groups. As sociologist Morris Janowitz warned in a study for the Eisenhower Commission on Violence:

The control of secret operations is at best difficult. The task becomes even more complex and troublesome when these surveillance agencies develop the conception, as they often do, that to collect information is not enough. They begin to believe that they must act as active agents of control, particularly in spreading distrust within these organizations.

The FBI has admitted trying to penetrate extremist organizations "with highly qualified sources consisting of not only rank-and-file members but also individuals who are in a position to have access to plans and policies." At times covert penetration has, in fact, been used to encourage the fragmentation and disintegration of extremist movements.

There is some documentation for this which I can provide, although I must say my most direct confirmation is from discussions with FBI officials which I have conducted as a scholar. This is the power of an agency of Government to destroy extremist movements not by prosecution, not by arrest and conviction, but by direct methods of fragmentation, infiltration and of control and disintegration. I think that this committee ought not to rely totally on one man, especially one man who is new to the job, in determining when those especially sensitive powers are to be exercised if ever at all.

Unlike electronic surveillance where the Attorney General's approval is required for the installation of every device, penetration by informants is not subject to outside supervision. Yet the risks to privacy are as great, and the potential for abuse by manipulation and control is even greater. The danger of provocative action is heightened by the FBI's refusal to use its own trained and disciplined agents for sensitive infiltration duties. In contrast to agencies like the New York City Police Department, which often uses experienced policemen for these delicate tasks, the Bureau has relied on amateurs who must then be carefully controlled by their contacting agent to avoid misconduct.

Another weakness in the FBI's intelligence operations is its policy toward the evaluation of data. Every LHM bears the statement: "This document contains neither recommendations nor conclusions of the FBI." Thus intelligence reports are written to avoid any hint of an agent's own interpretation. They are a compilation of information obtained from sources or physical observations and direct contacts, with little attempt to bring the agent's experience and knowledge to bear on the subject. Analysis is left to others—the Justice Department, primarily—who receive the unevaluated data.

For the Bureau's own internal purposes agents are expected to make recommendations. Should a file be opened? An informant recruited? A source contacted? An electronic device installed? An individual designated for the security index? And so on. In making decisions for the security index, for instance, Assistant to the Director Alan Belmont told the Warren Commission in 1964 that FBI agents used "judgment in the pursuance of this work, and they would continue to use judgment in the selection of people who meet this criterion." The question is not whether agents evaluate their findings; rather it is whether they are capable of doing so with sensitivity and understanding. If they are, then their views should be valuable outside as well as inside the Bureau. If they are not, then no attempt to avoid drawing conclusions can compensate for such lack of basic competence.

The results of the FBI's policy of keeping its conclusions to itself are threefold.

First, there is less opportunity for the Bureau's viewpoint to be challenged by others. Discussion may take place occasionally within the Bureau; but it is not comparable to the give and take among, for instance, the various foreign intelligence agencies.

Second, agents do not have strong incentives to produce sophisticated evaluations and to develop the kind of expertise needed for doing so. Investigative and administrative skills are rewarded, rather than thoughtful insight and analytical talent. James F. Ahern, former New Haven police chief and member of the Scranton Commission on Campus Unrest, observed recently that the FBI has "a

tendency to gather information mostly from local sources and to do very little sifting between rumor and hard intelligence." In his book, "Police in Trouble," he identifies weaknesses in reporting and how they led him as chief of police in New Haven when they were confronted with difficult situations to virtually disregard the FBI's intelligence and to rely instead upon his own intelligence and those of other police departments which he felt more flexible and concrete and to the point. Indeed, there have been other law enforcement officials who have rendered similar complaints, in dealing with the demonstrations at the national conventions this summer, and they found the FBI's intelligence absolutely useless and found themselves relying on other sources, primarily local police agencies, for distinguishing rumor from hard intelligence. Roger Wilkins, former director of the Justice Department's Community Relations Service, has recounted similar experience with Bureau intelligence reports.

Third, without benefit of FBI evaluations, the Justice Department's analysis units must operate in isolation from the experience of men in the field who deal with events at first hand. They as well as the Bureau are handicapped by the absence of an exchange of views. The same lack of contact existed until recently between the FBI and the foreign intelligence agencies of the Federal Government.

To summarize: the FBI's intelligence system appears to be founded on out-of-date assumptions. Isolated from external supervision and interchange with other agencies, the Bureau failed to reexamine its operations in the light of contemporary conditions. Responsible authorities have not fully considered the FBI's information gathering and retrieval practices, its handling of sensitive security intelligence data, its use of informants and covert political action. These issues involved both the FBI's competence as an intelligence agency and its impact on individual privacy and political liberty. If the Bureau is to adjust to the 1970's, these matters must receive careful attention from Congress as well as within the executive branch.

Among the questions that need to be considered are the following:

(1) Under what specific authority does the FBI conduct domestic intelligence operations or maintain intelligence files?

(2) What is the manner in which and the methods by which these activities are being conducted?

(3) Which other governmental agencies are conducting domestic intelligence programs?

(4) What are the reasons for the intelligence gathering; that is, what criteria are used to determine that individuals or organizations should be watched or that files on them should be opened? If criteria, as such, do not exist, what activities, events, or statements trigger intelligence gathering?

(5) What kind of information is being collected and compiled?

(6) How is the information stored, safeguarded, used, and distributed?

(7) Who has access to the information, and who does not?

(8) Consider not just the FBI, but also those agencies which receive FBI reports. What are the patterns and scope of information swapping within the Government, among levels of government, and with nongovernmental entities?

(9) Should the FBI accept and acknowledge formal authority to make recommendations and draw conclusions on the basis of intelligence data and its agents' expertise?

(10) What safeguards govern the FBI's practices with respect to the placement or cultivation of informants and sources?

(11) What impacts, if any, do domestic intelligence activities have on the privacy and liberties of individuals and organizations?

(12) What measures are taken, might be taken, or should be taken to insure that privacy and freedom are safeguarded and that legitimate governmental needs are served? How do the various alternative measures compare to each other? Which would best serve the values our society seeks to protect?

This committee has at least three choices in proceeding to establish a mechanism for congressional oversight of the FBI.

First, it might recommend that the President and the bipartisan congressional leadership appoint a Special Advisory Commission on Domestic Intelligence composed of Members of the Senate and House of Representatives, officials from the law enforcement and intelligence community, and individuals from the public sector. In order to protect sensitive information and operations, the Commission should have a qualified staff authorized to conduct a confidential study of the details of domestic intelligence work. The Commission's inquiry should proceed with careful deliberation through closed hearings, preparation of an interim report, public hearings, and issuance of a final report analyzing the strengths and weaknesses of various proposals and making recommendations to the President, the Congress, and other interested officials. Not less than 4 years should be allotted for the completion of its duties.

On the other hand, this committee might attempt to use the present hearings on the nomination of a permanent Director for expanded oversight. Director-designate Gray could be requested to share with the committee the results of his own internal review of FBI functions and the various alternative plans for the future developed by his subordinates during recent months. This would require lengthy closed hearings and confidential staff work extending over the coming weeks. These hearings would inform the committee in greater depth about the Bureau, as well as provide an opportunity to apprise the Director-designate of the committee's reaction to his plans. This form of oversight could be regularized by adopting a statutory requirement that the FBI Director be subject to reconfirmation after 4 years in office.

However, neither of these choices may be feasible. The President may be reluctant to participate in establishing the Commission. And the present hearings may be too unwieldy, focusing as they do on specific incidents and the nominee's qualifications rather than mainly on the FBI's institutional character.

Therefore, a viable middle approach may be for this committee to create a permanent subcommittee for overseeing the FBI. That subcommittee could follow up the present hearings with an extended study of the Bureau, focusing especially on the need for legislation authorizing domestic intelligence programs and the issues involved in intelligence operations. The subcommittee need not conduct an immediate public investigation of the FBI. Through closed hearings and with the aid of a qualified staff, it could accomplish much the

same thing as an advisory commission during the years ahead. What is essential is cooperation from the FBI itself. This is a long-term effort requiring the fullest access to information about Bureau functions. The subcommittee must develop the specialized expertise needed for analyzing complex problems.

Mr. Gray has indicated he believes this is the committee for oversight of the FBI. He believes he has an obligation in working with this committee, but this committee must respond to that offer with the institutional mechanism which will make it effective.

The present hearings have demonstrated that the FBI Director is entrusted with enormous powers—perhaps too much for any one man. Over the past 50 years America was fortunate to have in J. Edgar Hoover a Director who cared more for protecting the interests of the Bureau, not for the advancement of a political leader's ambitions. But Hoover was truly unique. Congress ought not willingly grant such powers to another man, especially one having a background of political involvement, without retaining significant oversight. No agency of Government should be immune from congressional review, and no future FBI Director should avoid the obligation of providing sufficient confidential materials to an appropriate congressional body for responsible and constructive analysis.

Thank you, Mr. Chairman.

Senator HART. Thank you very much, Professor Elliff.

This, as you remind us, is indeed the first time that suggestions as wide ranging as those you have presented have been presented to the Congress, at least to this committee. I think each of us would like to examine his own conscience to see what we desire and if we can identify that we must figure out the way to achieve the desirable way.

I have some immediate reaction to some of those suggestions but I should let myself have more than just the hour we have had here.

On page 27 of your prepared statement, you mention the activities of informants. From your interviews and studies, do you have any impression that there is a widespread practice for informants to use, for example, forged letters and to engage in sabotage activities within a group of extremists? What would you guess is the frequency?

Mr. ELLIFF. It would be really impossible for any outsider to know. For example the Ku Klux Klan in Mississippi was selected in 1964 as a target for this, and Don Whitehead has written a book apparently based on FBI sources about the FBI's assault on the Klan in Mississippi after 1964.

Once a group is chosen the Bureau seems willing to go all out in terms of using its resources to bring about these ends. How many groups have been so chosen, whether any other group than the Klan has been so chosen, I cannot document for the committee. I have the belief that at least one or more groups have been chosen for that purpose.

Senator HART. I have the impression that I have read that disrupters, who were in fact agents, joined certain of the peace groups and peace demonstrations. Have you found that?

Mr. ELLIFF. The Bureau itself has been concerned about its informants going overboard in provocation. One of these stolen documents in Pennsylvania, for example, was a memo prepared for the Philadelphia field office after one of the agents came back from a conference in Washington.

If I might read it—incidentally I obtained these files by going around to reporters and saying, "Will you give a political scientist a copy of these memos." I have tried to keep them confidential in terms of the names mentioned in them.

This memo read:

Again on the subject of informants, there have been a few instances where security informants in the New Left got carried away during a demonstration, assaulted police, et cetera. The key word in informants, according to Bureau supervision, is control. They define this to mean that while our informants should be privy to everything going on and should rise to the maximum level of their ability in the New Left movement, they should not become the person who carries the gun, throws the bomb, does the robbery or by some specific violative overt act becomes a deeply involved participant. That is a judgment area and any actions which seem to border on it should be discussed presumably between the informant and his control agent.

When you are dealing with the so-called "Tommy the Traveler" incident in upstate New York and other cases where informants have apparently been engaging in provocative activities, it is very difficult to say that the Bureau has instructed them to do so and to document that. Some informants have claimed they have been so instructed. It is very difficult to get firm documentation.

My belief is when it came generally to new left, the way the Bureau categorized new left, peace movement, and so on, that the Bureau followed these policies of control of their informants; but when one dealt with a specific organization that the Bureau felt was exceptionally dangerous to national security, then the techniques of fragmentation, covert letters, all kinds of disruptive methods might very well be used.

Agent Wall who left the Bureau and has written his reflections on being an FBI agent has stated that more was done in the new left field. What I am concerned about are not these methods which I believe have been general violation of Bureau policy, but the focused attention to certain specific groups. If I may cite one group, the Black Panther Party has been treated by the FBI as they treated the Ku Klux Klan, and the methods and concentration and attention they gave to the Klan they have given to the Black Panther Party. This is something very focused. I believe there must be high level deliberations in the Bureau over this. That differs from the kind of random harassment that might take place in the field offices in dealing with new left activity generally. This is my impression, my judgment.

Senator HART. Do I understand you, though, to say that the activities that you described, the sending of letters purporting to be signed by black leaders here in Washington—that this was an activity that violates the rule?

Mr. ELLIFF. That is my impression. It may have been done. But I don't believe it would have been done pursuant to instructions from the Domestic Intelligence Division of the FBI to the field office. I think that if it was done it was probably by the field office on its own initiative.

Senator HART. That excerpt from which you read reminds us of a very grave problem, like you say, they want to discuss the problem of how far is too far in terms of being more than an observer.

I said I should not react to your suggestions without more than the hour we have had here, but you suggest in conclusion that an oversight subcommittee of this committee might be established to review

the bureau and its activities, objectives, performance. Have you given thought, assuming such a subcommittee were created, as to how it would operate and specifically how would you determine what access it should have to confidential Bureau documents?

Mr. ELLIFF. This, of course, is a serious problem. The special committee chaired by Senator Ervin which is going to look into political espionage activities, Watergate and so on, is going to have complete access to all the raw data pursuant to a resolution by the Senate which has requested that this access be given.

My analysis of the Bureau's operation suggests that there is a distinction between the raw investigative data which the oversight committee need not see, need not have access to, and the instructions that go out from the Domestic Intelligence Division or the General Investigative Division or the other divisions to the field offices which request the initiation, for example, of a sweeping survey of a particular type of group because there might be some contact with extremists. There is this form of information, confidential information surely, but not the raw investigative data which can very well remain in the FBI.

This range of information with respect to policy and procedures, these types of memoranda and instructions to the field offices relating to specific investigations or specific categories of investigations, should be examined by an oversight subcommittee to obtain an understanding of the working procedures of the Bureau.

I have seen a limited amount of FBI information, a limited amount of FBI working memoranda. I may be wrong, but certainly discussions with the Bureau can help clarify this difference. There appears to be this kind of distinction, and these internal administrative requests and instructions that go out from the Division to the field offices ought to be a focus for the committee in order to understand the routine operations of the Bureau.

Senator HART. I think we can ask Mr. Gray—without turning the pages of a confidential document, without citing a specific paper, and acknowledging that it may have been an aberration, but that nonetheless appeared to be going on—whether he has made any reforms in the Domestic Intelligence Operations since he has been in.

Mr. ELLIFF. I think Mr. Gray is already on the record in this respect. He was quoted in Life magazine as saying that he believed he would continue the domestic intelligence policies of the past. From Life magazine of October 13, 1972, Mr. Gray is quoted as saying:

The FBI's controversial policy of surveillance of potential subversives, for example, will not change even though legitimate dissenters will be included.

It seems to me that is one of the few indications we do have.

We also have a speech that Mr. Gray delivered in Mississippi soon after taking office, in which he says:

Under Executive directives and laws of the Congress the FBI will continue to investigate acts by individuals and organizations that threaten the security of the nation and rights and freedoms of the citizens. This is an area which I expect to draw the heaviest salvos of protest and complaint because those who would alter drastically our form of government must and will remain vehemently opposed to the work of the FBI in behalf of all American people.

I was disturbed when I read that because I felt he was tending to associate those who wished to criticize the FBI's intelligence operation, to suggest constructive criticism of it, and to do so not in any

sense of criticizing the Director as an individual or the Bureau as an institution, with those who want to drastically alter our form of government. I could only conclude that Mr. Gray's statement was totally defensive on intelligence methods.

So I am troubled that Mr. Gray has not in any sense addressed himself to these difficulties. Perhaps there is only one instance when he did so, and I am reluctant to go into that, regarding the special agent in charge of the Washington Field Office who, according to the press, failed to report accurately on an incident that occurred at a demonstration here in Washington where an FBI agent was apparently assaulted by demonstrators. Mr. Gray asked for a report on this incident and the special agent in charge of the field office did not provide what Mr. Gray thought was an accurate report. He had the inspection division do an independent inspection and found apparently the true story which conflicted with what the field office had reported to him.

I think Mr. Gray is getting a sense, at least by that incident, that what he hears from the field in the matter of intelligence is not necessarily what happens, and that there are problems, especially when it might embarrass the Bureau to have the information about an incident be revealed, even within the Bureau to the Director of the Bureau himself.

So I think he is coming to understand some of these problems. Some journalists who have had interviews with him believe that after the confirmation hearings, when he is on his own, when he has the strength to really take action internally in the Bureau, he may be able to engage in this kind of reconsideration of what is the most sensitive FBI function in terms of national security.

On the record so far I cannot say Mr. Gray has done anything significant with respect to domestic intelligence. He seems merely to be keeping established patterns of practice including giving patriotic speeches which condemn extremists, which I feel are counterproductive and could have a chilling effect. Still, I am not certain that he would not, if he were confirmed, undertake to reexamine some of these assumptions that the FBI has been operating on for 30 years without reconsidering. He is an intelligent man. He is a man I believe with good intentions. I am not taking a position on whether he should be confirmed or not. I don't believe he is the best man for the job. I believe it should have been a court of appeals judge or someone like that but you can't always pick and choose your appointments.

Senator HART. We will leave that question hanging and go to Senator Hruska.

Senator HRUSKA. Mr. Chairman, Senator Tunney wished to be recognized.

Senator TUNNEY. I have a statement to make, Senator. Why don't you go ahead with your questions first.

Senator HRUSKA. I shall not be long.

Mr. Chairman, I am sure that you have found the witness to be as pleasing, engaging and articulate a witness as we have had in a long time. I have listened to him with great interest. His style of writing is also articulate and reasonable. Those attributes are appreciated by all of us.

In his statement, however, he does say at the beginning:

My purpose today is not to discuss the qualifications of L. Patrick Gray for the position of FBI Director, but to urge this committee to use these confirmation hearings to begin the examination of the FBI as an institution.

The text of the statement and its substance bears out this stated purpose.

It is clear that in spite of the testimony being interesting, however, and it is interesting, that this is not the time and place to consider the bulk of the testimony given by this witness. There should be reserved for a future time, it seems to me, questions that would be directed to its substance and to its accuracy and to some of the factual cases that are cited, some apparent inconsistencies that this unpracticed eye of mine has already detected, as well as the merit of some of his recommendations.

I was pleased toward the end of the statement when the witness said perhaps the present hearings may be too unwieldy to go into these matters focusing as they do on the anomalies rather than the FBI's character.

I want to congratulate you, Dr. Elliff, on your paper and to many of the insights you have into the FBI. We do have a task at hand. I don't know how much time it would take to evaluate and restructure the FBI. I have an idea it would be a lengthy process. In the meantime, we presently must consider the qualifications of an individual who has been nominated to head the FBI. We must do so in order to stabilize that great national role which the FBI does constitute in law enforcement. Maybe the FBI's role can be improved. I am confident it can, I am confident it will under Patrick Gray. There may be some limitations that Mr. Gray will encounter that will necessitate statutory approval and modification in which I believe this committee should involve itself at a later date. But, in the meantime I do want to say that I appreciate your appearance here and the very judicious fashion in which you have presented your recommendations and observations.

Thank you for coming.

Mr. ELLIFF. Thank you very much, Senator.

May I respond?

Senator HRUSKA. You may, indeed.

Mr. ELLIFF. I was here last week for the first 2 days of the hearing and I did feel Mr. Gray, in his opening statement, presented for the committee a record of 9 months in office.

If I may refer to that statement, in appendix A, he says, "These are the avenues of inquiry that I began with," 13 avenues of inquiry, and then at the end of his statement, he identifies 32 changes in FBI policies and procedures that he has adopted from May 3, 1972, to March 3, 1973. It seems what he was doing by offering this to the committee was suggesting to the committee that certainly you may want to look at Watergate and certainly you may want to look at some particular incidents, a couple of speeches I gave last summer, last fall, you may want to look at those and legitimately so, but I am suggesting if I should be evaluated it should not be on the basis of one major special investigation or certainly in terms of a few speeches I gave, but rather in terms of all I have done as acting director of the FBI.

It seems to me this committee may not want to consider all the proposals for change in the future, but it ought to take up Mr. Gray and inquire at least to some extent into what he has done in the past. He has been there for 9 months and he has done more than the Watergate investigation and more than making some speeches.

There is, I think, an area between a full scale, long term inquiry—I suggest 4 years at the minimum, to do a job on understanding and reorienting the FBI—and what I believe is a legitimate concern of this committee now in what he has done in his planning and evaluation agency under Mr. Baker and what kind of plans he has. He is deliberating on these matters and this committee does have an occasion to consider more than just a few isolated instances. I think certainly your decision on whether to support Mr. Gray or not ought to be made on the basis of his record as Acting Director for 9 months. Has he done a good job? Watergate is one of the issues, the public speeches are another part of it, but there is a lot more he has been doing for 9 months.

Senator HRUSKA. I am glad to hear you speak that way. It confirms my own observations during these hearings, particularly those yesterday. I wish to point out that we have had 5½ days when Mr. Gray occupied that witness chair, and I will leave to you who have been in the audience to determine just how much time was given to consideration of the overall constructive, thorough and professional manner in which Mr. Gray has performed his job, as indicated by this witness.

Unfortunately, other alternatives were considered and adopted and pursued, with the hearings going into matters which in my judgment do not have a bearing upon the present mission of this Judiciary Committee. However, I do want to thank you again for being here, Dr. Elliff.

I have no further comments, Senator Hart.

Senator HART. I do agree with Senator Hruska as to your style of writing and your speech. It was enjoyable as well as informative.

There have been some of us who earlier in the hearings had some questions and still have with respect to the structure and the functions of the Bureau and have not yet asked them. I must, on the record, confess that I have been absent much of the time but that is because of other hearings on equally important matters, among them campaign financing which is not unrelated to Watergate.

I am sure that before we close the record here those questions with respect to structure and functions of the Bureau as Mr. Gray sees them will be explored. We hope the record will be full, and you have indeed given us a number of specific suggestions.

Senator Tunney.

Senator TUNNEY. Thank you, Mr. Chairman.

Just one point on that. I recall spending approximately an hour and a half questioning Mr. Gray with respect to the structure and functions of the Bureau. Senator Hruska was here at that time. I questioned him about wiretapping. I questioned him about keeping files. I questioned him about surveillance, the procedures that they used, questions about informants, the budget of the FBI, whether it ought to be a lump sum budget or a line item budget, questioned him about many of these areas and I thought Mr. Gray handled himself very well, as a matter of fact, very well in reply to those questions.

After questioning him on those points I told him that I had no objections to his confirmation except as it related to his political connection, that I thought he had the intelligence and that his answers to the questions on organizational structure were forthright, but with respect to political structure I have some very serious doubts.

It was brought to my attention a few moments ago that John Dean, the same John Dean to whom was sent the information given the FBI in strict confidence to avoid the scrutiny of the CRP lawyers, that this same John Dean was actually the one who brought Gordon Liddy to CRP headquarters in December 1971. He recommended Liddy for the job as counsel and told the CRP Director that Liddy would be particularly good, and I quote, "for intelligence work." After that meeting between Dean, Liddy, and Jeb Magruder, Liddy was hired for the position that included his functioning in the Watergate conspiracy.

So John Dean himself was the one who put Liddy in that position. Jeb Magruder testified to these facts under oath in January 1973. Presumably he was asked the same questions by the FBI and gave the same answers to the FBI on July 20, 1972, the very day before Mr. Gray changed his previous policy and agreed to provide the sensitive investigative materials to Mr. Dean on the White House staff.

If Mr. Gray bothered to check on July 21, whether John Dean's name had come up at all in the investigation, he would have found or should have found that John Dean got Gordon Liddy, Liddy's job at the CRP. That would have totally disqualified Mr. Dean from access to any, let alone all, FBI files and data.

I believe no action should be taken by this committee on the confirmation of Mr. Gray until we have a complete explanation from both Mr. Gray and Mr. Dean before this committee under oath.

I am sorry that this matter did not come to my attention yesterday when Mr. Gray was on the stand and I had an opportunity to question him for approximately an hour and a half, but it came to my attention after the lunch hour today. I quote from Mr. Magruder's sworn statement in the file:

As I recall, Mr. Liddy came over to the committee on Friday in December somewhere. At that time we were in the process where we had two situations that had to be handled on a full time basis. One we were reviewing a fairly complicated filing law in many states and, secondly, with the new election law was on its way through the Congress and we needed to get ahold of what that legislation meant to our campaign. So, I can ask that John Dean, if he could find a lawyer to handle these problems for us on a full time basis, that we would be using lawyers on a part time basis and John recommended Mr. Liddy on a Friday, Mr. Liddy began the following Monday.

Then further on in the transcript in response to another question he said:

This is Mr. Magruder, as I recall, either John or myself, not myself, John or Mr. Liddy mentioned it. We talked about his FBI background and we did discuss the potential opportunities if we had an investigative problem, and intelligence gathering problems, that if Mr. Liddy's background would suit that type of work.

I would like to suggest, Mr. Chairman, that it is clear, from what we have heard in the way of testimony so far, that Mr. Dean had an omnipresence during the course of the FBI investigation of the Watergate. He had 82 reports, files, sent to him regarding the interviews by the FBI of witnesses, including three, apparently, that did not want to be interviewed by the FBI in the presence of CRP attorneys. He also sat in on all the FBI interrogations of White House witnesses. Yet this same Mr. Dean was the one that had gotten Liddy his job and Liddy was one of those under investigation by the FBI. I think this is most peculiar and it is something which has got to be cleared up before this committee can possibly consider acting

on the confirmation. I think it means we have to have statements under oath from Mr. Dean.

Senator HART. I would not anticipate unanimous consent on this committee with respect to your suggestion but I think the suggestion is sound.

I have to confess, having been absent from part of the proceedings here, that some of the information you have just included in your statement I was not aware of, and I am sure that others, who similarly have not been able to follow this closely, may feel it an obligation to resolve the question you raise; namely, if Mr. Dean obtained employment for Mr. Liddy—

Senator TUNNEY. Mr. Liddy was employed at the CRP as a result of Mr. Dean's conducting—

Senator HART. Perhaps I overstated Mr. Dean's influence in Mr. Liddy's success in getting the job, but if Mr. Dean brought Mr. Liddy in as the lawyer that he suggested could handle the problem, and later the same lawyer was under investigation for an alleged serious crime, I would want to know why that investigation should be revealed in detail to Mr. Dean as it went along, including the investigation of Mr. Liddy. I think we ought to have that.

I was a U.S. attorney for a little while, and assuming the Bureau knew of this employment arrangement at the time of its investigation, I would think it requires an explanation from Mr. Gray and Mr. Dean as to why Mr. Dean remained a party to the development.

Senator HRUSKA. Would the Senator yield?

Senator TUNNEY. Yes.

Senator HRUSKA. The matter brought to our attention by the Senator from California is of interest. I think there will be a lot of people who will want to know about it and legitimately so. I just wonder if this is the forum. We have witnessed the injection of extraneous matters before in these hearings. Yesterday afternoon we had headlines in the local press about Segretti with such intensity that one may have wondered if Segretti had been substituted as the nominee for the Directorship of the FBI in the place of Louis Patrick Gray III. I wonder if we can anticipate a rash of headlines either later this day or tomorrow morning substituting Liddy or John Dean as the nominee for the Directorship of the FBI.

All things to their own. We are here concerned for the purpose of considering the qualifications of Mr. Gray.

What Mr. Dean might have done, by hiring Liddy and pursuing the nefarious and wicked things that exist in the minds of some people, is something that the Senate has decided that Senator Ervin and his committee will go into.

I think the American people will wonder and want to know about it.

But I wonder if we should not give some earnest consideration as time goes on to the relevance of these questions, to the qualifications of Louis Patrick Gray III, and also to the workmanlike job that he did in pursuing the investigation of the Watergate incident as compiled in his report.

Senator TUNNEY. If the Senator would yield on that point, the question is how workmanlike the investigation was. The FBI interviewed Mr. Magruder on July 20, Mr. Gray sent the memo to Mr.

Dean on July 21, the day after the FBI interviewed him, and it would seem to me that this relationship between Mr. Dean and Mr. Liddy would have shown up in a thorough investigation the same way it did in the trial when Mr. Magruder made his statement under oath.

I am very deeply concerned about the question of Mr. Gray's independence. I in no way attack the integrity of Mr. Gray, but this does seem to me to bear directly upon his independence, as Director of the FBI, from political pressures and from the aura of political power surrounding counselors from the White House.

It does seem to me that is it very, very relevant, this matter, to the confirmation of Mr. Gray. The main charges against Mr. Gray, as I understand them, at least the main charges that have significance for me, relate to his political involvement and his lack of independence from political appointees, namely, from the White House staff.

I feel very, very strongly that we ought to have better information on this.

Senator HRUSKA. If the Senator will yield further. When we consider what has been done in a workmanlike way under Acting Director Gray, it seems to me that we ought to scan that file and take into consideration that it is the work of over 330 agents, over 1,500 interviews totaling many thousands of pages. I don't know how many thousands—they are recited in the record—of manhours that have been put into it. However, the reports reflect that a sincere, honest job was made to try to assemble all the pertinent facts.

Of course, it is not a complete record to go into the hands of a prosecuting attorney in order for him to start drawing indictments or charges before a grand jury. As in any case the district attorney would have to study the reports and determine what additional facts he would deem necessary and pertinent for the purpose of prosecuting any criminal trial.

The fact is the investigation report compiled by Mr. Gray is a complete and thorough and sincere effort to get at all the facts that are available. Now, I venture to say there will be other things, a year from now, 3 years from now and 5 years from now, which will appear. Hindsight is perhaps always clearest. However, the fact is Mr. Gray prosecuted his mission as fully as could be done.

The intimacy suggested between Mr. Gray and Mr. Dean because Mr. Gray supplied Mr. Dean with a summary report, seems to me that is no foundation for declaring intimacy or improper relationship. Whoever was in Mr. Gray's position would have responded in similar fashion because that is the natural and normal course of communication between the White House and the Department of Justice and the FBI.

But I agree with the Senator from California that it is an item that should be thoroughly canvassed and explored. However, let us have some respect for the forums that are involved.

Senator TUNNEY. Mr. Dean was interviewed by the FBI, as I understand it, on June 27, on July 7, and July 8, and Mr. Magruder was interviewed on July 20, and these documents—

Senator HRUSKA. Of what year?

Senator TUNNEY. 1972. The first report went to Mr. Dean on July 21, 1972, and subsequently Mr. Dean sat in on all interviews of White House witnesses and was sent the summary of 82 other interviews.

It seems to me that Mr. Gray ought to have determined whether or not the man to whom he was turning over all this information was in fact associated in some way with one of the men who was a suspect in the case under investigation. If he did not, it would seem to me to indicate that he was so under the influence of the aura of power surrounding the White House staff that he was not independent as an FBI director should be, the way I think J. Edgar Hoover would have been. I would like to ask the Senator if he would feel any differently if this kind of case would come up with a Democratic President and a Democratic counselor?

Senator HRUSKA. I would suggest there was no reason to believe at that time there was a close connection. Had there been such knowledge, I have every confidence that Mr. Gray would have taken that factor into consideration in his conduct. I would also suggest that in proceeding in matters of this kind there is not a presumption of an error of the ways of official sources as high level as Mr. Dean, rather there is a presumption that no such condition prevails.

Looking at it from this standpoint, I say this question is a new flyspeck recently discovered. I don't mean to say by referring to it as a flyspeck that it is not important and should not be pursued, but rather to define its relative size. Here is a small item of information that should be evaluated not in the light of things that happened in July and August, but in the light of what we find. We have listened to Mr. Gray here for 5 days. I think everyone is impressed by his sincerity, his judgment and integrity. Had he known of this alleged relationship or had any reason to believe that there might be something like this, he would have taken it into consideration and pursued it and acted accordingly.

Senator TUNNEY. What would you say if on July 20, when Mr. Magruder was interviewed, the record would show that the interviews brought out the fact that Mr. Magruder stated that Mr. Dean brought Mr. Liddy down to the CRP?

Senator HRUSKA. If that fact were there that would be something we should take into consideration to be sure. One way to do it is to spend 6 or 8 hours in the files over there at the FBI office. I studied the files myself and I might add that I was not permitted to make notes.

At one juncture I did take out my pencil to point to note something on the page and the agents bristled a little bit and they didn't get over their nervousness until I put my pencil back in my pocket. The point is, however, the way to get over this suspicion is to go to the FBI office and read the file yourself. By doing so a lot of the things will clear up, a lot of the fog that is being manufactured will disappear.

Senator TUNNEY. We can in that record certainly read the interview of Mr. Dean with the FBI of June 27, we can read the July 27 interview and 28 interview and the FBI interview with Magruder on July 27.

One of the things we will not be able to read is the personal conversations that were had between Mr. Gray and Mr. Dean on the telephone. That would not be a part of the file.

So I think certainly it is incumbent upon me to go and read those four interviews, but I also think it is incumbent upon Mr. Gray and Mr. Dean to testify under oath regarding this matter. Even if the files do not contain this particular information, we do not have on the

record any indication of what took place in the personal conversation between Mr. Dean and Mr. Gray at this time or prior to the time that Mr. Gray made all this information available to Mr. Dean.

I think it is more than just a flyspeck, because you see, Senator, I feel the Director of the FBI is one of the most sensitive jobs in the Government. I feel that we need a man there who, we can be absolutely confident, is divorced from politics and the pressures of politicians, immune from the pressures of Senators and Congressmen and White House counselors.

I think that this information is directly relevant to the point that I have just raised about Mr. Dean's independence from political pressures. I feel very strongly that it is a matter that warrants the very deep concern of all of us who want to maintain the FBI as an independent agency.

You know as well as I do that if we start now to place in the position of Director of the FBI an appointee who is political in nature that as each new administration comes the President is going to choose his own man. You are going to find that when the Democrats come in Mr. Gray will be kicked out, and perhaps some political person will be put in as Director at that time.

Then we would have a thoroughly politicized FBI which I know you don't want and I know I don't want.

Senator HRUSKA. If the Senator will yield I would like to comment on two points he raised.

One is the absence and total void of political pressures. I don't know how that can be created in this country. Innumerable times during his long and distinguished career Edgar Hoover was submitted and did get exposed to political pressures. There is no question about it. Even in my personal record I can recite instances of that kind. You cannot rid that of—

Senator TUNNEY. Did he yield to the political pressure?

Senator HRUSKA. Did he yield? I will leave that question to you. Many of those who have severely criticized the FBI freely indicate that he, from time to time, did yield to political pressures. There are others who say no he didn't. It is a political world when you get into that sort of discussion. There will never be a situation where a Director of the FBI will not be subjected to political pressure, because the country and the world in which we live consists of a lot of those pressures. I know of no way to wave a wand and command the disappearance of such pressure.

Another thing I would like to comment on, I do trust my explanation here of a flyspeck will not be magnified to a common ordinary household word.

Let me suggest to the Senator that any investigative record of this size consists of millions of flyspecks that have been sorted out and classified and recorded as to only a part of them and the totality of those specks are then found in the form of a report and of an investigative document. So it is not in an undignified way to the item of information that he brings to us. I referred, as I have already once explained, and I hope it will be known and read well, that that the term was used to signify and describe the relative size of one fact out of millions of facts that have already been considered in this investigation and in this hearing.

Senator HART. Professor Elliff, you have been with us for some days and it is now 5 o'clock, but could you comment, looking down the road, and assuming there is no statutory change with respect to the Justice Department and the Bureau. Suppose an allegation of impropriety on the part of one or more White House personnel reaches the Justice Department and the Bureau investigates and, unless we change the law, the Department must make the decision to prosecute. Suppose that it appears that the President's people are involved. Because of the built-in suspicion which would attach to a decision not to prosecute, is there a point at which Congress could move in and provide for a special prosecutor who would not be the President's appointee?

Mr. ELLIFF. Let's assume that Warren Harding had not died when he did and the Teapot Dome scandals came out. There might be an example. Could Congress have had an obligation? I think Senator Burton Wheeler would have pushed for that exercise of congressional power. It would take a statute for a special prosecutor. There have been those who have proposed that indeed the Attorney General be made an office similar to the Comptroller General and have this independent nature rather than being an office that is subject to the regular appointment by the Presidency.

I believe the American Enterprise Institute did a study of the Justice Department and proposed reconsideration of the nature of the Justice Department, but for a specific purpose, certainly, it would be within the constitutional power of the Congress to establish an independent prosecutor. Of course, you retain an independent judiciary to consider the prosecution.

But in this instance, and I have attempted to follow this whole matter during the course of these hearings, what disturbs me primarily is that the President felt he could not rely solely on Mr. Gray's investigation and decided that he had to direct his special counsel to conduct an inhouse investigation, overlapping the FBI's investigation, but with some purpose to it. It seems to me, without any accumulation of flyspecks, that the appropriate response of the President—and you can't call him to testify—is to turn to the man he has appointed as acting Director of the FBI, who has committed himself to conducting as thorough an investigation as possible, whose agents have the integrity so that people are willing to talk to them and to tell them things that they wouldn't tell anybody else, because they believe in the honesty of FBI agents. This kind of inquiry, reaching possibly into the President's official family, would indeed best be conducted under the supervision of the Director, or unfortunately at that time it was Acting Director, of the Federal Bureau of Investigation rather than a White House counsel being charged with the responsibility of conducting his own investigation.

I remember when that happened last summer I was somewhat concerned about this. Is there something that will be weak about the FBI's investigation if the President feels he must have some other inquiry conducted, rather than have Mr. Dean be in the position or some other Presidential counsel to be in the position of when the FBI investigation is fully completed reviewing its results to determine whether or not it has produced information that the President ought to know in terms of his official family? By injecting a Presidential aide into the investigative process, the appearance, if not the reality, of politicization of that process was bound to result.

It seems to me that a question can seriously be raised—not on the basis of any of the specific details of revelations, but rather in terms of this overall question as to whether or not a Director of the Federal Bureau of Investigation ought not to advise the President and say to the President, “This will politicize the investigation. We are going to do the job, Mr. President. You have appointed me to investigate crimes, to investigate misconduct, and I can do it.”

I assume automatic temptation of a President to have someone who is intimately involved with him, who works with him on a day-to-day basis, conduct some sort of an investigation. I don't know whether Senator Hruska understands my concern here. It is not based on any flyspecks or the revelations that have taken place in these hearings, but it has to do with the overall structure of the way that investigation was conducted and whether Mr. Gray ought to have asserted himself more strongly at that point.

My personal impression is that if it was a sin it was a sin of transition. He was a man new to his job, new to his responsibilities, an Acting Director and not a full-fledged permanent Director of the FBI, and that perhaps as permanent Director he would have said, “Mr. President, I will conduct this investigation, I advise you not to have an in-house investigation on your own. That will only tend to politicize an investigation which ought to be an objective, neutral investigation.”

Senator HRUSKA. Professor, in that historical example of President Harding, I think you put your finger on a very important point, because it illustrates dramatically the inherent part that politics plays in our system of government. Where could they turn in those days for a nonpartisan, nonpolitical objective source to inquire into that situation and prosecute President Harding, had he not died? Would they have gone to the district attorneys? A fresh batch of them out in the field, appointed by President Harding two years before his death? Would they have gone to the judges, some of them appointed by President Harding? Would they have gone to the nonpolitical, nonpartisan Congress, consisting of Democrats and Republicans? Where would they have turned? You must turn some place. In our present situation where will you turn now? You have to turn some place. You turn to the FBI.

You heard Pat Gray say again and again as he testified here that he determined at the outset of this investigation to pursue it to its fullest. He said that he would not betray the position and the integrity he possessed, and above all that he would not let down the people who constituted the FBI.

When he said that I was truly thrilled. Whoever would have said that with the ring of conviction in it should bring, except to the most cynical, a feeling that here was a most dedicated man.

Inherent in our government is the danger of the politicalization of our discussions. I have an idea that the fashion in which this hearing is being held will contribute heavily to politicalization of the FBI if we are not careful. I have an idea these hearings might have that effect and the conduct of the Senate will bear heavily on what will happen 4 years from now, 8 years from now, 12 years from now when we consider similar nominations to the FBI.

Mr. ELLIFF. I would also hope that Mr. Gray might learn and future Presidents might learn from these hearings that when one confronts one of these unusual situations, almost unique, of misconduct near the White House, the Director of the Bureau ought to explicitly resist and the President ought to exercise the self-restraint himself not to attempt to duplicate the investigation being conducted by the FBI. He should not attempt to inject into the investigative process a man of his own as was done in this case; and if future occasions such as this do arise, when the temptation is there to have a Presidential aide conduct an investigation that ought to be in the hands of the FBI, both sides should resist that temptation.

Senator HRUSKA. In that regard, of course, we must always bear in mind that there was not a scintilla of input into Mr. Gray's investigative efforts contributed by Mr. Dean. Mr. Gray conducted his own investigation pursuant to the well-established routine procedures of the FBI. If there was duplication it was an overlapping, but there was nothing that Dean did or said that found its way as input into the FBI report. The President asked Dean to do that. I would conjecture—I haven't talked to anybody about it—it would impress me as an effort to insure the public that the President is not indifferent to the situation, that he wants not only the FBI to go in full force but he will also make his own inquiry within his own household.

Mr. ELLIFF. My theory is that men do this out of fine intentions, but often they are unaware of the consequences. It is vitally important to realize the consequences as well as the original intentions. I hope these hearings have helped to identify some of the possible consequences in Mr. Gray's speeches or the conduct of this inquiry that might not have been anticipated at the start, but that are now since people are focusing on the Bureau, the Congress and the men really who are doing the job. You have got to trust men to do the job that they are assigned to do. But under our system of checks and balances we don't just rely on men doing the job, we rely on this give and take of a partisan hearing to uncover some of these consequences, so that it is possible in the future that this kind of a check will make people pause and be concerned about not only their good intentions but also the results of what they do.

Senator HRUSKA. Thank you very much.

Senator HART. Thank you very much.

We will adjourn to resume in the morning at 10:30.

Congressman Koch of New York will be the first witness and will be followed by Mr. Joseph Rauh.

[Whereupon, at 5:15 p.m., the committee recessed, to reconvene at 10:30 a.m., Friday, March 9, 1973.]

NOMINATION OF LOUIS PATRICK GRAY III

FRIDAY, MARCH 9, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 11 a.m., in room 2228, Dirksen Senate Office Building, Senator Philip A. Hart presiding.

Present: Senators Hart, Kennedy, Tunney, Hruska, Fong, and Cook.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

Senator HART. The committee will be in order.

Our first witness this morning is the distinguished Member of Congress from the 18th District of New York, Representative Edward I. Koch.

TESTIMONY OF EDWARD I. KOCH, A REPRESENTATIVE IN CONGRESS FROM NEW YORK

Mr. KOCH. Mr. Chairman and members of the committee, I am very appreciative of the opportunity to come before you to make my statement in opposition to the confirmation of the proposed Director of the FBI.

I would like to limit my remarks to matters of which I have some specific knowledge, rather than commenting on general procedures used by the FBI in other cases.

My testimony concerns the information that has been collected by the FBI on Members of Congress.

I have some background in this area of political dossiers and information that is being collected by the Government, not only by the FBI but by so many other governmental agencies. In the 91st Congress I introduced legislation which would open all Government files to inspection by the individual on whom the files were maintained. If my bill were enacted, each Government agency maintaining a file on a citizen would be required to inform him or her of the existence of such a file.

Most of the files are, I am sure, harmless—social security, income tax, Veterans' Administration, to name a few, but some of them obviously are ones that deal with political matters. When I introduced this legislation, I found broad receptivity on the House side from conservatives and liberals.

Conservatives said to me, "We support this legislation because we believe in the constitutional process and we are not anxious to have big brother take over the Government."

And liberals said, "We support it for that reason, too, but we also want to see our files"—and under my legislation the files would be made available.

Unfortunately, the legislation did not go very far in the House. We did have a hearing on it, and there was a hearing in the Senate before Senator Ervin's subcommittee. I am still pressing for the adoption of that legislation, however. But I became intrigued when I noted in the press that FBI Acting Director Gray had issued a statement which was carried rather extensively by the press on October 27, 1972. I would like to read a paragraph from that news release. I quote FBI Acting Director Gray:

It has just come to my attention that since 1950, personnel at FBI headquarters responsible for dealing with Congress have, as a matter of routine practice, gathered biographical data on major candidates for the House of Representatives and the Senate from newspapers, magazines, campaign literature and various reference publications. FBI field offices from time to time have been requested by means of a routing slip directive to assist by providing information that was readily available from local files and local publications.

You would think, even if you were opposed to the collection of that kind of material, that it sounds relatively harmless. But I thought, well, I really ought to know what is in that file. So after first consulting with two of my colleagues, Benjamin Rosenthal and Jonathan Bingham, we wrote a letter which I thought was relatively harmless and said, on November 1, 1972:

DEAR MR. GRAY: Having learned for the first time that there are dossiers kept by the FBI on Members of Congress, we, the undersigned, request that those dossiers relating to each of us be furnished to us.

We ask you to send our respective files to our offices immediately so that we may examine them and ascertain exactly what it was that the FBI was collecting.

It was signed by myself, by Congressman Benjamin S. Rosenthal, and by Congressman Jonathan B. Bingham.

I received the following response dated November 24, 1972:

DEAR CONGRESSMAN KOCH: As you may know, Acting Director Gray recently was hospitalized with an intestinal obstruction. We do not know at this time when he will return to his office.

Your letter of November 1, 1972, was being given careful consideration prior to Mr. Gray's hospitalization. You will appreciate the importance of your request necessitates his personal attention; therefore, we are unable to predict when we will be in a position to respond. I assure you that upon Mr. Gray's return we will respond to your request as quickly as possible.

It was signed by Acting Associate Director W. Mark Felt.

Fortunately, Mr. Gray did recover fully and returned to his office. On January 2, 1973, he sent me this letter:

DEAR CONGRESSMAN KOCH: I regret that my illness followed by surgery has delayed this response to your letter of November 1, 1972.

For your ready reference, I am enclosing a copy of my press release of October 27, 1972, announcing the termination of the FBI program of collecting biographical data on major nonincumbent congressional candidates.

The FBI does not maintain secret files or political dossiers on Members of Congress, and you will note that I neither stated nor implied that we do in my press release. The creation of dossiers was neither the intent nor the purpose of the program I terminated on October 27. Its purpose was to assist officials of the FBI in the conduct of our relations with the Congress of the United States,

Let me describe for you the program that I ordered discontinued and how it operated. I believe this will greatly enhance the understanding of this matter.

Around 1950, the officials of the FBI then responsible for dealing with the Congress decided it would be most beneficial to them if they had some biographical data on newly-elected members and a knowledge of any prior contacts by FBI

representatives with these new congressmen and senators. Initially, they orally requested FBI field office officials to furnish the desired information. In 1960 the practice was begun of requesting such information by sending routing slips to the various FBI field offices. This has been followed each election year since that time.

The information was gathered for our own internal use and not in response to any regulation or statute. At first, information was sought only on nonincumbent candidates for Congress. In 1960, the requests were expanded to include nonincumbent candidates for governorships, since FBI officials also felt their contacts with Governors could be enhanced by some prior knowledge of the individual's background.

No investigation was conducted to secure this information, and no investigative file was opened either in the field offices or at FBI Headquarters. The biographical information was collected by individual agents covering the home area of the candidate. It was gathered from local newspapers, campaign brochures, and reference books such as city directories or books which publish biographical information—all sources readily available to the general public. This information was augmented by a summary of any data (already in the files) of the field office. This might include correspondence exchanged with the candidate; memoranda concerning personal contacts; results of investigations involving the candidate, either as a subject, a victim, a witness, or a reference; or information voluntarily submitted to the FBI.

The material collected by the field office was sent to FBI Headquarters where it would be held until the results of the election were known. If the candidate was defeated in his bid for office, all of the material submitted by the field office would be promptly destroyed and no record of it kept. If the candidate was successful, a memorandum summarizing the material submitted by the field office would be prepared. Into this summary memorandum also would be incorporated a brief abstract of any information already contained in the files at FBI Headquarters. Here again, the information might include correspondence exchanged with the candidate; memoranda concerning personal contacts; results of investigations involving the candidate, either as a subject, a victim, a witness, or a reference; or information voluntarily submitted to the FBI. The raw material forwarded by the field office would be destroyed, and only the summary memorandum would be retained and incorporated into FBI files.

I am giving serious consideration and study to the ultimate disposition of these summary memoranda.

So then I wrote another letter which read as follows:

JANUARY 10, 1973.

DEAR MR. GRAY: I am delighted that you have recovered from your illness and have returned to your duties.

I do appreciate your detailed response of January 2nd. Please do let me know whether the three of us who requested our files from you were among those who were included in the "FBI program of collecting biographical data on major nonincumbent congressional candidates."

If I was included, I would very much like to see that file.

All the best for the New Year.

On January 24, 1973, I received the following response:

DEAR CONGRESSMAN KOCH: Your letter of January 10, 1973, has been received and I appreciate your kind comments about my return to duty.

As outlined in some detail to you in my letter of January 2, 1973, the FBI collected biographical information on major nonincumbent congressional candidates beginning around 1950. At no time was an investigation conducted on you or any other member of Congress as part of this program.

The methods of collecting the information, the specific types of information involved, and the methods of recording that information were all set out in the January 2 letter. As I indicated in that letter, if the candidate was successful, a memorandum summarizing the biographical information was prepared and incorporated into FBI files.

Such recorded information retained by the FBI is subject to the regulation and control of the Attorney General. It is not available for inspection except for authorized purposes and then only on a need-to-know basis. Therefore, I must decline your request.

I gathered from that that he did not think I needed to know about my own file.

Then, during this committee's hearings, I became extremely interested in one of the statements made by Mr. Gray, to be found in the testimony taken on February 28, 1973. I will begin with a question asked of Mr. Gray by Senator Hart.

Senator HART. Well, wouldn't the redtape and difficulty be warranties as a means of insuring against that kind of hurt?

That was a reference to destroying the file.

Mr. GRAY. Well, the Archivist is required to review material to be destroyed, and I do not want people to read some of this rot that is in those files, that is where the hurt comes in, and I am not going to, as long as I am the guardian of those files, I am going to break my back to protect those files because it is wrong to let some of that stuff out. Somebody has got to read them. And once again, you get the question of who is going to do it.

Now, that is somewhat at variance with the kind of information that the Director furnished me because one gets the impression that the information collected consisted of public records, biographical data, and material that appeared in the press—nothing that anyone might take exception to, and yet the reference in his testimony is to "rot" that he would not want others to see.

What I am suggesting is this: I make no personal attack on Mr. Gray. People tell me he is a very estimable gentleman. But I do know that there is something wrong with a situation where Members of Congress—and here were three of us—requested their files, simply to see what it was that the FBI had been collecting, and were refused. And when the refusal took place, it was based on a need-to-know basis.

Do not Members of Congress need to know? That is really the conclusion of my testimony.

Senator HART. As you were describing your exchange with Mr. Gray, Congressman, I was trying to recall exactly what he told this committee on this subject.

I think in fairness I had better reserve an expression of opinion until I have looked at that transcript to see whether my question was clear and explicit and if there was a possibility of confusion, recognizing that the preparation of the letter to you is more carefully done than a response from the stand. That seems a disturbing contradiction, but perhaps it is not.

Senator Kennedy?

Senator KENNEDY. After reviewing the exchange of correspondence, you definitely concluded then that they were keeping some kind of file on you?

Mr. KOCH. There was no question in my mind. Not only were they keeping it, they were bent on concealing the file, at least prohibiting Members of Congress from seeing it.

Senator KENNEDY. And it is your impression that is a continuing practice by the FBI, based upon the correspondence?

Mr. KOCH. Well, it is my understanding from the press release and from newspaper reports that the Acting Director has discontinued the practice with respect to new information to be gathered. I accept him at his word. But he has also made it very clear that the information which he has is not being destroyed because of technical legal problems, and he is not making that information available to those against whom it was accumulated.

Senator KENNEDY. Your reservations about Mr. Gray then deal with the procedures which he is following. They have been past precedents he has been willing to accept, and now he refuses to be open about this type of request?

Mr. KOCH. Yes, Senator.

What I am saying is that having accumulated that kind of material, it ought to, at least when requested, be made available to those persons on whom it was gathered. Mr. Gray is making very clear that he does not accept that point of view, and in my judgment that disqualifies him to hold the position.

Senator KENNEDY. Do you think anyone ought to be able to have access to it?

Mr. KOCH. Well, my legislation on that subject does the following and it has two safeguards:

It provides that a record that is held by the Government shall be available to that individual on whom the record is being gathered. The safeguards guarantee that the names of informants will not be available because that is an important matter to be protected, from the Government's point of view, and there is a balance that has to be struck. The Government is entitled to collect certain information. But it must be subject to certain safeguards.

Second, if the agency determines that the matter in the file involves national security, then it shall not make that final determination but, as a check on that, it must submit that recommendation to the President. If he determines in fact that it is a national security matter, he may say that that file shall not be displayed. But in order to make certain that is not abused, my bill requires that there be a report to Congress on the number of files withheld each year, agency-by-agency.

Now if, as a matter of national security, 2,000 files are withheld, that may be understandable. If the President withholds 2 million files, then this country is in a lot of trouble.

Senator KENNEDY. Did the FBI respond to your legislation? Did they ever give an opinion?

Mr. KOCH. Yes; the committee received a report from the Department of Justice opposing the bill.

The bill was the subject of hearings before Congressman William S. Moorhead's Subcommittee of the House Government Operations Committee.

Senator KENNEDY. I want to thank you very much, Congressman. I welcome you here. I have known you and of your work for a long time and I know you have given great thought to this whole problem, one which should be of concern to all Americans. I think it is a point well taken and I thank you for appearing.

Senator HART. Senator Hruska.

Senator HRUSKA. Mr. Congressman, I want to add my hearty welcome to your appearance here today. We have only one complaint about the visits from the other body of the Congress and that is they do not happen often enough. We always appreciate your coming and adding to the record.

Mr. KOCH. I shall come more often, Senator.

Senator HRUSKA. Mr. Congressman, you have referred to the correspondence between you and Mr. Gray. Will you supply copies of the letters for our record or have you done so?

Mr. KOCH. Copies are attached to my prepared statement and I have read them into the record in their entirety.

Senator HRUSKA. Your testimony is a real addition to our information and we thank you for coming.

Mr. KOCH. Thank you.

Senator HART. Senator Fong.

Senator FONG. Congressman, I, too, would like to welcome you to the committee.

I gather from one of the letters from Mr. Gray that they did not collect information about you during the campaign.

Mr. KOCH. Well, the way the language is set forth you cannot be sure from that letter whether or not there is a file on me or on the other two members who requested it. I believe, if you read it very carefully, you come to the conclusion there was, simply because he says the files will not be made available, and if they are not going to be made available, they must be there.

Senator FONG. Did he not say he did not collect any material on you during the campaign?

Mr. KOCH. Well, not exactly.

Senator FONG. I thought I heard it that way.

Mr. KOCH. Well—

Senator FONG. That nothing was collected concerning you during the campaign.

Mr. KOCH. Let me see if I can find that for you. I do not think it is that clear. Here it is. I will read the language:

As outlined in some detail to you in my letter of January 2, 1973, the FBI collected biographical information on major nonincumbent congressional candidates beginning around 1950. At no time was an investigation conducted on you or any other Member of Congress as part of this program.

Now, he is very careful about that. There was no formal FBI investigation. But they did gather material and the material that they gathered is not going to be made available to the three Members of Congress who requested it.

Senator FONG. Do you feel that any person on whom there is a file should have the right to see that file?

Mr. KOCH. My legislation is very specific. It says that subject to the safeguard of national security, which is further protected, as I earlier described—where you can withhold the file if the President makes that determination—any file with respect to an individual should be available to that individual for the following reasons: So that he may see whether there is irrelevant or erroneous material; so that he may submit a corrective statement; so that he might apply to a privacy board, which is created under my bill, for the removal of the material if it happens to be the rot, to use the word of the Acting Director, that exists in some of these files.

Senator FONG. Would you say that they should not keep any files at all?

Mr. KOCH. No; I do not say that. I believe there is a balance to be struck. I believe that the FBI has the right to collect certain material. I believe that every Government agency has a right to collect certain material. It becomes a question of the balance.

In my judgment, it would be wrong to maintain political dossiers. In fact, the acting Director specifically says that he does not maintain a political dossier. But then it becomes a question of definition.

I believe, based on the fact that they are refusing to reveal these files to three Members of Congress, that, in fact, they do have at least three political dossiers and of course many more.

Senator FONG. So you are saying that if you ran for office, the FBI should not have a file on you?

Mr. KOCH. Yes; I am saying that. Simply because I am running for office the FBI ought not to take the position that it is its job to determine my political credentials. Now if I happen to be someone who is the subject of a criminal investigation, obviously they have an interest in that; police enforcement—they have an interest in that; but simply because I run for office, they have no bona fide interest in that.

Suppose the FBI determines they do not like my positions, and they record this in the file. I would resent that bitterly. The fact is they probably do not like my positions.

Senator FONG. If somebody wrote in and said, "Congressman Koch is a good man," you would not mind having that?

Mr. KOCH. No; because that is not necessarily an accolade in my district. [Laughter.]

Senator FONG. Suppose he wrote in and said Mr. Koch was a bad man and did certain things, do you think that should be thrown away or should that be kept in some kind of a file?

Mr. KOCH. Well, Senator, it then becomes a question, if they simply say I am a bad man, obviously what does that word mean?

Senator FONG. And he goes further and says you did certain things, do you think he should keep that or should he throw it away?

Mr. KOCH. I believe these files should be destroyed. I do not believe the FBI has any right to maintain dossiers on the citizens of this country unless they involve matters of criminality or national security. I do not believe that when I or any other person runs for office, whether we are elected or not, that that is a question of national security. I simply do not believe that the FBI should be the party that determines whether one is qualified or not.

Senator FONG. It is very difficult to draw the balance; is it not?

Mr. KOCH. There is a balance.

Senator FONG. Yes.

Mr. KOCH. I must say to you, Senator, that there are people who are not supporting my legislation because they say that no file may be withheld. They say, "You have a provision in there which provides that in the event of national security, where the President specifically says it involves national security, the file will be withheld." These people do not believe you should even have that safeguard. I disagree with them. I think there is a balance to be struck.

I think my bill provides that balance.

Senator FONG. Thank you.

Senator HART. Congressman, I still have not resolved in my mind precisely what the exchange which you cited between the committee and Mr. Gray on the destruction of the files establishes and I am not yet clear on exactly what goes into the files.

If it is just newspaper clippings and campaign literature and information derived from reference books available in any public library, if that is all it is, why would the Bureau be reluctant to show it to you as the candidate for office?

Mr. KOCH. Clearly there is more in that file, Senator, not necessarily my file but in anyone's file, than simply biographical material. I think the Acting Director very honestly made that statement to you in his exchange with you when he said that in these files, and the word that he used is particularly appropriate, there is "rot" that he would not want an archivist to see. So clearly he is embarrassed by some of the material, which is probably slanderous, libelous, raw garbage, and yet that file continues to remain there.

And I must say this: We know that FBI files have a way of becoming public, you have had other testimony in other matters where the FBI files have been used in a way that you would not want them to be used and, as I understood it, in a way that the FBI Acting Director would not defend and was rather embarrassed about.

So in this age of the computer where information tends ultimately to appear on some major computer bank, all of this material will ultimately appear on some tape and will be spewed out and perhaps used adversely against people who will never know what it contains and who will not be able to correct misleading, erroneous information. That is why I think that my bill which I mentioned earlier, which is H.R. 667, is one that I would hope would receive consideration by both the Senate and the House.

Senator HART. As others have indicated, your testimony is helpful and specifically directs our attention to the proposal that you have just again commented on.

I understood the Acting Director to say that unless the law is changed, the files cannot be disposed of. If that is in fact the situation, then we ought to change the law.

Mr. KOCH. It would not be the first law that has been changed.

Senator HART. In the meantime, I hope we can find out whether those files contain just press clippings or more.

Are there further questions?

Senator FONG. Congressman, you are in accord with Mr. Gray's idea of not collecting any more such information?

Mr. KOCH. Yes; if Mr. Gray took that position, as I think he has.

Senator FONG. That he is not going to collect it any more.

Mr. KOCH. That he is not going to collect this kind of information, I am surely in accord with that. But I also want him to destroy the information already collected.

Senator FONG. You think he could destroy it without a change in the law?

Mr. KOCH. That I am not able to state. As I understood it from the testimony, the files could be destroyed if they were first read by the Archivist.

Well, if that is necessary, if he does not want to have the Archivist read it, let him read it himself and then destroy it. It seems to me that one cannot simply rest on a technicality that it must first be read before it can be destroyed. If he does not want anybody to read it because it is so filled with rot, then let him take the time to read it and then destroy it.

Senator FONG. Two million files, more than that?

Mr. KOCH. It would give him something to do. [Laughter.]

Senator HART. In the exchange of correspondence that you read, I got the impression that if the political candidate was defeated—

Mr. KOCH. Then they destroyed it.

Senator HART. Then they destroyed it.

Mr. KOCH. That is exactly right.

Senator HART. How does that jibe with the argument that you cannot destroy the file until the Archivist reads it?

Mr. KOCH. You are right. In his letter of January 2, 1973, Mr. Gray says:

If the candidate was defeated in his bid for office, all of the material submitted by the field offices would be promptly destroyed and no record of it kept.

That is what he said. So only if you win are you in trouble. [Laughter.]

Senator HART. If the logic here is out of joint, we will just have to get this thing clarified with a new Director, giving attention specifically to this question. It is of basic concern.

Congressman, thank you very much. Your prepared statement will be made a part of the record.

Mr. KOCH. Thank you, gentlemen.

[Congressman Koch's prepared statement follows:]

TESTIMONY BY REPRESENTATIVE EDWARD L. KOCH PREPARED FOR SENATE JUDICIARY COMMITTEE OPPOSING THE CONFIRMATION OF L. PATRICK GRAY AS DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and distinguished Members of this Committee, I wish to be on record opposing the confirmation by the United States Senate of L. Patrick Gray as Director of the Federal Bureau of Investigation.

The FBI is this country's most powerful nation-wide investigative force. Those of us who are sensitive to the inroads made on the civil liberties of our citizens in recent years must be especially sensitive to the question of who will head the FBI during the next four important years.

My reason for opposing the confirmation of Mr. Gray does not relate to any question I may have as to his experience in the area of law enforcement or the fears that he may not be able to withstand political pressures on the FBI from the Administration, or a politicization although I have heard both these points made. Rather my opposition stems from what I consider Mr. Gray's insensitivity to the value of privacy in America today. Late last year and again early this year I wrote to Mr. Gray with respect to dossiers that had been collected by the FBI on congressional candidates. I asked that if such a dossier was being kept on me, I be furnished a copy. After several exchanges of correspondence, Mr. Gray by letter of January 24 turned down my request to see the material in my file. Mr. Gray stated:

"Such recorded information retained by the FBI is subject to the regulation and control of the Attorney General. It is not available for inspection except for authorized purposes and then only on a need to know basis. Therefore, I must decline your request."

The FBI apparently decided that Members of Congress do not "need to know."

I should note that my request was turned down even though the FBI assured me in our correspondence that "no investigation was conducted to secure this information" and that only publicly available biographical data is contained in these files. In addition, there is no suggestion in Mr. Gray's letters that the examination of the contents of the files by any one of us would in any way affect national security. Yet still the requests to see the files were denied.

I consider the maintaining of such files an inhibiting factor on the workings of our representative government and a violation of the separation of powers.

The problem of privacy for American citizens today is among our most pressing domestic issues relating to civil rights. Government intrusion into the workings of the free press and other examples of the use of governmental power should reinforce our traditional instinct for limiting governmental power.

Because of the ongoing assault on the privacy of individuals, I introduced legislation in 1969 and again in this Congress, H.R. 667, to require government agencies to notify citizens that dossiers and records are being kept about them and to make such records available to such persons, with certain specific exceptions

such as national security cases, The question of confirmation of Mr. Gray as director of the FBI is, in my mind, closely tied to the need for congressionally established controls over the collection, maintenance and dissemination of information on individual citizens by government agencies, including the FBI.

I would like to take this opportunity to press the Congress to enact privacy legislation promptly and to refrain from confirming Mr. Gray until he takes a more positive attitude toward this issue with respect to his own bureau.

Senator HART. Our next witness is Joseph L. Rauh, Jr., appearing today to present the views of Americans for Democratic Action.

This is not the first nor, I hope, the last time that the committee will welcome Joe Rauh.

Senator FONG. Mr. Chairman, I want to welcome my Harvard Law School classmate.

Senator HART. Do you not want to hear what he has to say first? [Laughter.]

Senator FONG. I am always interested in what he has to say.

TESTIMONY OF JOSEPH L. RAUH, JR., AMERICANS FOR DEMOCRATIC ACTION, ACCOMPANIED BY THEODORE H. BORNSTEIN

Mr. RAUH. Mr. Chairman and members of the committee, I am here today to present the views of the ADA, of which I am a past national chairman and presently a national vice chairman, in opposition to the confirmation of Mr. Gray. We appreciate this opportunity to appear. Accompanying me is Mr. Theodore H. Bornstein, assistant legislative representative of the ADA.

Mr. Chairman, I know how rushed the committees are in matters of this kind, and you have been, you are always, very patient. I thought I would insert my statement and summarize it as a method of expediting the hearing.

Senator HART. Thank you very much, and without objection the statement will be printed in full as if given.

[Mr. Rauh's prepared statement follows:]

STATEMENT OF JOSEPH L. RAUH, JR., VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION, BEFORE THE SENATE JUDICIARY COMMITTEE

My name is Joseph L. Rauh, Jr. I appear here today to present the views of Americans for Democratic Action, of which I am a past National Chairman and presently a National Vice Chairman, in opposition to the confirmation of L. Patrick Gray, III, as Director of the Federal Bureau of Investigation. We appreciate this opportunity to present our views to the Committee.

Prior to the opening of the hearings, ADA sent a letter to Mr. Gray as follows: "Americans for Democratic Action urges you to withdraw as nominee for the post of Director of the Federal Bureau of Investigation and to request the President to appoint to the office someone who is wholly outside the arena of partisan politics.

"When he created the Bureau of Investigation (now the FBI), Attorney General Stone stated: 'There is always the possibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power. . . .' And, accepting the position of Director, Mr. Hoover stated that 'the Bureau must be divorced from politics.'

"What Mr. Stone and Mr. Hoover said in 1924 today is even more true. The Bureau is the custodian of dossiers on the private lives and opinions of millions of our citizens. Decisions made every day determine who is to be the subject of surveillance, whose phones are to be tapped. No one is wholly outside the purview of the Bureau's activities.

"There was resistance in many places to the FBI's aggrandizement of power and none was more opposed to this trend than ADA. But we are confronted today with the fact of this power and the further fact that this power—placed in the hands of a partisan political figure—would maximize the present manifold dangers to freedom.

"Partisan politics is an honorable exercise. Your important positions in President Nixon's campaigns in 1960 and in 1968 do you honor. But as Mr. Stone and Mr. Hoover made clear, there is no place for partisan politics in the FBI. Temptations to use that power for the benefit of your political associates often may be irresistible. Every act you perform, no matter how motivated, will be deemed by many to be based on partisan political considerations. The appearance of political motivation may affect the FBI's stature and integrity almost as much as would the reality of political motivation.

"By withdrawing now, on the ground that you too believe the FBI should be divorced from even the appearance of political considerations, you would demonstrate both a self-denial for the sake of your country and a sensitivity to the great issue of civil freedom which would do you proud. You would create a precedent which could insulate the Bureau from politics for generations to come and so make a truly great contribution to the ever-lasting struggle to preserve our American way of life."

The hearings before this Committee have only served to reinforce the position taken by ADA in its letter to Mr. Gray. What was once the *danger* of partisan politics in the FBI became the reality of partisan politics during Mr. Gray's 10-month period as FBI Acting Director. We, therefore, once again call upon Mr. Gray to withdraw as nominee for the post of FBI Director. By so doing, by setting a resounding precedent of defending—at real personal sacrifice—the non-politicizing of the FBI, Mr. Gray would strike a blow for American democracy and American freedom far beyond anything he can ever do in the office of FBI Director.

But if Mr. Gray chooses to continue his fight for the office, this Committee has no alternative except to make the most complete and detailed investigation possible (much more complete and detailed than has been possible up to this time) into Mr. Gray's activities as Acting Director over the past 10 months—even to the extent of awaiting the report of the Special Committee on the Watergate. Indeed, if Mr. Gray persists in refusing to permit a study of the Watergate affair by the staffs of the members of this Committee, a delay until the results of the Watergate Committee are in is imperative. Certainly, no one can suggest that there is any urgency in confirming Mr. Gray, since he is presently serving in the post at issue and since his predecessor served there for 47 years without confirmation.

Many Americans feel both in debt to, and afraid of, the FBI. Many Americans are grateful to the Bureau for its work in solving heinous crimes, while at the same time they are deeply concerned by the Bureau's continually increasing power over the individual. I certainly am in this category on both counts.

When my client Joseph A. Yablonski was murdered in the closing hours of 1969, it seemed certain that the murder was union-connected and union-directed. But I was helpless to prove this important fact myself, and both Attorney General Mitchell and Secretary of Labor Shultz initially opposed FBI investigation of the crime. But, when public pressure forced General Mitchell to order the FBI into the case, the Bureau's determination, thoroughness and ability obtained overwhelming evidence of the involvement of the United Mine Workers officials and made possible the cleaning up of one of the country's greatest trade unions. My gratitude to the FBI for this accomplishment has been publicly stated many times.

But deep concern there is, too. Back in 1950 I wrote a favorable review of a book critical of the FBI. The review appeared in the Washington Post on a Sunday morning. When the Senate met on Monday noon, Senator Bourke Hickenlooper, who I had never met, took the floor to denounce me with a speech prepared from my dossier at the FBI. My friend Alan Barth, America's most distinguished civil liberties writer and analyst, wrote an article in Harper's Magazine in 1954 entitled "How Good Is An FBI Report?" This time the traducer, with FBI materials, was Senator Barry Goldwater.

Let me hasten to make an important point concerning this use of FBI files by Mr. Hoover. As far as I know, from 30 years or more of FBI watching, Mr. Hoover never used the FBI files for partisan political purposes. There is a real distinction between the use of the files to discredit one's critics—unfair and even dangerous as I believe that practice to be—and the use of FBI files in the partisan political arena. For the first time that cloud of political partisanship hangs over the FBI.

Both for the good the FBI has done and can do and for the potential dangers that lie in surveillance, wiretapping, bugging and dossiers, there is no place for a partisan political figure at the head of the FBI. The morale of the Bureau in performing its law enforcement work depends on keeping it totally out of poli-

ties—both in reality and in appearance. And the danger to liberty in the FBI's frightening powers over the individual—surveillance, wiretapping, bugging, dossiers—the danger to liberty inherent in these powers being exercised in the political arena by a partisan Director should summon the Senate to its historical role as the watchdog of freedom.

Mr. Gray comes to his post as Acting Director of the FBI through the political route. He himself informed the Committee that he "had no professional law enforcement experience." When the usual ground for appointment to the nation's top law enforcement position—i.e., law enforcement experience—is wholly absent, common sense raises the presumption that political considerations entered into the making of the appointment. And when the appointee worked on the personal campaign staff of the man making the appointment, that presumption is strengthened mightily. Thus, the absence of law enforcement experience, coupled with Mr. Gray's long political involvement with the President and the Administration, brings the nomination directly into the political arena. This is indeed the classical case of the nomination of the wrong man for the wrong reason.

This would be true if the nomination had been made 10 months ago. But everything that has happened in these intervening months reinforces that conclusion. Mr. Gray's 10-month role as Acting Director confirms the worst fears generated by his initial designation.

(i) Mr. Gray made political speeches as a Nixon surrogate. He made such a political speech in Cleveland after he had been informed by campaign officials of Ohio's importance in the election. His speeches in Butte and Minneapolis were even more political. I challenge any fairminded man to read Mr. Gray's Butte speech and say that it was not an endorsement of the national Administration and its leader; it tracked in every particular the Administration line concerning the Democratic candidate. If Mr. Gray is so insensitive that he honestly believes his own statement that his Butte speech was non-political, this insensitivity is itself a total disqualification for leadership of the country's national police and investigative agency.

(ii) Mr. Gray sent the FBI files on the Watergate case to the White House at the very time the FBI was investigating the case. Since persons previously in and still close to the White House and persons still in the President's reelection campaign were involved in the case, this was an obvious breach of proper law enforcement procedure. Can anyone deny that this was partisan politics?

(iii) When Mr. Gray received information that Donald Segretti claimed to have been shown the FBI files concerning his activities, Mr. Gray's only action was to ask the President's Counsel, John Dean, if he had shown Mr. Segretti the files. He accepted Mr. Dean's denial and took no further action. He made no effort to track down this compromising of FBI files as he would have done in any other case. Can anyone deny that this was partisan politics?

(iv) When the FBI sought to interrogate Mrs. John Mitchell, who asserted that she was going to "tell all" about the Watergate affair, Mr. Gray accepted Mr. Mitchell's refusal to have his wife interrogated. It is hard to believe that there is another wife in America, who, had she asserted she was going to "tell all" about a crime, would have been spared an FBI visit. Can anyone deny this was partisan politics?

(v) When FBI agents sought to interrogate Robert Mardian, previously a high Administration official and then a high official in the President's reelection campaign, Mr. Gray apparently accepted Mr. Mardian's plea of lawyer-client privilege without question. But even if this privilege existed, which seems highly doubtful under the circumstances, every lawyer knows that the privilege is no ground for refusing to answer all questions, but only those involving private confidential communications between lawyer and client. Much could have been asked of Mr. Mardian that was not possibly covered by the lawyer-client privilege. Can anyone deny that this failure to press Mr. Mardian was partisan politics?

(vi) Further investigation by this Committee will undoubtedly bring out additional political partisanship in Mr. Gray's 10 month Acting Directorship. Mr. Tom Wicker, in the New York Times of Sunday, March 4, refers to testimony that the security chief of the Committee to Reelect the President was "plugged in" to the FBI. The Committee undoubtedly has other leads beside the one suggested by Mr. Wicker and the Watergate files will no doubt supply still others. This should be the most complete investigation in the history of this Committee, for it may be the most important nomination on which it will pass.

What is at stake in Mr. Gray's nomination is at the least the integrity of the FBI and at the most the integrity of our political system. The Senate is the last remaining bulwark against permanent politicizing of the FBI. We are confident that it will not be found wanting.

Mr. RAUH. Mr. Chairman and members of the Committee, prior to the hearings we asked Mr. Gray to withdraw, and I would like to read that letter.

Americans for Democratic Action urges you to withdraw as nominee for the post of Director of the Federal Bureau of Investigation and to request the President to appoint to the office someone who is wholly outside the arena of partisan politics.

When he created the Bureau of Investigation (now the FBI) Attorney General Stone stated: "There is always the possibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power . . ." And, accepting the position of Director, Mr. Hoover stated that "the Bureau must be divorced from politics."

What Mr. Stone and Mr. Hoover said in 1924 today is even more true. The Bureau is the custodian of dossiers on the private lives and opinions of millions of our citizens. Decisions made every day determine who is to be the subject of surveillance, whose phones are to be tapped. No one is wholly outside the purview of the Bureau's activities.

There was resistance in many places to the FBI's aggrandizement of power and none was more opposed to this trend than ADA. But we are confronted today with the fact of this power and the further fact that this power—placed in the hands of a partisan political figure—would maximize the present manifold dangers to freedom.

Partisan politics is an honorable exercise. Your important positions in President Nixon's campaigns in 1960 and in 1968 do you honor. But as Mr. Stone and Mr. Hoover made clear, there is no place for partisan politics in the FBI. Temptations to use that power for the benefit of your political associates often may be irresistible. Every act you perform, no matter how motivated, will be deemed by many to be based on partisan political considerations. The appearance of political motivation may affect the FBI's stature and integrity almost as much as would the reality of political motivation.

By withdrawing now, on the ground that you, too, believe the FBI should be divorced from even the appearance of political considerations, you would demonstrate both a self-denial for the sake of your country and a sensitivity to the great issue of civil freedom which do you proud. You would create a precedent which could insulate the Bureau from politics for generations to come and so make a truly great contribution to the ever-lasting struggle to preserve our American way of life.

The hearings here, Mr. Chairman and members of the committee, only serve to reinforce the position that we took in that letter.

What appeared there to be the danger of partisan politics has now been shown, I regret to say, as the reality and, therefore, ADA this morning again calls on Mr. Gray to withdraw.

We say to him that by so doing, by setting a resounding precedent of defending, at real personal sacrifice, the nonpoliticizing of the FBI, Mr. Gray could strike a blow for American democracy and American freedom far beyond anything he can ever do in the Office of FBI Director.

We thank the committee for the investigation it has made to date. We urge it to make it the most thorough investigation in the history of this committee. We say that we think you can do this because we do not know what the rush is. I cannot understand any hurry here.

Mr. Gray is serving in his post now. His predecessor served for 47 years without confirmation. It seems to me that this committee should work its will in a very deliberate way. It has all the time it needs. If necessary, it can wait until after the Watergate hearing, although if it gets its own facts that will not be necessary.

I think most Americans who have studied the problem feel both in debt to and afraid of the FBI, and I join with this.

I am most grateful to the FBI for its work in solving crimes, especially the solution of terrible crimes for which it is famous. At

the same time, I am deeply concerned, as are most Americans who are aware of this problem, by the Bureau's continually increasing power over the individual.

I would like to give a personal example of both my debt to the FBI and my fear of the FBI.

When my client, Joseph A. Yablonski, was murdered in the closing hours of 1969, I was certain that the murder was union-connected—connected with the election in the mine workers. I knew that the only chance we had of getting to the bottom of that was through the FBI. Initially Attorney General Mitchell and Labor Secretary Shultz were opposed to the FBI going into the case. Public pressure demanded it, they did go in, and the FBI did a magnificent job. And today a union that was once ridden with corruption and violence is a wholly different organization. I have over and over again paid tribute to the FBI for what they did there. They saved a union and, in a real sense, they gave new hope to people who believe in trade union democracy.

But just as I express my gratitude, I have to express my deep concern about an experience of a different nature.

In 1950 I wrote a book review in the Washington Post of a book by Max Lowenthal which was critical of the FBI. It appeared in the Washington Post on a Sunday morning. On Monday noon Senator Bourke Hickenlooper, whom I had never met, made an attack on me on the floor of the Senate, using FBI material.

Now I am hardly a household word in Iowa, and Mr. Hickenlooper's interest in me could have been of no significance. What happened was this: FBI materials were used to silence or attempt to silence a critic.

It is on that point that I think one can see the difference between the previous actions of the FBI and the fears we have now of partisan politics creeping into the FBI.

I have been an FBI watcher for 30 years, and I want to say for Mr. Hoover that I do not believe he did a *partisan* political act in those 30 years. I am not defending the use of FBI materials to discredit critics, and as one who was subjected to that treatment, it is not a very happy treatment. But it is different; there is not the same degree of danger that the use of FBI files in politics would be.

I never thought I would be saying that I was thinking of the good old days of J. Edgar Hoover. [Laughter.]

But I want to make my point clear: Mr. Hoover would not let politics get in there. He did some other things that we are all worried about, but on this item he was a giant, and that is what we must never forget. And it was because, through my personal experience, I could explain the difference between using FBI files in a partisan way and using them against your critics, whether you like that or not, that I referred to this incident.

Now, both for the good the FBI has done—its magnificent police work—and for the dangers of the dossiers, surveillance, wiretapping and bugging, there is no place for a partisan political figure at the head of the FBI.

Its whole morale depends upon being nonpolitical, and the dangers in the use of its great power now are really beyond description. So the question is, is that danger there? We believe it is.

Mr. Gray himself, the first day here, said that he "had no professional law enforcement experience." That is a direct quote. But

the most important qualification for the job is law enforcement experience. If a man does not have the most important qualification, common sense raises a presumption that this is a political appointment. And that presumption is strengthened when the appointee was on the campaign staff of the appointer. So we respectfully suggest to this committee that this is indeed the classical case of the nomination of the wrong man for the wrong reason.

This was our position 10 months ago. And everything that has happened in the last 10 months confirms the worst fears that one would have of taking a political appointee and putting him into this job that requires a giant to stand against political pressures.

The examples have all been before the committee and I won't repeat them except just to say a word about each one.

First, Mr. Gray made obvious political speeches. I challenge any man to read that Butte speech and not consider it a political speech. The Butte speech tracked the anti-McGovern line of the reelection committee with perfection.

Second, Mr. Gray sent the FBI files on the Watergate case to the White House at the very time the FBI was investigating the case.

Third, Mr. Gray did not follow up when those files were compromised and shown, as alleged, to Mr. Segretti.

Now, my statement in the record was prepared last Sunday at the request of committee counsel to have it in ahead of time and I was perfectly willing to do that. I can understand the need for having statements ahead of time, but some things have happened since then that compound the case against Mr. Gray.

The Judiciary Committee now knows these things. First, that Mr. Gray sent Mr. Dean the files on the Watergate case. Second, that Mr. Dean was intimately involved in the Committee to Reelect the President, that he had gotten Mr. Liddy his job there, that he was involved in the operation of that committee. Third, that three employees of that committee asked to have their statements to the FBI kept confidential, that they did not want a lawyer there. And Mr. Gray gave those statements to Mr. Dean. It was a breach of faith with those three employees. Those three people trusted the FBI, they trusted in the right to go to the FBI and give secret information, and their statements were given to Mr. Dean, who was working with their employers. This is the classical case of putting the fox in charge of the chicken coop. Mr. Dean was the fox in charge of the chicken coop and Mr. Gray fed the fox with those FBI reports.

I want to raise a question. It may have occurred to everybody in this room. It is a delicate thing, yet it keeps coming back into my mind. Why was there a Watergate investigation by the White House? Why was Mr. Dean told to make an investigation of this matter? The FBI could make an investigation. Why did the President set up a separate investigation?

And that leads me to the tougher question: Was the Dean investigation set up so that Mr. Dean could see the FBI reports? It is going to take a great deal of committee investigation to answer that question, but you can't down the question. There was no need for an investigation other than the FBI investigation.

Senator KENNEDY. Couldn't Mr. Dean have requested those even if he was not conducting an investigation? Couldn't he, as the counsel for the President, have gotten those files anyway?

Mr. RAUH. I don't know, Senator, because I have been here only off and on. But the testimony was that Mr. Gray had rejected the idea of sending FBI files to Mr. Haldeman. I think he did testify to that effect. I don't know the answer to your question. But it is my recollection that there was a problem about this. There is obviously the possibility that he could have gotten them anyway.

Well, I could go on with more examples, but you have heard them all here. It seems to me remarkable that Mrs. Mitchell was never interrogated after she said she could "tell all" about the Watergate affair. I am sure the FBI wouldn't have been as kind with other husbands whose wives were claiming they were going to tell all about something, especially when the husband was somewhat involved.

I thought the failure to interrogate Robert Mardian was one of the most remarkable mis-understandings of the law that I have ever witnessed. Here is a man whom the FBI wants to interrogate and he says "I have got a lawyer-client privilege." Well, every lawyer knows that the lawyer-client privilege is limited to confidential communications between lawyer and client. There was no suggestion that what Mr. Mardian knew was confidential communications from these people. Indeed there were suggestions that there were documents destroyed. It is not a confidential communication from the client. This whole idea of letting a man not be interviewed because part of it might be privileged is wrong.

In addition, the privilege isn't Mardian's. It belongs to the client, and he would have had to ask his clients in each instance whether they wanted him to exercise the privilege.

It is very doubtful whether, in fact, Mr. Mardian was the lawyer for all of those people. Liddy seems to have had so many lawyers, it sounds like the Chase Manhattan Bank. But assuming Mr. Mardian could get in on that, too, it still wasn't ground for not interrogating him.

Senator FOXG. Are you saying, Mr. Rauh, that every time an FBI man comes to talk to you, you have to talk to him?

Mr. RAUH. Oh, no. But when you don't talk to the FBI there is an immediate presumption that you have got something to hold back. I can think of no case in which I personally would not talk to the FBI. But I have had clients that I have told not to talk to the FBI. Generally, I think there is an implication that if you refuse to talk to the FBI, there is something wrong. Mr. Mardian didn't want to refuse on the ground there was something wrong, so he refused on the basis of a lawyer-client privilege. Particular questions might have been beyond the scope of what could properly be asked, but the totality of the thing could not possibly have been within the lawyer-client privilege.

Senator FOXG. You admit that he had a right not to talk to the FBI?

Mr. RAUH. Everybody has a right not to talk to the FBI. The only people you have to talk to are the grand jury when they subpoena you and then you don't have to talk to them if you invoke the privilege against self-incrimination. But you don't have to talk to the FBI if you don't want to.

Senator FOXG. Now, you are blaming Mr. Mardian because he didn't want to talk to the FBI.

Mr. RAUH. Because he gave a reason that was a phony. If he had said "I don't want to talk to the FBI," everybody would have known he had facts he wanted to hold back. So he had to give a phony reason to pretend there was nothing wrong in his not talking.

Senator FONG. Maybe that was the reason why he didn't want to talk to the FBI—

Mr. RAUH. Lawyer-client?

Senator FONG. He didn't want to talk to them.

Mr. RAUH. A man who has held high legal posts ought to know what the lawyer-client privilege is. You know that it is limited to confidential communications between lawyer and client and that it does not cover the waterfront.

Senator FONG. I think he was within his rights not to talk to the FBI.

Mr. RAUH. I do, too. You are absolutely right, every American citizen has a right not to talk to the FBI. It is only the grand jury or a committee here that can compel an answer. You don't have to answer to the FBI. But presumptions arise in the public mind when you don't answer to the FBI and, I think, Mr. Mardian gave a phony legal answer in order to avoid that presumption.

I would like to conclude with these thoughts: First Mr. Gray, it seems to me, has committed the cardinal sin of compromising FBI files and then doing nothing about it. They went to Mr. Dean, who was involved in the campaign; they covered people who had asked to be kept secret; there was an allegation that they got out to Mr. Segretti, and it was never investigated. If that isn't politics, I don't know what is.

Second, Mr. Gray has said over and over again that he gave this the full court press. If I understand it, that is a basketball expression for giving it the works, doing everything you can. But I suggest that every time somebody got close to the ball, Mr. Gray seemed to call time out. There really wasn't the full court press that he claimed.

Third, I would like to suggest that if you follow this road there is no turning back. I hope Senators Hart and Kennedy won't mind my saying that Democrats are not saints either. I think if Mr. Gray is confirmed, the next Democratic FBI Chief is also going to be in partisan politics. I think that this is a road down which our country is going that is so dangerous that we must stop it here. I am a Democrat, and I know it will happen when we get in again, whenever that may be. Actually, I am not certain that I wholly believe that the Attorney General should not be a little more removed from politics, but the Democrats started that with Howard McGrath. That was the first time I really recollect that occurring, in my working lifetime at least and it is a troublesome point but it is not the point that we face today. I think political partisanship is more dangerous in the FBI Director than in any other job in this country, and if the Republicans do this, the Democrats are going to do it, too.

I want to say this: That was the one thing that I think America is most indebted to Mr. Hoover for. There never was partisan politics when he headed the FBI. There were things we fought and bled and died against, but there never was partisan politics. I predict, if Mr. Gray is confirmed, Mr. Hoover will be, at the turn of the century, the only FBI Director who was totally removed from partisan politics. I have no more, sir.

Senator HART. You have always been an effective witness but never more so than this morning.

When you asked for a nonpolitical FBI Director, the only note I made as you were going along is the point you closed on, that the Bureau is under the direction of the Department of Justice. The Department of Justice is run by the Attorney General who is selected by the President. Are we kidding ourselves that without a figure so radiantly garbed as was Mr. Hoover that we can ever get a nonpolitical director until we devise a different structure?

Mr. RAUH. That is a very important point, Senator, and the different structure could be of two kinds I suppose: remove control by the Department of Justice or have a nonpolitical head of the Department, which neither party has wanted. I guess in retrospect, as I look back, I cheered for some of the Attorneys General who were appointed, even though they were political, and I cannot say that I had the foresight to see the danger. But, as I look back, I think there were grave risks in some of the Attorneys General so appointed. And yet as I look ahead, I don't see that it is going to be changed soon.

I guess the real answer, Senator Hart, is this: You are correct, of course, Mr. Hoover was less under the influence of Attorneys General than probably any other official in the Department, and it was a good thing. As far as some of the other civil liberties aspects were concerned, I would say it was a bad thing, but Mr. Hoover was less political than any future FBI Director is going to be.

Nevertheless, the Bureau is such a massive thing, is so big, has such vast functions, that I don't believe there will be substantial influence from even a political Attorney General if there is a clear understanding of the nonpoliticized nature of the FBI. That is why I think Mr. Gray could do such a noble act if he were to withdraw on that ground. If you once had it accepted that the FBI is nonpolitical, I believe the Attorney General, no matter how political, would have to be careful. I believe, first, most Attorneys General would want to keep out of it if you had that principle settled, and second, those that didn't would have great trouble moving in once it were known there was a precedent for nonpoliticizing the FBI—if the Senate of the United States rejects Mr. Gray, or if Mr. Gray withdraws.

Senator HART. Senator Kennedy.

Senator KENNEDY. I have no questions.

I welcome you, Mr. Rauh. I think you have summarized a strong case very eloquently, as always, and I appreciate your appearance here.

Mr. RAUH. Thank you, Senator.

Senator HART. Senator Fong.

Senator FONG. Mr. Rauh, I again want to welcome you before the committee. I am always glad to have you before us and it is always nice to be talking to a classmate of mine. Sometimes we don't agree on some of the things that we speak on, but nevertheless we are friends.

Mr. Rauh, you said that the Butte, Mont., speech is one of the most partisan speeches given.

Mr. RAUH. What word did you use, sir? I did not hear you.

Senator FONG. That it was a very partisan speech.

Mr. RAUH. Partisan; yes, sir.

Senator FONG. I have read the Butte, Mont., speech. I don't find it partisan whatsoever. Now, the Butte, Mont., speech is entitled "A Nation That Cares." It was a speech before the Rotarians. Gray says:

In our 20th century world these are among the salient questions facing mankind:

What kind of society do we want?

What kind of country is America going to become?

Does our Government care about our people?

Does it listen?

Is it a sensitive society, wanting to make life more significant and meaningful for every man, woman, and child?

These are questions which strike to the very heart of our American way of life.

* * * * *

I believe that Americans know what it means to care.

We care enough to do our very best.

We care deeply about our community, our fellow man, our Nation.

We realize that unless people care—about themselves, about others, about their values and traditions—our country will die.

There is nothing political in that, is there?

Mr. RAUH. Senator, I was, I would have to be honest with you, I was going through the parts of the speech I was going to read to you to get ready to answer you and I didn't hear what you read. I apologize. Senator Fong, for having looked at the speech instead of listening to you. If you want to reread it, I am perfectly happy to give an answer. I just was doing something else.

Senator FONG. You are not prepared to answer?

Mr. RAUH. I can't, I am ready to read my part of the speech and I didn't listen. I am just as apologetic as I could be.

Senator FONG. Let us start with part of the introduction.

Mr. RAUH. All right. Can we go back over it, sir, and I will answer.

Senator FONG. The title of the speech is "A Nation That Cares."

Mr. Gray starts off and says:

As a fellow Rotarian, I welcome this opportunity to be your guest this evening.

We in the FBI deeply appreciate the splendid cooperation which you, as Rotarians and citizens of this great city and state, have given us over the years.

This evening I want to talk about A NATION THAT CARES, a Nation which is concerned about its citizens, their welfare, their happiness, their dignity as human beings.

In our 20th century world these are among the salient questions facing mankind:

What kind of society do we want?

What kind of country is America going to become?

Does our Government care about our people? Does it listen?

Is it a sensitive society, wanting to make life more significant and meaningful for every man, woman, and child?

These are questions which strike to the very heart of our American way of life.

They are questions about which we must take a stand if we are to face the future with confidence and courage.

I believe that Americans know what it means to care.

We care enough to do our very best.

We care deeply about our community, our fellow man, our Nation.

We realize that unless people care—about themselves, about others, about their values and traditions—our country will die.

There is nothing political in that, is there?

Mr. RAUH. No, sir, except that that rhetoric was set up to make a contrast with the end of his page 2 where the attack on the Democrats

really starts to hit. I agree with you that, if that were all that was said, it was nonpolitical. But I can just watch the speechwriters' minds going. That was the nice part—how we love our country—to set it up, to hit the people who, because they are critical, do not love our country, the suggestion that the Democrats are somehow not equally so devoted to our country as this administration. So, while I will agree that those words in a vacuum were nonpolitical, in this speech they were carefully devised as part of a real political speech.

Senator FONG. Well, I will go further.

Unfortunately, there are today a small minority of Americans—

Senator FONG. He didn't say Democrats. There are a number of Republicans who fall in that category.

not many but a few—who bitterly and falsely denounce our country as cruel, sick, callous, and repressive.

They want to create the impression that our Government is an ogre, a monster which simply doesn't care.

Another prominent educator has publicly denounced our national leaders as not giving—in his words—"any clear sign of compassion or concern for the poor, the weak, the sick, the unemployed, the helpless . . ."

Another speaks of a "selfish and oblivious ruling Establishment."

An author asks, "Is America falling apart?" and then categorically states, "The American Constitution is out of date."

Do you construe that as very partisan—

Mr. RAUH. Absolutely. I think the effort there is to inculcate into the minds of the listeners that the McGovernites denounce our country. There are even words that have been used by McGovern that are in there. I think if you compare this speech with some of the President's own statements, some of the adjectives used by the President, you will find they are very close and were clearly intended to convey the impression that the McGovern supporters believe these things, and some of them were actually said by the Senator. I think he used the word "repressive" during the campaign. I think the lack of "compassion," "selfish and oblivious ruling Establishment," many of these things were actually said by the Democrats. I think it was clearly political to set up nice values at the beginning of the speech and then these "terrible" things that were being said on the other side.

Senator FONG. Republicans said that also?

Mr. RAUH. But it gets worse as it goes on, Senator. I could have passed these couple of pages except I didn't feel like it. But as you go on you are going to find the speech gets worse and worse.

Senator FONG. Now, the word "repressive" is always used against the Government, regardless of which party controls the Government. It is used by Democrats, Republicans, nonpartisans, and Independents. That word is used all the time.

Mr. RAUH. But Mr. Gray is quoting that word to say that it is wrong to use it. Mr. Gray is suggesting here that it is wrong to use the word "repressive," that there is something un-American about using the word "repressive."

Senator FONG. No. He says there is, and I quote: "a small minority of Americans." The Democrats are not a minority, they are a majority. He said "today a small minority of Americans, not many, but a few." and I don't see any political implications in that.

Mr. RAUH. Senator, when you denounce your opponents, you never suggest they are a majority. You talk about them as a minority. I know what a good politician you are and I am sure you never suggested that people who have different views from you are a majority. That is an old political debating trick that everybody since kingdom come has used in politics. You set up your opponents as a minority and you tell about all those terrible things that the minority stands for, like calling this a repressive society. I think you are kind of putting me on because you really know this is a political speech, Senator.

Senator FOXG. Well, in my State I am a member of the minority party. We are outnumbered by the Democrats almost 4 to 1.

Mr. RAUH. I bet you don't admit that.

Senator FOXG. I admit it.

Mr. RAUH. I bet when you run for office you don't say your opponent is going to beat you 4 to 1.

Senator FOXG. Well, that is different. [Laughter.]

I don't agree with you, Mr. Rauh, that this speech is political. I think it is a speech that could be given by any professor, any American. I think this is a pro-American speech, not a pro-Republican speech or an anti-Democratic speech. But, of course, you have your opinion and I have mine.

Mr. RAUH. Would you permit me, sir, to read one sentence at the top of page 8?

Senator FOXG. Yes.

Mr. RAUH [reading]:

At the Federal level, the resources and the successes in this field continue to rise, and today there is more legal action against alleged civil rights violators than ever before.

Listen to that: "Today," that is in the heat of the campaign, September 1972, Gray is saying, "Today there is more legal action against alleged civil rights violators than ever before." I am not referring to the fact that the statement is an untruth; I am referring to the fact that it is obviously a political statement.

Senator FOXG. If you take that as a political statement you probably will take this on page 4 as a political statement:

Since World War II the taxpayers of this country have provided approximately \$130 billion in loans and outright grants to other nations. This has gone not just to our strongest and closest allies, but most especially to weaker nations most in need of it. We have given this aid literally until it hurt—hurt our balance of payments and our trade position with other countries.

But the critics who claim this is a selfish Nation do not talk much about that. What other country has found a means to send people of ability and dedication to help emerging nations around the world in their efforts to elevate their way of life, without asking anything whatsoever in return?

The critics who say we are crass and ungenerous people do not talk much about that.

What other people supports anywhere near the variety of charitable causes and contributes anywhere near the proportion of its resources for such causes? I refer to approximately \$20 billion per year in private contributions to health, welfare, educational, and religious institutions. And this does not include the millions of man-hours and woman-hours contributed in the form of personal skills and service to these causes by devoted individuals.

But the doom-sayers who call ours a decadent society do not talk much about that.

Here he is referring to what America has done in all these years from the Marshall Plan on. Democrats have been in power and Republicans have been in power. The Kennedy administration, the Johnson administration, have followed that course. I think it is a pro-American speech. I don't agree with you that this is a pro-Republican speech.

Mr. RAUW. Sir, if you go six lines further down from where you are reading, listen to this:

To those who claim that our national priorities are distorted away from the individual, I would point out that the Federal outlays for supporting and developing human resources such as those I have described continue to increase year after year, and that in the current fiscal year 45 percent of the Federal Budget is for human resources and only 32 percent for national defense.

The whole thing you read was a background to point out how much more the administration was doing this year than anybody had done before.

Senator FONG. In other words, this is a Nation that cares. This is what he is saying, this is a Nation that cares.

Mr. RAUW. If you want to say that the present administration cares the most, I respectfully suggest that is a debatable point, but anyway it is political.

Senator FONG. Well, Congress is controlled by the Democratic Party in the House and Senate. They pass the laws and they take the credit also. When he says that our country cares, it indicates our country has appropriated and contributed all this money. It is the Congress that appropriates. The President that signs the bill.

Mr. RAUW. My dear classmate, you are a good lawyer with a lousy case on this Butte speech. [Laughter.]

Senator FONG. Well, we differ on this speech but let us go on from there.

You say that Mr. Gray had no experience, law enforcement experience.

Mr. RAUW. Mr. Gray said that.

Senator FONG. Yes; he said that. Now he has 10 months of experience. Do you feel that is enough now?

Mr. RAUW. I might have a different view, sir, if Mr. Gray's 10 months of experience had been in law enforcement and he had kept out of politics. But I respectfully suggest that when he went around making speeches which I consider political—we disagree on that I recognize—when he got himself involved in doing things like compromising the FBI files, I would feel that his experience works against him. I don't consider the FBI directorship a kindergarten or that you ought to have an in-the-class training program. It seems to me that a man ought to have some experience before he comes in or else works his way up through the FBI. Strangely enough, Mr. Gray in the Navy might have been in the ONI or something else with law enforcement experience, but he wasn't. Mr. Gray never had any experience there. I thought his statement to this committee was kind of cute. He tried to make a virtue out of it. He said in effect, "I don't have any experience so I don't have any predispositions to know anything wrong." Well, with that kind of "experience," I think nobody would ever hold a job to which he had worked his way up, and the young lawyer just out of law school would be the first man in front of the Supreme Court. But life does not work that way.

Senator FONG. You know, Mr. Rauh, lawyers fit into almost any kind of profession if they are pretty good lawyers. Here is a man who has had experience in the Navy as a lawyer, who has been in the Justice Department as a lawyer. He has knowledge of the law. Is that a good qualification for his job?

Mr. RAUH. Well, it is not a bad philosophy, Senator, to suggest that you start at the top and learn from there. But it is not one that I thought our country generally accepted. I thought people got experience and then got the post after they had the experience rather than getting it this way.

Senator FONG. We are talking about today. We are talking about a confirmation today. We are talking 10 months after he was appointed. Here is a man who has had 10 months of experience. Would you say that is not sufficient experience?

Mr. RAUH. No; I would say something much stronger. What he has evidenced there is a partisan political aptitude rather than a law enforcement aptitude. I am not suggesting that someone might not, in 10 months, have garnered law enforcement experience. I am saying that Mr. Gray's talents were used otherwise.

Senator FONG. Well, Edgar Hoover was a clerk in the Government Printing Office. Then he became Assistant Attorney General for 4 or 5 years under Stone. Then he became FBI Director at the age of 29. He didn't have much experience when he went into the FBI.

Mr. RAUH. He had the whole experience of the FBI; he worked his way up from the bottom of what was then called the Bureau of Investigation. If I read the history books right, Hoover was in the Palmer "red raids." He was appointed in 1924, Senator Fong. He had already run the 1920 Palmer red raids. Now, you can say that that wasn't a very nice thing to have done, but as far as law enforcement experience is concerned, he was already in charge of the whole field force in 1920 and was in charge for 4 years.

I never thought I was going to be the defender of J. Edgar Hoover, but by God, he had experience when he went into the top job.

Senator FONG. When he became Director of the FBI at the age of 29?

Mr. RAUH. He had had 6 years of FBI experience. I think that is pretty good and he had risen from the bottom to the top, exactly what I have suggested might be done here. I don't say you have to take the FBI Director from the staff of the FBI but you ought to take him from the law enforcement field. There are plenty of chiefs of police around this country and there are other people in other areas of investigation and police work that could do this job without going to a politician. I say "politician" not in a derogatory sense, I consider myself one. I consider you, my friend, one. It seems to me that it is an honorable calling, but oil and water don't mix and politics and the FBI don't mix.

Senator FONG. Let us get to the Mardian case. Mardian refuses to talk. Do you hold that against the FBI?

Mr. RAUH. I hold it against Mr. Gray that he didn't think to point out to Mr. Mardian that you can talk to the FBI without the lawyer-client privilege barring you if you want to. Gray should have said: "There may be some questions you have, and, if you don't want to talk to us, just tell us, but you don't have a lawyer-client privilege."

Senator FONG. Isn't it a question for a court to decide whether there is a lawyer-client privilege?

Mr. RAUH. I think——

Senator FONG. Eventually, if that privilege is claimed?

Mr. RAUH. Oh, yes; but, sir, I don't think you or any lawyer would think there is total privilege. I admit if one of these people were his client, they couldn't ask about a confidential communication when the two of them were alone. That is what the privilege is.

But he said, "I can't talk to you at all," and everybody knows that that was no ground for not talking.

Senator FONG. But Mr. Mardian claimed it.

Mr. RAUH. That's right, sir.

Senator FONG. And, when he claimed it, Mr. Gray couldn't force him to talk.

Mr. RAUH. I think he could have forced him because Mr. Mardian, who wants to be respected in this country, is not going to refuse to talk to the FBI. People who want to be respected do not refuse to talk to the FBI. They think of some excuse for not talking other than just refusing. I don't know of anybody who just goes around refusing to talk to the FBI.

Senator FONG. But the fact is that he refused to talk to the FBI.

Mr. RAUH. But he gave a phony excuse.

Senator FONG. You don't hold that against Mr. Gray?

Mr. RAUH. I do because Mr. Gray should have exposed that phony excuse, and I think Mr. Mardian would have had to talk.

Senator FONG. Well, let us come to Dean. Do you think Dean should not have gotten the files?

Mr. RAUH. Sir?

Senator FONG. Do you think that Mr. Dean, Counsel to the President, should not have gotten the FBI files?

Mr. RAUH. I certainly think he should not have gotten the files. Mr. Dean had input into the Committee for the Reelection of the President. Mr. Dean was heavily involved in that committee. There is a statement in the Post yesterday from a man named Lumbard of how Dean was working with the committee. Of course, they shouldn't have given Mr. Dean the files. There is no possible excuse for having given the files to a man who is involved in some way with the co-conspirators. He turns up having made Liddy his guy in the committee. Now, Liddy has been convicted down there in the *Watergate* case. And here is Mr. Dean connected with him, he got him his job. To give Dean the files—what more can you do to compromise the files than to give them to someone who is in close contact with the person that they are about, and particularly to do so when three decent people in that committee wanted privacy and secrecy. To give Dean, who is connected with that committee, their files—why that was an outrage.

Senator FONG. I am correct, I think, that the testimony before this committee is that the files were given to the Attorney General, who is the boss of Mr. Gray. The Attorney General turned them over to Mr. Dean, who is Counsel to the President. Now do you think that Gray had a right to turn the files over to the Attorney General?

Mr. RAUH. It is my understanding that if they were turned over to the Attorney General, it was for transmission to Mr. Dean. I haven't

been here all the time. But having studied the press, and I have to base it on that, it is my understanding that the files went from Mr. Gray to Mr. Dean, and that he had intended they go to Mr. Dean. Whether they went through the Attorney General is not important. Mr. Gray had intended to give them to Mr. Dean and Mr. Gray has defended his giving them to Mr. Dean.

Senator FONG. Now, do you think the President, who is the overall boss, has the right to look at any of the FBI files?

Mr. RAUH. Yes; if the President had asked the FBI to make this investigation. But I said that I thought a serious question arose about whether there was any reason for a Dean investigation other than for the purpose of getting him access to the files. It is very hard to say about the President seeing the files. If the President had said to the FBI, "Make me an investigation of the White House staff on this thing and I want a report," that would be one thing.

That isn't what happened here. I would have said that the President had a right to do that. I would say the President would have had a right to say to the FBI, "I want the White House staff gone over and laundered completely on the Watergate case. Give me a report on that." That is one thing.

But to give the files to Mr. Dean who is up to his navel with the Committee to Reelect the President, to give them to Mr. Dean when that committee has got people working there who commit illegal acts, that was a compromising of the files.

Senator FONG. The President had an interest in this, didn't he? His people were being criticized.

Mr. RAUH. Oh, he had a real interest in that.

Senator FONG. Yes. So, he had a right to the files. That you don't deny?

Mr. RAUH. I tried to answer that. I don't know what you mean by "a right to the files."

Senator FONG. To look at the files.

Mr. RAUH. I don't think the President had a right to see the file of an employee of the committee who asked to go to the FBI and be interrogated secretly. I think the President did have a right to a report from the FBI of what they found out about the White House staff. But that is not what happened.

You see, you are trying to say, well, the President could have it and therefore his delegate could have it. That does not follow at all. You might as well say because the President could have had it, Liddy could have had it. What you are saying is that since the President could have it therefore Liddy's sponsor in the White House could have it. There are differences even in the White House.

Senator FONG. Yes; but Dean is Counsel to the President.

Mr. RAUH. What?

Mr. FONG. The President does not look at everything. He has to delegate his duties and he has to delegate certain functions. Here, he delegated it to Mr. Dean.

Mr. RAUH. And I raise this question: Didn't he delegate it to Mr. Dean for the purpose of granting Dean access to the files? The one person in the White House who should not have had them was Mr. Dean, after he had such a close connection with the Committee to

Reelect the President, the committee which was involved in the Watergate bugging.

Senator FONG. The fact is that Mr. Dean got them, why do you criticize Mr. Gray for this when Mr. Gray gave them to the Attorney General and the Attorney General sent them down to the White House?

Do you say that Mr. Gray should have prevented that? Should Gray have stopped Mr. Dean from looking at it? Should Gray have said to Mr. Dean, "You can't look at it," or said "Mr. President, you just can't give it to Mr. Dean." Is this what you say?

Mr. RAUH. It is my understanding that the testimony before this committee shows that Mr. Gray intended the material to go to Mr. Dean. He should not have done that. He knew Mr. Dean was tied up with the Committee to Re-elect the President and he should not in any way have given Mr. Dean access to those files. And I say that the most shocking thing of all was giving Dean the statements of the employees whose consciences were too much for them. They had been put through FBI interrogations with a lawyer there, so they couldn't tell the whole story. They then went to the FBI with the whole story and then, to their amazement, they find out everything had gotten back to the committee because the files went to the guy who was involved with the committee from the White House.

Senator FONG. I understand from the testimony of Mr. Gray that the President asked that Mr. Dean look at those files. I am not sure whether that is right, but my recollection is that the President asked that Mr. Dean look at the files. Now with that kind of an order, would you say that Mr. Gray could tell the President, "No, you shouldn't give Mr. Dean that right to look at them."

Mr. RAUH. I think you are proving my case. I think that what you are really proving is how much you need a nonpartisan FBI Director. You need an FBI Director whose feet are in concrete, who cannot be swayed by the partisan considerations of anybody.

I don't know what Dean's relationships with the President are. That is not within my ken. But I know Dean's relationships with the Committee to Re-elect the President and he was a man who should not have had this material, especially from employees of the Committee to Re-elect the President.

Senator FONG. We are talking about an agency which is under the Justice Department. The FBI collects facts and data for the Justice Department. It is the Justice Department that prosecutes, if they decide there is a case. The FBI is an investigative arm of the Government. The results of their investigation goes to the Justice Department. Now, do you say that this man here, Gray, should not send anything to anybody? This is what you are saying, aren't you?

Mr. RAUH. Just about, Senator. There are exceptions to every rule, and we have got, for example, the one good exception—the Committee to Investigate the Watergate, which has the right to see some of this material. But I would say there is one man who should not have had it, and that is Dean.

But let me tell you something else. I don't believe your theory and Gray's theory coincide.

Gray is not saying he was told to give the files to Dean by the Attorney General. Gray is saying he did it. In other words, I think you and Mr. Gray had better have a kind of a getting together.

Senator FONG. No. The testimony shows—

Mr. RAUH. So you get to the same point.

Senator FONG. The testimony shows he turned it over to the Justice Department and the Justice Department turned it over to Dean. There is no other evidence and there is no testimony to contradict that.

Mr. RAUH. But is it not Mr. Gray's testimony that he sent it over there to send to Mr. Dean? I think that if you are suggesting that Gray didn't want it to go to Dean, and that the Attorney General ordered him to give it to Dean, you would be disagreeing with Gray.

Senator FONG. I didn't say that.

Mr. RAUH. We don't have the case of the Attorney General making the decision for it to go to Mr. Dean. We have the case of Mr. Gray making the decision for it to go to Mr. Dean. That is a far different thing.

Senator FONG. Mr. Gray didn't make the decision. It was the President who decided who on his staff was to make an investigation. So it went to the Justice Department and the Attorney General sent it down to the White House.

Mr. RAUH. I don't know of any decision to the effect that the President directed Mr. Gray to give the files to Dean. If he did, I haven't heard that testimony.

Senator FONG. That is the testimony—the President wanted him to send it to Mr. Dean.

Mr. RAUH. As I say, I haven't been here but I read the press stories. The President set up Mr. Dean as a man to look over the White House activities and in that capacity Mr. Dean kept getting this material. There is not any suggestion that I ever heard in this hearing that the President told Mr. Gray, directly or indirectly, to turn this material over to Mr. Dean. I think that is really a suggestion you are making on a hypothetical basis.

I think that Mr. Gray's defense of himself is less protective, sir, if I may respectfully suggest this, than your defense of Mr. Gray. I think he admits he sent it to Mr. Dean.

Senator FONG. No; he admitted he sent it to the Attorney General.

Mr. RAUH. To send to Mr. Dean. I think the Attorney General was a letter drop.

Senator FONG. And, the Attorney General sent it over to him.

Thank you, Mr. Rauh.

Mr. RAUH. Well, you are always very nice, sir, and I hope when we get outside we can talk some more.

Senator FONG. Surely.

Senator HART. Thank you very much, Mr. Rauh.

It is my understanding that Professor Dorsen is obliged to meet an appointment back in New York later today and for that reason it is asked if he possibly could be heard before the lunch break.

It is my understanding that he will be unable to summarize his prepared statement.

Senator FONG. And his prepared statement will be received in full in the hearing?

Senator HART. Yes.

Professor Dorsen speaks to us this morning, as the chairman for the Committee for Public Justice. He is indeed welcome.

TESTIMONY OF NORMAN DORSEN, CHAIRMAN, COMMITTEE FOR PUBLIC JUSTICE, ACCOMPANIED BY LEON FRIEDMAN, EXECUTIVE DIRECTOR, COMMITTEE FOR PUBLIC JUSTICE, AND STEPHEN GILLERS

Mr. DORSEN. Thank you very much, Mr. Chairman, and Senator Fong, for allowing me to go on. I shall try to be very brief.

We do have a rather lengthy prepared statement which we will request be made a part of the record. The statement refers to specific instances and problems that we hope will draw your attention.

[The prepared statement referred to follows:]

STATEMENT BY NORMAN DORSEN, CHAIRMAN, COMMITTEE FOR PUBLIC JUSTICE AND LEON FRIEDMAN, DIRECTOR, COMMITTEE FOR PUBLIC JUSTICE

I welcome this opportunity to appear before the Senate Judiciary Committee to discuss the confirmation of L. Patrick Gray as Director of the FBI.

My name is Norman Dorsen. I am professor at New York University Law School and Chairman of the Committee for Public Justice.

On behalf of the Committee for Public Justice, I urge this Committee to take the opportunity of these hearings to examine the powers, role and structure of the Federal Bureau of Investigation as an institution. I noted that in appendix A of Mr. Gray's prepared statement for these hearings he lists the inquiries he set in motion on assuming the acting Directorship of the FBI. He does not tell us, however, the results of these inquiries today, nine months later, or his position on the important institutional questions they raise. The immediacy of these matters cannot be overemphasized and I hope to cover them briefly in my following remarks.

The Committee for Public Justice is an independent organization affiliated with the American Civil Liberties Union Foundation. It studies and is concerned with individual rights and civil liberties of American citizens. As part of its efforts at public education concerning these problems it held a conference on the FBI at Princeton University. This conference was attended by 50 experts on the FBI, including former FBI agents, ex-justice department officials, and many other writers and academic figures, of all points of view, who have made the FBI a special area of their interest. The conference examined a wide range of issues, such as the Bureau's history and responsibilities, its relations with other police forces, its performance in the areas of civil rights and organized crime, the collection and dissemination of personal and political information, and the use of electronic surveillance and informers. Papers from that conference, together with panel and other discussions, have recently been published in a book entitled *Investigating The FBI*, which was sent to each member of this Committee.

APPROPRIATE AREAS OF INQUIRY

Since its inception 65 years ago this June the FBI has never been the subject of a completed congressional investigation. In 1921, a subcommittee of the Senate Judiciary Committee questioned Attorney General Palmer and J. Edgar Hoover, then head of the Bureau's General Intelligence Division, about raids against American citizens and aliens the previous year. These raids had been the subject of a critical report signed by twelve prominent lawyers, including Felix Frankfurter, Roscoe Pound, and Zechariah Chafee. At the conclusion of the hearings, Senator Walsh wrote a report criticizing the Justice Department and the Bureau. Senator Sterling wrote a report exonerating both. Neither report was adopted by the full Committee. No attempt has since been made by any committee of Congress to thoroughly examine the Bureau or its role in the American legal system.

We believe that no one should be confirmed as Director of the FBI unless he gives satisfactory assurances to the Senate that he will take steps to end well-documented practices of the FBI that threaten First Amendment and other Constitutional rights of American citizens. These practices include the following:

(1) FBI infiltration and surveillance of unpopular or minority groups and individuals engaged in political, not criminal, activity;

(2) Interfering with, monitoring, spreading false rumors about, or photographing public demonstrations;

(3) Engaging in wiretapping or electronic bugging without a warrant for any purpose;

(4) Invasion of privacy by collection and dissemination of information;

(5) Inadequately investigating local police misconduct;

(6) Placing unnecessary restrictions on the rights of agents and other employees of the Bureau.

We are also concerned about public control of Bureau policies and practices. We will now discuss each of these issues.

I INFILTRATION OF GROUPS AND SURVEILLANCE OF MEMBERS

In 1924 Harlan Fiske Stone, then Attorney General and later Chief Justice of the United States, addressed himself to the problem of FBI infiltration of political groups. He said:

"The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with . . . such conduct as is forbidden by the laws of the United States. When a police system passes beyond this limit, it is dangerous to the proper administration of justice and to human liberty which it should be our first concern to cherish."

Mr. Gray himself said last week that the FBI has no jurisdiction to investigate any individual where there is no violation of federal law.

But substantial evidence exists that for many years the FBI has infiltrated private groups and public gatherings. The appearance or fact of widespread FBI infiltration of unpopular or minority groups for political purposes may frustrate the First Amendment rights of their members to association, petition and speech. The following are examples of "political" infiltration.

BLACK GROUPS

a. The Media, Penna., documents and *Investigating The FBI* contain a Hoover directive to infiltrate and watch "all black student unions" "organized to project the demands of black students" and to develop racial informants in the ghetto. The justification given was the need to be aware of "the potential for violence in each ghetto area." *

b. The Media documents and *Investigating The FBI* contain a directive to all agents to "ascertain among which informants are planning to enter college this fall and will be in a position to infiltrate black power groups on campuses." [QMBD]

c. According to former FBI agent Robert Wall (in *Investigating The FBI*) the alleged basis for the standard practice of infiltrating black groups is the "violent tendencies of militant, black extremists." The Media documents are in accord.

d. According to the Media documents and the book, the FBI infiltrated the National Black Economic Development Conference in Philadelphia and also monitored its bank account.

POLITICAL AND ANTIWAR GROUPS

e. According to *Investigating The FBI* and the Media documents, the planning of a 1969 conference on War Resisters was investigated "through established sources only" in order to determine the scope of the conference and whether it would "generate any anti-U.S. propaganda." [QMBD]

f. According to Mr. Wall, there was a heavy placement of informants in "all organizations likely to participate in any mass march or demonstration".

g. According to Mr. Wall, "there are hardly any limits on the Bureau's activities in compiling political information particularly about the new Left". Examples, from different sources, include the Institute for Policy Studies, communes, the April 1970 Earth Day demonstration, and a meeting of the Washington Peace Mobilization in the winter of 1969, where, according to Frank Donner, 9 of 32 participants were agents.

h. Mr. Donner related experiences of student informers who surfaced "despite cloudy threats of reprisal" and admitted lying about activities of others on campus.

*Where quoted material appears in both *Investigating The FBI* and Media documents, it is hereafter indicated by QMBD. Otherwise all unattributed references are to the FBI book based on the Committee's conference.

INVESTIGATION OF INDIVIDUALS

i. According to Mr. Wall, special agents were directed "to investigate all the leaders in all the local peace groups and to determine, among other things, the source of any money used to finance the movement. From there it was a simple step in the investigation of anyone connected to the peace movement in any way."

EXTENT OF INFILTRATION

j. Mr. Hoover had reported that in 1964, the last year for which he apparently gave a statistic, there were 150 non-communist groups infiltrated to determine the extent of communist influence.

k. An analysis of the Media documents shows that of those documents dealing with substantive intelligence, 40 per cent contained information from political surveillance.

l. During his three years investigating radical groups, Mr. Wall *never* found evidence which could lead to a conviction for criminal violence. Violence was the rationale given Mr. Wall for informant surveillance and infiltration of these groups.

m. According to Mr. Wall, the mere use of the caption "Radical Matter" is sufficient to justify opening a file on any black group or individual.

Mr. Gray has testified that on taking office he ordered a detailed analysis and justification for FBI policies with regard to the investigation of individuals where there was no specific violation of federal law. But he did not tell this Committee current FBI policies in this area, the result of his inquiry or his own position on this matter.

Accordingly, Mr. Gray must be questioned further by this Committee to see whether such practices are continuing. He should inform this Committee of the standards used to infiltrate and conduct surveillance of groups or individuals engaging in political, not criminal activities.

The Committee for Public Justice believes that the FBI must confine itself to the enforcement of federal criminal law. Controversial practices such as infiltration and surveillance of groups and individuals must be controlled by Fourth Amendment probable cause standards. Insofar as the Bureau has investigative or intelligence responsibilities outside this narrow area, these should be strictly defined by Congress after full debate. The Committee should not recommend confirmation of Mr. Gray unless he assures it that the practices described above will not continue and that proper institutional safeguards will be established to prevent their recurrence.

II. POLITICAL HARASSMENT

There is substantial evidence that the Bureau has engaged in activity other than infiltration of groups which appears unrelated to legitimate criminal investigation and which serves to harass political groups engaged in protected First Amendment activities.

USE OF THE PRESS FOR POLITICAL PURPOSES

According to former agent Robert Wall, the following procedures of the Bureau were part of its "Cointelpro-New Left" program:

a. "A frequent tactic was to leak stories to the press and television shortly before any mass march or rally. This was easy enough to do. Agents in our offices would write often fanciful press releases warning that violence was expected on the day of the rally, or that the organizers of the march were in contact with Hanoi, or that some known communists were active in organizing the march. Our superiors in the Internal Security Division at the FBI headquarters would then pass on the information to conservative newspapers, which published it immediately. The purpose of such stories was not only to influence the general public but to scare away those whose commitment was weak and thereby reduce the number of persons who might otherwise attend."

b. Another purpose of the program was to create dissension among various new Left groups.

c. Agents would also try to confuse peace demonstrators by distributing flyers with misleading information.

OTHER EXAMPLES

d. According to the Media documents and the book, it is a Bureau policy to create the appearance of "an FBI agent behind every mailbox." [QMBD]

e. According to Mr. Wall, in early 1969, the Bureau gave the Internal Revenue Service the names of "known militants and activists" for tax investigation.

f. The television newspaperman, Daniel Schorr, found himself the subject of an FBI investigation for a government job he did not know he was being considered for.

In this area, the Senate should assure itself that the nominee recognizes that the Bureau should be politically neutral and has no responsibility to influence the course of political events.

Mr. Gray should be questioned further by this Committee to see whether the practices are continuing. The Senate should assure itself that proper institutional safeguards will be established to prevent their recurrence.

III. ELECTRONIC SURVEILLANCE

In *United States v. United States District Court* (1972), the Supreme Court ruled that information from warrantless government wiretaps would not be admitted in court and that this rule applied even in national security cases. Until this case, the Bureau had been using the authority in the 1968 Crime Act to wiretap mainly in gambling and drug cases. It had not been using the Act as the basis for "national security" taps, which it conducted without warrant, although it was the national security area that had been cited in requests for wiretap legislation before 1968.

The Bureau may still use warrantless wiretaps and electronic listening devices in national security cases where it does not intend to offer such information in court. The Act prohibits national security wiretaps without judicial warrant *whether or not* the information is going to be used in a criminal proceeding.

The following evidence indicates the need to inquire very closely into the Bureau practice with respect to electronic wiretapping.

(a) Victor Navasky and Nathan Lewin report in their article in *Investigating The FBI* that FBI figures do not reflect the FBI's access to non-federal wiretaps and bugs. But as one recently retired Justice Department official told them, not only do agents have access to state and local electronic eavesdropping, but:

"When I was there agents routinely inspired bugs and taps by others. They'd go to state and local police agencies and say, look, do us a favor. The local guys would get the information and there'd be nothing in the FBI files to indicate where it came from. It's a loophole, like the tax laws. They'd use the loophole."

(b) FBI reports have always been issued in terms of wiretaps, "in Bureau cases". However, there may be at least three other areas in which the Bureau is involved in wiretapping which it has not disclosed. These include long-term embassy taps which were put on in the first place—some as long ago as during World War II—not at the instigation of the FBI, but of other agencies, such as the State Department, but which the FBI services. They also include taps requested by foreign intelligence agencies, such as the CIA, which are not permitted to tap domestically, yet have domestic intelligence needs. The FBI may handle these taps and absorb the information received. Finally, the FBI may be intercepting teletype messages which it does not consider a wiretap and therefore which it does not discuss in its periodic reports.

(c) Messrs. Navasky and Lewin also report that there may be unauthorized taps and bugs. They write,

"Former agent [William W.] Turner is quite insistent that the "suicide tap"—wherein an agent, knowing that if he is caught he will be dismissed, nevertheless, under the pressure to produce, conducts illegal, unauthorized surveillance on an ad hoc basis. Most authorities on the FBI find stories of hit-and-run taps difficult to credit, since "Mr. Hoover runs a tight ship," and "Why should an agent risk it?" Nevertheless, Turner, who attended the FBI's sound school in Washington, D.C., and monitored Bureau taps for a year and a half in the Bay area, points out, "All I know is that I did it and the term "suicide tap" is a common term. You hear it whenever agents gather."

In view of these facts, Mr. Gray should be questioned as to the extent of electronic surveillance carried on today by the Bureau with or without court approval and whether it is done by the Bureau on its own behalf or for others. He should also be questioned about the safeguards established to prevent unauthorized "suicide" taps. He should also be questioned about procedures the Bureau has for assuring itself that information obtained from other police agencies is not the result of illegal electronic surveillance or wiretaps. He should also be asked whether the Bureau maintains that it has any legal basis to conduct electronic surveillance or wiretapping other than the 1968 Crime Act.

The Committee for Public Justice believes that the FBI should engage in no electronic surveillance of American citizens unless it complies with the procedures of the 1968 Crime Act, including the requirement for prior judicial approval. Furthermore the Bureau should take steps to assure itself that these procedures are not compromised by "suicide" taps or the use of other agencies.

IV. INVASION OF PRIVACY BY COLLECTION AND DISSEMINATION OF INFORMATION

The Bureau receives 29,000 sets of fingerprints daily: 13,000 are from law enforcement agencies (1970 figures). Mr. Gray himself said that there are over 60 million fingerprints on file and that the Bureau keeps millions of other personal files on American citizens. This raises questions about the control, accuracy, use of, and access to this sensitive material. The problem is aggravated by the fact that the Bureau controls the National Computer Information Center.

According to Mr. Gray and special agent Beverly Ponder*, the Bureau has no control over the re-dissemination by recipient agencies of information in its files. Although a 1965 Hoover memorandum makes denial of access to Bureau files the penalty for "unofficial" use, only four agencies, all law enforcement, have been barred in the last ten years. The Bureau does not define "official use."

According to Aryeh Neier's article in *Investigating The FBI*, of the seven to eight thousand public agencies that received Bureau information in 1970, less than half were law enforcement agencies.

In addition to the lack of control, the use of FBI information raises other serious problems. According to Professor Thomas Emerson's chapter in the FBI book, FBI files are available to loyalty-security investigators, state legislative committees and Congressional committees. Emerson also cited evidence that private collections are also fed by FBI files and that Brownell, Truman and Hoover have used FBI information for improper purposes. Examples of local use are given by Neier.

Despite Mr. Gray's expressed concern about this problem, we are not satisfied that the Bureau makes sufficient efforts to learn final disposition of a case following an arrest. And the Bureau does not distinguish between juvenile and adult arrests despite state laws requiring confidentiality of juvenile records.

In contrast to the Bureau's procedures allowing dissemination of the mere fact of arrest, civil service forms request only conviction information.

Neier demonstrates that the effect of information dissemination on the lives of individuals whose names are in FBI files is often to trap them in a "record prison" so that it is harder for them to get work, credit, bonded, etc.

Special agent Ponder said there is no procedure for challenging untrue information, or removing outdated material. We know that the FBI files contain scurrilous material from anonymous letters, unfounded rumors and vicious gossip. If, as Mr. Gray told this Committee, files on members of Congress contain "rot" that he did not want even an archivist to see, we can well imagine what files on ordinary citizens contain. Yet we know of no effort taken by the FBI to purge this material or to strictly limit its dissemination.

Mr. Gray acknowledged that the FBI has purged inactive arrest records of individuals age 80 and older from the fingerprint files. This is an entirely unsatisfactory response to the problem.

Mr. Gray should be asked who are the recipients of FBI arrest and conviction records and whether they are ever private agencies or organizations or public agencies other than law enforcement agencies. He should be asked what procedures the Bureau has for preventing local and other law enforcement agencies from further dissemination of information obtained from the Bureau. He should be asked what sanctions the Bureau uses against misuse of such information and how effective he has found them to be. Finally, he should be asked what procedures exist for challenging the contents of a citizen's FBI file where (a)

*This information was given in a deposition taken in *Menard v. Mitchell*, 328, F. Supp 718 (D.D.C. 1971).

the originating source for the information in the file is not the Justice Department and (b) where it is the Justice Department.

We are also disturbed by Mr. Gray's offer to share the FBI's raw Watergate files with the entire Senate. Apparently Mr. Gray believes that the way to control the dissemination of uncorroborated data is to widen the circle of people eligible to receive the information. We think Mr. Gray has adopted the wrong approach and the Senate should reject the blanket release of this material even to Congress. We suggest instead a small bipartisan oversight committee with procedures to protect individual privacy.

V. INVESTIGATIONS OF LOCAL POLICE MISCONDUCT

The Committee for Public Justice is concerned about the reliability of the Bureau's investigations of complaints against local police. The most recent vivid example of the dangers of too close a relationship between Bureau agents and local police came during the investigation of the Orangeburg State College shootings. The FBI states, among other things, that the agent in charge of the investigation shared a hotel room with the state police official he was supposed to be investigating. Two of the three agents who witnessed the shootings claimed they were not present but the Justice Department later learned otherwise.

At one time the complaints about the FBI in the civil rights area centered on its failure to adequately investigate complaints by Southern blacks and Spanish surnamed Americans. The civil rights movement has shifted in the last few years into political and economic *organization*—giving rise to some of the infiltration problems discussed above. But although the civil rights issues are less prominent, the problem of local police invasion of the civil rights of minority groups and political minorities remains.

The reduced visibility of the civil rights movement makes it all the more important that the FBI remain energetic and neutral in investigating police brutality and similar local allegations. A frequent charge in this regard has been that the Bureau uses local agents, who are friendly with local police, to investigate citizen complaints against these same local police.

Mr. Gray has stated that it is now FBI practice to assign, *in so far as possible*, senior agents who do not have day to day dealings with the local police to conduct investigations of allegations of illegal conduct on the part of police.

Mr. Gray should be asked what "in so far as possible" means and what happens when it is not possible to assign non local agents to investigate such allegations. What other safeguards are imposed to insure that citizen's complaints are given adequate attention.

VI. RIGHTS OF AGENTS AND EMPLOYEES OF THE BUREAU

FBI employees are not covered by the Civil Service Act. The history of the FBI is full of examples of agents being punished for petty violations of rules (e.g. being five pounds overweight, having sideburns beyond the maximum length, removing a suit jacket while on duty, having a personal item like an airline brochure in one's desk drawer). Former special agent John Shaw was forced out after he wrote a letter constructively critical of the Bureau to a professor at the John Jay College of Criminal Justice. Often the punishment is a transfer to a less desirable location. Or special agents may be suspended or dismissed. Because there is no Civil Service protection for this group of federal employees they are literally at the whim of the Director.

Mr. Gray has made commendable changes in personnel policy. But much remains to be done. Mr. Gray should be asked how he feels about criticism of Bureau practices from individual agents—either to Bureau supervisors or other professional law enforcement officials. He should be asked what avenues the Bureau has for allowing constructive agent criticism and whether agents are able to criticize Bureau practices without fear of reprisal. If this is the policy of the Bureau, what efforts are made to make agents aware of it?

The Committee for Public Justice believes that in order for the Bureau to be an effective organization, internal criticism should be encouraged, not punished. The Committee sees no reason why special agents and other employees of the Bureau should not have civil service protection.

VII. PUBLIC ACCOUNTABILITY AND CONTROL

All of the problems that we have raised point to the importance of establishing adequate controls over the FBI for the future, an issue which Mr. Gray has discussed. In the past such control has not existed. In his lengthy letter, reprinted in the appendix of *Investigating The FBI*, Mr. Hoover argued that the Justice Department, U.S. Attorneys, Judges, Congress and other bodies already exercise sufficient control over the Bureau. But U.S. Attorneys and Judges can only review matters that come before them. There is much the FBI does that is never seen by a court. The Justice Department, as Victor Navasky shows in the FBI book, has allowed the Bureau inordinate independence. And, as we mentioned above, the last Congressional attempt to look into the Bureau occurred in 1921.

Congressional control through the budget process, effective with other agencies, has been lacking in the case of the FBI: Mr. Hoover had always received his requested appropriation, except twice when he received more than he asked for. Furthermore, the FBI budget is, except for a few items, appropriated in a lump sum, to be spent as the Director chooses, though most other agencies have detailed line budgets.

Public control should come in two ways. First, there should be an assertion of executive and legislative controls, including budgetary ones. Second, Professor Emerson has suggested two new institutions—a Board of Overseers and an Ombudsman—to give private citizens a say in Bureau policy-making and redress against individual abuses or denials of rights.

Mr. Gray has offered to work with the Judiciary Committee to develop a system of Congressional control over the Bureau's policies and operations. That offer should be accepted. At the very least this Committee or another appropriate Committee of Congress should review FBI procedures and activities yearly and a select bipartisan group of Congressmen should be responsible for on-going oversight.

Mr. Gray should be asked whether he believes that the FBI is subject to adequate controls within the Justice Department?

What does he believe these controls are and how does he believe they may be improved. He should also be asked whether he thinks there is a problem presented by the fact that the Attorney General and the FBI Director have political loyalty to the same President. He should be asked whether the FBI should continue to have a lump sum rather than a line budget and what is the justification for this arrangement.

QUALIFICATIONS OF THE FBI DIRECTOR

The Director of the FBI should have the personal qualifications and professional skills we expect of the men and women who occupy the highest offices in our land. This position is too important, its powers too great and its effect on American liberties too vast to compromise on anyone less than the best.

The FBI Director should be thoroughly acquainted with law enforcement techniques and principles. He serves as the model for hundreds of thousands of law enforcement personnel throughout the nation. He must be a model they can respect and emulate. The Bureau itself cannot be expected to surpass the qualities of its Director.

The Director of the FBI must have a commitment to professional responsibility that transcends loyalty to any political point of view or individual, even the individual responsible for his appointment. Only then can he do his job free from political interference.

The FBI Director must be fiercely independent and non-partisan. He should be capable of trust from persons of all political viewpoints.

The Director's integrity and commitment to truth should be beyond question. He should appreciate not only the need to avoid the political arena but the need to avoid the appearance that he has any political obligations in conflict with his law enforcement responsibility.

The Director of the FBI must have a strong allegiance to civil liberties and civil rights of Americans because he, as much as any elected or appointed official, has the power to affect these liberties and rights. And this commitment should not be one he adopts at the time of his appointment, but one that has been reflected through his entire professional career.

The Director of the FBI must understand and respect the limits of his own power because it is in the nature of the position that often he will have only his own self-restraint to rely on in carrying out his duties.

Needless to say, there are few individuals who have all or most of the qualities listed here. That should not surprise us. The Director of the FBI is an extraordinary position. An extraordinary person is required to fill it. The fact that Supreme Court Justice Byron White was suggested for the position is an indication of the calibre of the individual the post requires. The American people should settle for nothing less than excellence. The Judiciary Committee must carefully consider whether the current nominee meets these standards of excellence.

Mr. DORSEN. I am a professor of law at New York University and I am speaking here today as chairman of the committee for public justice, which is an independent organization affiliated with the American Civil Liberties Union Foundation. The committee is an organization of about 120 prominent citizens that is concerned about and conducts studies relating to individual rights and civil liberties.

The most important aspect of our testimony flows from the fact that we were the sponsors of the Princeton conference on the FBI that was held about a year and a half ago that culminated in the book "Investigating the FBI" that was just published, edited by Pat Watters and Stephen Gillers, who is to my right. To my left is Mr. Leon Friedman, a New York lawyer, who is executive director of the committee for public justice.

We followed up the Princeton conference with correspondence and meetings with Mr. Gray. The two cochairmen of the conference, aside from myself, were Prof. Duane Lockard, chairman of the politics department at Princeton, and Dean Burke Marshall, formerly Assistant Attorney General for Civil Rights.

Mr. Lockard, Mr. Marshall, and I met with Mr. Gray at some length during the summer. We raised a number of points with him of concern to us, and we then wrote him a letter, on July 18, 1972, specifying our concerns. He replied on August 4, 1972, and I would request permission to put these materials into the record.

Senator HART. Without objection.

[The letters referred to follow:]

COMMITTEE FOR PUBLIC JUSTICE.
New York, N.Y., July 18, 1972.

HON. L. PATRICK GRAY,
*Acting Director, Federal Bureau of Investigation, Department of Justice,
Washington, D.C.*

DEAR MR. GRAY: Duane Lockard, Burke Marshall and I were pleased to meet with you on June 27. We think it was a constructive session and were glad to have an opportunity to express our views on many of the matters that trouble us and other members of the Committee for Public Justice regarding the operations of the Bureau. We are encouraged that you share our interest in further meetings.

For the present, it may be helpful if we briefly summarize here our principal concerns and the subjects on which we would appreciate your reaction, either by clarifying Bureau policy or by providing additional information.

1. *Political Investigations.* Perhaps our deepest concern is the appearance or fact of the Bureau's infiltration or surveillance of unpopular or minority groups. Such activity, as you know, tends to frustrate first amendment rights of their members to association, petition and speech. We were pleased that you recognized this as a problem. We would welcome a statement from you that the Bureau does not intend in the future to conduct political surveillance where there is not probable cause to believe that a crime has been, is being, or is imminently about to be, committed. We also will be interested in your eventual conclusions on the question of separating the conventional law enforcement activities of the Bureau from the counter-espionage work, the practice in almost all other Western Democracies.

2. *Bureau Files.* Following up Mr. Marshall's suggestion at the meeting, we think it would be desirable if you could publicly clarify your earlier comments regarding "secret" files. On reflection we are still uncertain about what your

comments at our meeting signified with respect to these files. In our judgment this subject is a source of apprehension throughout the country, and therefore should be given a high priority.

3. *Control Over Data.* The widespread dissemination of unverified data to state and local units, including private organizations and public bodies not charged with law enforcement responsibilities, presents a grave problem of inaccurate labelling and large-scale invasions of personal privacy. As we understand it from our discussion, there is no real control over the accuracy of the input or the use of material by the receiving agencies. We were gratified by your recognition of the various aspects of this problem, and we would like to learn from you the degree to which there is such uncontrolled dissemination of raw data and your plans for remedial action.

4. *Arrest Records.* A particularly poignant aspect of the unwarranted release of information is the practice of disseminating data concerning arrests which did not result in conviction. The harm to the people concerned is obvious, particularly to juveniles, whose entire futures could be jeopardized. In addition, when innocent persons are barred from employment or licenses, they can be driven in the direction of crime—exactly the opposite of what is intended or desirable. We will appreciate your views on this matter, including your reaction to the Ervin Amendment now pending in the Congress that would be a first step in dealing with the arrest record problem.

5. *Relations with Local Police.* We are glad that you intend to assign senior, non-legal agents to the investigation of allegations of police brutality to assure that citizen complaints will receive and be seen to receive fair and full attention from the Bureau. We think this would be a major step forward for the Bureau's reputation and for the opportunity of citizens to receive a fair investigation in a most sensitive area.

6. *Civil Rights.* We were pleased to learn of your intention to institute an affirmative action program to assure the hiring of non-whites. We recognize the difficulty of this task, and that great effort and resourcefulness will be necessary to achieve the goal. We hope you will also take steps to increase the training agents receive in the investigation of violations of law related to civil rights and discrimination. As we all agreed at our meeting, this is one of the most serious problems confronting us all at present.

7. *Reports.* Although the Bureau has provided annual reports for many years, many observers have found them insufficiently informative. There have also been questions raised about the statistical methods used. We think the country needs a full analysis of Bureau priorities and activities, and we therefore hope that you will give some attention to the presentation of fuller reports to the public.

8. *Citizen Advisory Panel.* We reiterate our support for the appointment of a responsible group of persons, representing a cross-section of the community, to advise on matters affecting the Bureau. Particularly in view of the Bureau's somewhat cloistered history, this would be widely seen as evidence of your intention to introduce national participation in the work of your sensitive agency, or as you recently put it, "to open the window a little."

We look forward to hearing from you on all these matters, and to further meetings with you when they can be helpful. We think that it would be mutually beneficial if such meetings involved a broader group in order to enable us to provide and you to receive a range of views concerning the important issues you and your colleagues will be facing in the coming months.

In addition, toward the end of our meeting you said there were factual errors in the book on the Bureau that we will be publishing based on the October conference in Princeton. It is not too late for changes to be made, and we therefore would be pleased to receive from you or your staff a list of any factual errors in the manuscript.

Sincerely,

NORMAN DORSEN.

U. S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D. C., August 4, 1972.

Mr. NORMAN DORSEN,
Chairman, Executive Council, Committee for Public Justice, 23 West 9th St.,
New York, N. Y.

DEAR MR. DORSEN: Thank you for your letter of July 18. Your comments are of interest and I am considering them in the course of my continuing learning process.

Rather than to respond now to your comments, I will endeavor to do so at a future meeting in our continuing dialogue.

I would, however, like to correct one apparent misunderstanding with regard to the topic you titled "Relations with local police." I said that it is and has been FBI practice to assign, insofar as possible, senior Agents who do not have day to day dealings with the local police to conduct investigations of allegations of illegal conduct on the part of police.

I look forward to continuing our discussion, and will give careful consideration to your suggestion that our meetings should involve a broader group of people.

Sincerely yours,

L. PATRICK GRAY III,
Acting Director.

Mr. DORSEN. I should say in connection with the Princeton Conference, before we get to some of the points that we would like to stress here, we understand Mr. Gray testified before this committee that a speech that he made in Cleveland before the last election was designed to be a response to some of the points that we raised at the Conference, and that I raised with him on behalf of Marshall, Lockard and myself in my correspondence. We have here a memorandum dated June 27, 1972, from T. E. Bishop to Mr. Felt of the FBI staff, subject: "The City Club, Cleveland, Ohio, Request for Appearance of Acting Director Gray, August 11, 1972." And Mr. Bishop in this memorandum suggests the kind of things that might be the subject of Mr. Gray's talk and the fact that Mr. Gray was in fact invited by the City Club.

Mr. Gray wrote on the bottom of this memorandum in his own hand as follows: "Conceptually let's try a speech responding factually to criticisms of the Princeton Conference without identifying. Let's be positive."

We have examined the Cleveland speech, which I understand was suggested to have been a political speech. We are not here to say whether or not we think it was a political speech, but we are here to say we have examined this talk, and it does not respond to the points that we raised with Mr. Gray. It is not a talk that responds to the civil libertarian concerns that animate the Committee for Public Justice.

With respect, we feel that the main issue before this committee is not Mr. Gray. We think the main issue before this committee is the Federal Bureau of Investigation and we also say, with respect, that despite the forceful questioning that many of the Senators have engaged in with Mr. Gray, that there has been inadequate attention paid during these hearings to the problem, to the central problem, facing the American people.

The FBI over a period of many years, as witnesses have testified, has done a fine job in certain instances in law enforcement but it has also done a number of other things that seriously threaten individual rights in this country, and in our opinion we think this committee should give much more attention to these questions than it has so far.

I might say in passing we were very pleased this morning to read in the newspaper that President Nixon agreed with the American Civil Liberties Union that certain types of information should be kept confidential. We hope that the President, his staff, and this committee will be consistent with that philosophy, and take pains to examine quite closely the various problems involving civil liberties and the Bill of Rights that this nomination presents.

Our second main concern is public control of the Bureau. The real difficulty that the stewardship of Mr. Hoover presented, even apart from the fact that many people felt that he was not as sensitive to

individual liberties as he might have been, is that the Congress of the United States did not fulfill its responsibility to oversee, to observe, to get information, to control on behalf of the American people, one of the most important institutions in American life.

Virtually every problem with the FBI that we have identified in our prepared statement can be traced to the fact that there has been insufficient control through the budgetary process, through the acquisition of information by Congress, and by other means.

Whether or not Mr. Gray is confirmed, there will be a new Director of the FBI, and we hope that this committee and other committees of Congress will not repeat the errors of the past, and will investigate boldly and decisively some of the matters that are of concern to us and we believe to a large number of Americans.

Our position here, to be quite explicit, is we think that nobody should be confirmed as Director of the FBI—this includes Mr. Gray, and it includes anyone else who might have been or might be nominated for the position—unless he gives satisfactory assurances to the Senate that he will take steps to end well-documented practices of the Bureau that threaten first amendment and other constitutional rights of American citizens.

These practices include the following:

1. FBI infiltration in its surveillance of unpopular or minority groups and individuals engaged in political and not criminal activity. I might say that the testimony this morning by Congressman Koch underscores this point.

2. Interfering with, monitoring, spreading false rumors about or photographing public demonstrations.

3. Engaging in wiretapping or electronic bugging without a warrant for any purpose.

4. Invasion of privacy by the collection and dissemination of information about individuals.

5. Inadequately investigating local police misconduct.

6. Placing unnecessary restrictions on the rights of agents and other employees of the Bureau.

Each one of these six themes is developed at some length in our prepared statement. Each one of them is documented, not by generalities, not by expressions of political wishful thinking, but by concrete testimony that took place at the Princeton Conference and in other reliable sources. We, therefore, respectfully suggest to this committee that Mr. Gray should be recalled and asked explicitly what his policies are with regard to each one of these matters.

He should not be confirmed nor should anyone be confirmed unless he is prepared to give this committee, and the Senate as a whole, and the American people, assurances about each of these matters. This should be done forthwith.

The political investigations have already been brought to the committee's attention. They involve infiltrating political and antiwar groups, groups of black Americans, and others. The extent of it is vast. It is not at all trivial. We are not a political organization, we are not here to testify on a political basis. I believe, in fact I assert, that we would be presenting the same testimony no matter which party was making the nomination, no matter who the nominee was, whether he was a Republican, a Democrat, or an Independent. There are certain

issues in this country that transcend politics. One of them I like to think is the Bill of Rights and the problems that every country throughout the world is grappling with regarding liberty.

Apart from political infiltration, there is the use of the press for political purposes that we document through the testimony of a former FBI agent, Robert Wall. Many examples of harassment, many examples of taking steps to undercut political views that do not appeal to the people who were making the decision.

Electronic surveillance, despite the U.S. Supreme Court's decision a year ago, is far from ended as a problem in this country. The evidence is that there is much electronic eavesdropping and wiretapping that has not yet been subjected to regulation. This is documented in our prepared statement.

Invasion of privacy is a problem that I am sure everyone in this room and everyone in a position of authority in this Government can sympathize with. People who are barred from jobs, blacklisted on the basis of arrest records, even though they were guilty of nothing, convicted of nothing, and found by the courts or the district attorneys to be innocent people. There are thousands of people walking the streets of this country who are unable to acquire gainful employment because the fact they were once "arrested" has been disseminated to thousands of law enforcement groups and employers. This is documented in our book and is discussed in our prepared statement.

Next is local police misconduct. Who has lived through the decade of the 1960's and not seen the kind of tensions that investigations of civil rights groups or right-wing groups have caused? I think the least that one can do in this area is to try to see to it that the investigation by the FBI is conducted by people who have no individual relationship to the events or people that they are investigating. There are, unfortunately, examples which we refer to where this has not been the case.

Mr. Gray has stated that it is now FBI practice to assign, "insofar as possible," senior agents who do not have day-to-day dealings with local police to conduct investigations. What does "insofar as possible" mean? I respectfully suggest that Mr. Gray be recalled and asked what that means. This is not a minor matter. People are deserving of an impartial investigation.

We will not say more than we have already in the testimony about the right of agents and employees of the Bureau, but I emphasize that the problem of control, which I referred to already, is of crucial importance. There must be an assertion of executive and legislative controls, including control over the budgetary process. Mr. Hoover always got the amount of money that he requested, except on two occasions, and on those he was given more money than he asked for. There are not many people in positions of executive authority in this Government who have a comparable record.

The second type of control is one that has been suggested by Professor Thomas Emerson of Yale Law School, that we ought to have a board of overseers or an ombudsman to give private citizens a say in Bureau policymaking. This proposal is in response to the fact, as Mr. Gray has testified, that no other institution in American Government has the admiration of as many people as has the FBI, and no institution is as feared by the American people. The FBI moves, to

paraphrase Mr. Gray's language, "thoroughly and completely into the life of Americans." I will reiterate here, because there are political overtones to this nomination hearing, that we are not speaking about politics, we are not speaking of Republicans or Democrats or blacks or whites or war protesters or anti-war protesters. We are speaking about the problem of preserving the free institutions of this country.

When one steps back a bit and thinks about the few words I have said and the testimony that you have had from others, one might say, "Well, who is fit to be the Director of the FBI? What kind of person is it? Is there anyone who measures up?"

Our position is very simple: That the qualifications for this job should be those that are equivalent to the highest posts in the land, a Justice of the U.S. Supreme Court, the top advisers to the President. He should be thoroughly acquainted with law enforcement techniques and principles, he should be thoroughly acquainted with the police professionalism that is necessary to lead an organization of this kind. Only if he is a person trained and experienced in this way can he do his job free from political influence.

Needless to say, the Director must be fiercely independent and non-partisan. I will not add what I think is obvious, that he also should be devoted to civil liberties and civil rights because I hope that everyone here would agree to that.

The Director of the FBI is in an extraordinary position, and an extraordinary person is required to fill it. The fact that Supreme Court Justice Byron White was suggested for the position is an indication of the caliber of the man or woman that the post requires, and the American people should settle for nothing less than excellence.

I will close by saying this: I have tried, because of the exigencies of time, to summarize and merely allude to the points that have been made in the book and in our prepared statement. I hope that when this committee meets in executive session, when it stops to think where it is at, where the people are at, and what this problem means for the future of this country, that they will recall Mr. Gray, that they will begin to ask Mr. Gray more questions, more pressing questions, on some of these matters.

Let me give one example. Mr. Gray said, in response to an inquiry about investigations of political activity, that now the Bureau investigates or infiltrates only groups that advocate violence or engage in violence.

In our judgment that is an insufficient response. What does "advocate violence" mean? The Supreme Court has many times drawn distinctions between types of advocacy. One is the theoretical kind of advocacy that in many cases the Supreme Court said is perfectly lawful. But even apart from that, which may appear to the nonlawyers as perhaps too much of a legal point, what are the examples of organizations that are infiltrated? What are they exactly?

Perhaps this is information that would have to be given to you in executive session, but I should think you would be very interested to know and see what criteria are being used. I say to the people here who may be sympathetic to Mr. Gray for one reason or another, if one type of organization can be investigated and infiltrated today, another type of organization can be investigated and infiltrated tomorrow.

One of the greatest things about the late Justice Hugo Black was that he was not a person for civil liberties for one side or the other but

he saw before most of us that respect for the Constitution and Bill of Rights has two sides to it. While one might be happy to see the other fellow's rights denied, situations change. From my reading of American history and the teaching of constitutional law for 12 years, I am as sure as that we sit here today that some of the partisans of Mr. Gray or of any other nominee may one day feel the lash of inquiries, investigations, and infiltrations that all of a sudden will appear to them as being unconstitutional and unconscionable.

I make no aspersions about Mr. Gray as an individual. We had a very pleasant visit with him, but we are not dealing here with an individual matter. We are dealing here with some of the most basic principles that underlie our Government and our Constitution. I urge this committee with all the force I can, not to look at this in a partisan way, not to look at this as a Democratic or a Republican appointment, but to look down the road.

I would like to end on this note. If infiltration, if violations of the Bill of Rights, can take place by one side, I promise you that they will take place by the other—all to the everlasting regret of all of us concerned with the preservation of our historic liberties.

Thank you very much.

Senator HART. Thank you very much, Mr. Dorsen.

As you summarized it, I was leafing through your prepared statement. I will say that you described it correctly as containing specifics.

I should explain that it was and is the intention of at least some of us on the committee to ask questions of Mr. Gray that bear on the structure of the Bureau. I think that was indicated to him the first day he was here. A continuity then began to develop in questions in regard to specific events which have occurred during his brief incumbency and it was thought generally wise to allow that to go forward, and to delay until his later appearance the basic inquiry such as you suggest the committee should carry out and which we will.

Mr. DORSEN. Thank you.

Senator HART. Senator Fong.

Senator FONG. Thank you, Mr. Dorsen, for your discourse on the scope and the breadth of the things which we should look into in these hearings as to what the FBI should be doing and should not be doing. I promise you that this committee will give that very careful consideration.

Mr. DORSEN. I am grateful to you, and especially for allowing me to testify at the time I have.

Senator FONG. This committee, the members of this committee are concerned with the same things as you are.

Mr. DORSEN. Thank you very much.

Senator HART. Thank you.

We will recess now to resume at 2 o'clock.

[Whereupon, at 1 p.m., the committee recessed until 2 p.m. the same day.]

AFTERNOON SESSION

Senator HART. The committee will be in order.

Our opening witnesses for this afternoon are Mr. Jack Anderson, the newspaper columnist, and Mr. Les Whitten, his associate.

Gentlemen, we welcome you. You may proceed.

TESTIMONY OF JACK ANDERSON, NEWSPAPER COLUMNIST

Mr. ANDERSON. I have a written statement, Mr. Chairman.

My name is Jack Anderson. I am here to oppose the nomination of L. Patrick Gray III as Director of the Federal Bureau of Investigation.

My opposition is not based on personal animosity. My research into Mr. Gray's background shows him to be, in many ways, an exemplary citizen. He had a distinguished career in the Navy. He was respected during his years as an attorney in private practice. He sat on the high councils of Mr. Nixon's presidential campaigns in 1960, and again in 1968.

It is this last qualification that disturbs me. Generally, I believe that a President's appointees should be responsive to the President; that they should be emphatic; that they should share a similar philosophy; that the appointee should execute policy the way the President wants it executed.

Yet, I think we will agree that the post of FBI Director is different from all other jobs in an administration. It is not a policymaking position, at least in the usual context. The only policy of the FBI should be truth; the Director should be the man who is best able to motivate his agents to find the truth. All the other considerations—political conformity, personal loyalty, rewards for past favors—should be totally unimportant.

I think it is immeasurably wrong to put a man in charge of the FBI whose prime interest is pleasing the President. On more than one occasion, Mr. Gray has proved that his antennae are acutely tuned to the White House wave length. This is a luxury that neither the Nation, nor, in the long run, the White House itself, can afford.

I am afraid that I have a reputation for being blunt when I speak of people in power, no matter which branch of Government employs them. I hope you will forgive me today for living up to that reputation. In all his actions since he became a civilian in 1960, Mr. Gray has proved himself to be a political hatchetman for Richard Nixon. That, I believe, is why he was nominated to succeed J. Edgar Hoover. It is certainly why I am here today to oppose confirmation of his nomination.

There were times when I criticized Mr. Hoover's leadership in the FBI. When he was young and vigorous, he took command of a corrupt bureau staffed with a sorry collection of misfits, drunks, and even blackmailers. He quickly transformed it from the house of political prostitution, which it certainly was, into a formidable law enforcement agency that enjoyed the respect and trust of the Nation.

As the years went by, I am afraid there was some erosion in the principles Mr. Hoover initially laid down. From time to time, political favors were done. Juicy bits from the Bureau's raw files were bootlegged to people in high position, possibly even to some members of this committee. Political dossiers began to appear in the Bureau's files, along with those of criminals. The Bureau collected information on citizens simply because they opposed the policies of the men in the White House, or because they apparently had exotic sex lives, or—in an astounding number of cases—simply because they were black. This politicization of the FBI, I believe, was a perversion of the Bureau's purpose.

I am old enough to understand that no human institutions are perfect, and that none of us in the human race are perfect. J. Edgar Hoover made mistakes, and we found out about some of them. I suppose there were other mistakes we did not find out about that also had a deleterious effect on the FBI. But no serious person ever accused Hoover of running a political police force. Not even me.

I am no longer sure that the label does not fit. Mr. Gray's testimony here regarding the investigation, and the failure to pursue certain aspects of the investigation, of the Watergate bugging scandal indicates either that he is a far more naive man than one would expect for someone with his background, or that he supposes the members of this committee and the press are far more naive than we should be. I do not think Mr. Gray is a naive man.

His Watergate testimony is not an isolated example. Shortly after he was appointed temporary director of the FBI, Mr. Gray called in the reporters and told them, and I quote: "None of you guys are going to believe this—and I don't know how to make you believe it—but there are no dossiers or secret files."

Just as Mr. Gray suspected, a lot of people didn't believe him, and I must admit I was one of them. But, I did try to set him straight, with a list of names of Americans on whom the FBI does keep dossiers and secret files. I even provided the file numbers on these dossiers so Mr. Gray could easily locate them. Whether he will admit it or not, the FBI has those secret files. And I have photostats of some of them, in case the members of this committee have any doubts.

We have waded through several hundred FBI memos, slipped to us from the files of politicians, newsmen, movie stars, football heroes, and other prominent Americans. Our purpose was to prove, in black and white, what many Americans had begun to suspect—that the FBI has been keeping dossiers on people who have committed no crime and are not likely to commit a crime, that the FBI has been prying into the bedrooms of prominent people for no other purpose than to collect gossip for the files, that the FBI has been investigating people because of the opinions they hold not the deeds they do.

I submit, Mr. Chairman, this is the sort of thing we expected in Nazi Germany, or Stalinist Russia. It is intolerable in the United States of America. The FBI has gone beyond its jurisdiction, beyond its constitutional authority, beyond what is proper. The FBI must never become a political police force, working for the Government against the people. The FBI should be carefully restricted to investigating criminals not noncriminals, spies not the loyal opposition, subversives not dissidents.

It is clear from the testimony before this committee that L. Patrick Gray is not going to restrain the FBI, is not going to take the FBI out of politics, is not going to restore the FBI to its proper place in our democratic society. We have come before this committee, Mr. Chairman, to ask the Senate to intervene. Now is the time, and this is the place, to serve notice upon the FBI that there must be limits to police power in a democracy.

We don't make these charges without evidence. We have brought the evidence, documentary evidence, FBI reports. These reports are loaded with raw gossip that has nothing to do with crime, unverified rumors that have no place in Government files. We ask only that you satisfy

yourselves whether the FBI has been abusing its powers and that you withhold the scurrilous information from the public as we have done.

Let me read just one typical report. This is taken from what is known as a "name check" report. Some Government agency requested information on a famous movie and television star. The FBI went through his file and wrote a summary of the findings. And I quote:

_____ has not been the subject of an FBI investigation.

Let me depart from the text to ask why the FBI should have a file on a man who is not the subject of an FBI investigation.

The document continues:

During 1965, however, a confidential informant reported that several years ago while he was in New York he had an "affair" with movie star _____. The informant stated that from personal knowledge he knew that _____ was a homosexual. The belief was expressed that by "personal knowledge" the informant meant he had personally indulged in homosexual acts with _____ or had witnessed or received the information from individuals who had done so.

On another occasion, information was received by the Los Angeles Office of the FBI that it was common knowledge in the motion picture industry that _____ was suspected of having homosexual tendencies.

It is to be noted in May, 1961, a confidential source in New York also stated that _____ definitely was a homosexual.

Our files contain no additional pertinent information identifiable with Mr. _____.

Let me depart from the text again just to say this is a report that appeared on a man whose records, whose FBI files starts out by saying that he is not the subject of an FBI investigation.

Another name check request brought forth this information concerning a famous professional football player:

_____ has been observed intoxicated on several occasions and also reportedly had an affair with an airline stewardess who became pregnant as a result of this association. It is alleged that an abortion was arranged for this girl by the wife of _____, the operator of a restaurant-bar in New York. It is understood that the abortion had to be postponed due to the arrest of _____'s wife on charges stemming from an abortion ring operating in the New York area.

There are dozens of reports, equally outrageous, that the FBI has been keeping on totally innocent American citizens. But the committee members, we trust with the utmost discretion, can read the reports for themselves.

The FBI's habit of prying into the private lives of prominent people did not begin with L. Patrick Gray. But he has done nothing to stop it. On the contrary, he has turned over confidential FBI files to his political superiors for political purposes.

Now I would like to go into some other cases that are nearer in time, and closer to me because they directly affect me. I am referring to the arrest in January of my associate, Les Whitten.

Les is one of America's finest investigative reporters. He works very long hours. He gets the facts straight. He also knows the law, and he obeys it. Les does not steal documents—no matter how tempting their contents might be—and no one else in my office is allowed to pilfer papers, either.

We have another policy. Unlike the FBI, we do not pay informants. We don't do it for two reasons. One is that paying informants is morally distasteful. The other is the quality of purchased information is

almost uniformly bad. People give us information because they want to see wrongs righted, not because they want to enrich themselves.

Mr. Gray testified here the other day that Les Whitten was arrested after an informant said Whitten was to pay for and pick up a batch of documents stolen from the Bureau of Indian Affairs last November. He did not and would not offer to pay for stolen documents. The information attributed to the informant was fabricated. I don't see how a professional police undercoverman, who heard what was said among the Indians, could possibly have received and passed on such misinformation. I cannot bring myself to believe that the FBI fabricated. Yet what Mr. Gray told this committee was fabricated.

We did run a series of columns detailing some of the abuses of Indian rights and some of the abrogations of promises made to the Indians. This information did come from BIA files. The Indians who stripped the files after their occupation of the BIA building gave us photostats of that information. We merely extracted the news from these documents. We do not believe the news belongs to the Government. We believe the news belongs to the people. The Indians, for their part, were eager for the public and the Congress to know how wretchedly they had been abused.

Mr. Whitten, as he told the FBI men who arrested him, was not stealing the papers. He was covering the return of the documents to the Government. The FBI's informant knew that. He was filmed by ABC-TV less than 4 feet from the Indian negotiator, Hank Adams, when Adams announced he was trying to get the documents back to return them to the Government. In a few minutes, Mr. Whitten will give you the names of others whom Mr. Adams had told about his intention to return the documents. It was no secret.

Again, I do not believe, I cannot believe, that the FBI didn't know about Mr. Adams' intentions, that the FBI informant never mentioned the many times Mr. Adams talked about returning the documents, that the FBI agents investigating the theft of the Indian papers didn't even bother to read the newspapers which reported fully Mr. Adams' intention to return the documents. In other words, I believe the FBI knew full well no crime was being committed when eight agents arrested Mr. Whitten and Mr. Adams. I believe Mr. Gray, in this instance, was using the FBI deliberately, knowingly to harass a newsman.

Mr. Gray testified here the other day that the FBI checked with the BIA, and could find no one who was expecting Mr. Adams. I have a higher regard than that for the FBI's investigative ability. The arrest was made at 10 in the morning about 20 minutes away from the BIA. Hank Adams had a 10 o'clock appointment with Dennis Creedon, a House investigator who had an office at the BIA where he was investigating Indian complaints. Mr. Adams intended to deliver the documents to Mr. Creedon, although I understand Mr. Adams did not explain his purpose when he arranged the appointment. Mr. Whitten found out about the appointment by asking Mr. Adams, then double-checking with Mr. Creedon's office. Certainly the FBI, with all its investigative experience, could have obtained the same information in 10 minutes.

Is it possible that the FBI knew precisely where Mr. Adams was going, and didn't want him to get there? It would seem to me that if

the FBI really believed we had purchased purloined papers, the agents would have waited until Mr. Adams and Mr. Whitten reached their destination. The FBI is experienced at following people. Why didn't the agents, if they thought Mr. Whitten was bringing the stolen documents to me, follow him to my office. Then they might have arrested me, too. I understand I'm not too popular at the top level of the FBI. Or at the White House.

But I suggest the FBI knew the papers were going to the BIA and not to my office. That is why the agents stepped in when they did, with all the great majesty of their office. It was a political arrest, pure and simple. And it was yet another attempt to strangle the freedom of the press guarantee of the first amendment to the Constitution. As you well know, a grand jury here in Washington rejected out of hand the charges against Mr. Whitten and the others.

Let me quote a small excerpt from Mr. Gray's sworn testimony. "Upon reviewing our records," he testified :

I learned on January 24, 1973, from information contained in a teletype from our Washington field office that a Metropolitan Police Department officer working in an undercover capacity had advised his superiors that he had heard Anita Collins and Hank Adams had been conferring with Jack Anderson to buy documents stolen from the Bureau of Indian Affairs.

Now let me say under oath that never at any time did Anita Collins and Hank Adams confer with me about buying stolen documents. In fact, I never met Anita Collins until after her arrest. If Mr. Gray is going to arrest newsmen on the basis of this sort of information, the press is in jeopardy.

There is yet another worrisome detail stemming from the arrest of Les Whitten. It is the Government's seizure of the telephone records of my home and my office. Mr. Gray has told you that this was simply an attempt to locate more of the Indian papers. He glossed over the fact that these records predated the occupation of the BIA building by 4 months.

Mr. Gray said that the telephone records were used solely to attempt to locate people who might have the papers, and that there was no interest in our other news sources.

Now, gentlemen, I have heard from a number of telephone contacts who suddenly have become aware of FBI inquiries about them. These are not Indians.

One of those called by the FBI was Robert Updike, a city prosecutor in Phoenix. One might suspect FBI agents would know the names of prosecutors in the cities in which they work. And there is only one Robert Updike in Phoenix. Mr. Updike is not an Indian.

In another attempt to locate the Indian papers, the FBI tried to learn the identity of B-52 crewmen whom I reached by overseas phone on Guam. There aren't many Indians on Guam.

You know and I know that reporters rely on their sources. We try to cover the whole United States from Washington, and the telephone is as important a tool to us as our typewriters. When the FBI manages to intimidate our sources by violating the secrecy of our telephone records, it has taken a giant step toward silencing those small voices who believe the public is entitled to know more about their Government than can be found in Government press releases.

To me, the FBI's actions in this case smack of censorship and prior restraint. For access to the news is an essential part of our press freedom.

I am not surprised it happened. The FBI has been, in varying degrees, a political agency ever since Mr. Gray took command last year. It is difficult to suppose it will be less political after Mr. Gray is permanently ensconced in the Director's office.

Gentlemen, for the first time in history, the Senate of the United States has an opportunity to pass on the Director of the FBI and the policies of that Bureau. We know there have been abuses by the Bureau in the past. I urge you to prevent, as much as possible, future abuses.

To me, the greatest possible abuse would be to turn the directorship into a political plum. And I can guarantee you, if Mr. Gray is confirmed as Director, we will never see the end of the precedent you set. There will be a parade of political hacks and a mountain of corpses left by political hatchetmen. It seems ironic that the FBI should be turned over to politics so soon after the post office was taken out of politics.

The whole credibility of our form of government—and believe me, gentlemen, I passionately love our country—will suffer if you make the wrong decision.

Keep the FBI out of politics.

Thank you.

Senator HART. Mr. Anderson and Mr. Whitten, I am reminded by the staff that although this did not occur when I was chairman this morning that all previous witnesses have testified under oath and that the chairman desired their testimony be received under oath. May I administer the oath?

Mr. ANDERSON. Please. We anticipated that it would be.

Senator HART. Do you swear the testimony you are giving and shall give in this proceeding is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ANDERSON. I do.

Mr. WHITTEN. I do.

Mr. ANDERSON. I am happy to take the oath retroactively.

[Laughter.]

Mr. ANDERSON. Mr. Chairman, I will be happy to answer questions but for orderly procedure it might be helpful to hear Mr. Whitten's account.

Senator HART. Thank you.

Mr. Whitten.

TESTIMONY OF LESLIE H. WHITTEN, JR., ASSISTANT TO JACK ANDERSON

Mr. WHITTEN. My name is Leslie Hunter Whitten, Jr. I have been principal assistant to Jack Anderson for the past 3½ years. I have supplied the committee with a brief biography.

On February 28th, Mr. L. Patrick Gray III testified about a case involving me in which I was arrested, handcuffed, my notes forcibly removed from my hands, and I was consigned to a cell block for 5 hours by his agents.

These events occurred on January 31, 1973, while I was covering the return of three cartons of documents taken from the Bureau of Indian Affairs last November. The return was being made through a man at the BIA with whom Indian leader Hank Adams had an

appointment. Both Mr. Adams and I were arrested. We were charged under a law designed for underworld fences, a charge rejected by a Federal grand jury and then dismissed by the Justice Department.

Mr. Gray's report to you of that incident, delivered in police report style, was so inaccurate that it would make a rookie policeman blush. In its two double-spaced pages, it contains no less than eight pieces of false information, one of which was later corrected. Its omissions make it even more misleading.

Here are the facts as opposed to the false information supplied to you under oath by Mr. Gray. Some of what I say has already been said by me to a Federal grand jury and written in the New York Times under my own name. I submit the New York Times article for the record if it may be done.

[The New York Times article referred to follows:]

[From the New York Times, Feb. 8, 1973]

OLD INDIAN REFRAIN: TREACHERY

(By Les Whitten¹)

WASHINGTON—At about 8:45 Wednesday morning, Jan. 31, I received a telephone call at home from Hank Adams, a young Indian leader who had taken part in the occupation of the Bureau of Indian Affairs building last November.

When the Indians all but razed the building and departed with tons of documents and other stolen material, Adams stayed behind in Washington to continue to talk with the Federal Government.

He was beginning to have success. The Indians were giving up some of the stolen materials, and Adams, as evidence of good faith, was passing it on to the F.B.I. He was satisfied he could put major stashes of the documents into Federal hands within a few weeks, and in late January had advised B.I.A. officials that the return of documents was "in the process of happening."

Because I had written a series of columns about the contents of some of the other stolen papers, Adams notified me of the arrival of the cartons.

The 8:45 A.M. call from Adams was disappointing. He said the material was not newsworthy, but was important to have in the B.I.A. files where all tribes could consult it. I offered to help him transport the cartons. He told me he had a ride.

I skipped breakfast and hurried over to Adams' apartment house. There, the person who was going to give him a ride had not showed up, and we decided to use my car. He called his contact at the B.I.A. and said he was "on the way." The three cartons were marked with the name of an F.B.I. agent to whom Adams had earlier returned some of the stolen material. Adams knew the B.I.A., after receiving the cartons, would probably call in the F.B.I. or send them to the F.B.I. for examination.

Just as we were about to load the cartons into my car, a flood of F.B.I. men descended on us. I produced pen and paper to make notes. These were snatched from my hands and replaced with a set of handcuffs.

The arrest was made on the basis of information furnished by the "Indian" whom Adams had expected to chauffeur him and the papers to the B.I.A. that morning. The "Indian" turned out to be an undercover Washington policeman. The F.B.I. agent to whom the boxes were addressed made a complaint.

We were driven to an F.B.I. office downtown where my notes were returned. I was fingerprinted and photographed, although throughout, with the single exception of the notes episode, the agents treated me courteously.

Finally, I was taken before a Federal Magistrates Court. After being released on my personal recognizance I left the custody of the marshals to brood on how a 44-year-old reporter came to be facing 10 years in prison and a \$10,000 fine for trying to report the news.

The charge against me is that I "did unlawfully receive, conceal and obtain three cardboard boxes of Government documents, books and records, with intent to convert the said property and records to (my) own use or gain."

¹ Les Whitten is an Investigative reporter for the Washington Columnist Jack Anderson.

As it happened, this particular group of documents included old legal opinions, land records and, ironically, a volume of the U.S. Code. These were of no "use or gain" to me as news or anything else.

But if I had been getting them "with intent to convert them to (my) own use," what would the use have been? It would have been to chronicle this nation's shameful betrayal of its native Indian people.

Such a "use" of Government documents—stolen or not—has been protected by the Constitution and has been respected until recently by those responsible for upholding it. Now all that is changing.

The Government is asserting ownership of documents—and the contents of documents—in a systematic effort to hide its dealings from the people. The only reason to arrest a reporter with documents is to keep the information away from the public, because a reporter has no use for the documents except for his stories.

My arrest signals a new step in the Government's ownership of the news, of the information in official documents. It is chilling to think that the Administration had this utter contempt for the Constitution and for reporters who try to tell the public about the frequent failings of government.

Yet even more chilling is the fact that so few in the press itself (but, God, how welcome those few are) have spoken up about my arrest. If the press will not defend itself, can there be any hope at all?

Mr. WHITTEN. This goes right to the heart of whether Mr. Adams was taking those documents down there with me or whether he was going to go to my office and paper the walls with them. Points one and two: On February 28—the date is important—Mr. Gray told you that "we have checked with everyone at the Bureau of Indian Affairs that we could check with, and not one of them said that they had any such appointment with Mr. Adams." Both elements of this statement are false. On February 2, 1973, 26 days before his testimony, the Washington Post reported that a House investigator at the BIA, Dennis Creedon, had an appointment with Adams at 10 a.m. the morning of our arrest (which took place at about 10:15 a.m.). The Post says, "Creedon's boss C. R. Anderson, director of the (House Appropriations) Committee's surveys and investigative staff, confirmed yesterday that Mr. Adams had a 10 a.m. appointment with Creedon at the Bureau of Indian Affairs Building. The House committee is using a third-floor office at the BIA * * *

I submit the Post article for the record, if I may.

Senator HARR. It will be received.

[The Washington Post article referred to follows:]

[From the Washington Post, Feb. 2, 1973]

INDIAN EXPLAINS ACTIONS

BIA MATERIAL WAS SENT FOR HIM TO RETURN

(By Donald P. Baker)

Indian leader Hank Adams said yesterday that the stolen government documents that he and reporter Leslie H. Whitten were arrested with Wednesday morning were to be returned to the FBI later that day.

Adams said Special Agent Dennis P. Hyten had accepted other materials that had been stolen from the Bureau of Indian Affairs building last November, and had given Adams a signed receipt for them.

An FBI spokesman confirmed that agents routinely sign receipts for material they pick up, but would not comment on whether Hyten had ever signed such a receipt for Adams.

Adams contends that he was merely acting as a go-between for persons who had mailed the documents to him so that they could be returned to the government.

He said that he gave Hyten paintings and office equipment "valued at several thousand dollars" at a meeting in Adams' fifth-floor efficiency apartment at 1464 Rhode Island Ave. NW on Dec. 11.

Adams yesterday gave to his attorney, L. Graeme Bell, of the Native American Rights Fund, a receipt bearing Hyten's name, and listing "items received from Hank Adams."

Bell said the signatures on the receipt, on a search warrant issued Tuesday for Adams' apartment, and on the criminal complaint signed that same day, "match perfectly."

The receipt indicates Adams turned over three drawings by R. C. Gorman, a Navajo artist, and a portable dictaphone and accessories for dictaphones and typewriters.

During the looting of the BIA building, hundreds of original paintings and thousands of dollars worth of office equipment were stolen, along with government documents.

On "one or two" occasions since then, Adams said, he had mailed BIA material to Hyten, at the field office in the old Post Office Building.

The three boxes of documents that the FBI confiscated Wednesday were to be shown to an investigator for the House Appropriations Committee, Adams said, and then turned over to Hyten.

The name of Hyten and the telephone number of the Washington field office, to which Hyten is assigned, were written across the top of the boxes, according to Adams and Whitten.

Adams said he first wanted to show the documents to Dennis Creedon, an investigator for the Committee, to show "our good faith in returning the documents."

Creedon's boss, C. R. Anderson, director of the Committee's surveys and investigative staff, confirmed yesterday that Adams had a 10 a.m. appointment with Creedon at the Bureau of Indian Affairs Building.

The House Committee is using a third-floor office at the BIA from which it is investigating complaints by various Indian spokesmen that the federal agency has not served the best interests of America's native people.

Acting on information the FBI said was supplied by an undercover agent, Adams and Whitten were arrested at about 10:15 a.m. outside Adams' apartment.

The two men said they had carried two of the three heavy boxes to Whitten's yellow Vega that was parked on the street when they were arrested. Whitten is an investigative reporter for columnist Jack Anderson.

The two men, and Anita Collins, news editor for the American Indian Movement (AIM), were charged with illegally receiving stolen government documents. The charge is a felony punishable by up to a year in jail and a fine of \$10,000.

All three have been released on personal recognizance pending a preliminary hearing set for Feb. 15 to determine whether there is probable cause to hold them for grand jury action.

Two other persons arrested Wednesday in Adams' apartment were Daniel Pigeon, 22, of Wittenberg, Wis., and Alison Grace Cerri, 20, of 9316 Piney Branch Pkwy., Silver Spring.

Pigeon and Miss Cerri were released later Wednesday, and the U.S. attorney's office said no charges would be placed against them. Adams said he had learned that Pigeon and Miss Cerri have been subpoenaed to appear before a federal grand jury this morning.

Adams and Miss Collins say the arrest was set up by a Pueblo-Apache they knew as Johnny Arriano who revealed himself to Miss Collins at the time of her arrest as an officer of the metropolitan police department.

In an affidavit for a warrant to search Adams' apartment, in which Arriano is referred to as "the source," the undercover policeman said that Adams gave instructions to bring the documents to his apartment "so they could go through them to determine which would be given to Anderson."

En route to the bus terminal, according to the sworn statement of the source, "Collins told the source that, if caught, they were to say they were just picking up the documents to turn these over to the police."

Adams and Miss Collins agree that "Johnny" picked up the cartons about 2 p.m. Tuesday at the Greyhound express office, 914 I St. NW., and delivered them to the apartment, but they say there was no conversation about turning them over to Whitten.

The reporter was called at his home in Silver Spring about 8:30 a.m. Wednesday, Adams said, and told that the documents would be returned and "there's nothing (newsworthy) in them," Adams said.

Whitten said he offered to accompany Adams to the BIA and offered the use of his auto, in exchange for an exclusive story on the return of the documents. He said he momentarily considered what might happen if they were stopped by police, but "thought we were clean as a whistle because we were taking them back."

Before leaving the apartment, Adams and Whitten said they wrote Hyten's name and telephone number on the boxes.

Once outside, Whitten said he was arrested by two FBI agents "who called me by name." The reporter said the FBI might have known him on sight because of previous publication of stories gleaned from stolen BIA papers, or by checking the license plates on his car, or via a tap of Adams' telephone.

Adams suggested that the agents knew when to stake out the apartment "because Johnny was supposed to pick me up at 10 a.m. and take me to the BIA."

Instead, the undercover agent went to Miss Collins' house at 1747 Lanier Pl NW, and arrested her.

Mr. WHITTEN. I was present in the room when Adams, that same morning, called Mr. Creedon to tell him that he was going to be late, but was "on the way." Mr. C. R. Anderson confirmed to me that Mr. Creedon, who I am told is a brave, honorable man and will testify honestly, has told him that Mr. Adams indeed did call him about 30 minutes before the arrest (about 9:45 a.m.) and said he was "on the way." We printed a report of this in our column on February 12, 1973, 16 days before Mr. Gray testified. I submit this column as sent out by the United Feature Syndicate to our subscribers.

[The document referred to follows:]

[From the United Feature Syndicate, Feb. 12, 1973]

WASHINGTON MERRY-GO-ROUND—DOCUMENTING A FRAME

(By Jack Anderson)

WASHINGTON.—Press spokesman Ron Ziegler has described as "wrong, wrong, wrong," our report that the White House has instructed the Justice Department to "nail" us.

We will be happy, if Ziegler is wrong, to accept President Nixon's apology for jailing Les Whitten. It remains a fact, meanwhile, that Whitten was arrested and his notes ripped out of his hand while he was covering a story for this column. We also have evidence that his arrest was a setup.

He was charged with possessing stolen documents and converting them to his own "use and gain." But here's the real shocker. The FBI knew the charges were false before its agents pounced on him. Here are the facts, which we can now document:

For weeks, Indian leader Hank Adams had been trying to arrange the return of the documents that the Indians had taken from government files. He had managed to secure a few papers and other stolen items, which he turned over to the FBI. Agent Dennis Hyten signed a receipt for them on December 11.

Yet after the January 31 FBI raid on Adams' apartment, Hyten signed the criminal complaint, charging him with possessing stolen documents. Our FBI informants say the FBI was really laying for us and timed the raid to catch Whitten in the net.

TV FILM TELLS ALL

Adams' role as the negotiator, merely trying to return the stolen documents to the government, was well known. The respected Indian writer Vine Deloria, author of "We Talk, You Listen," and "Custer Died for Your Sins" told us all the Indians involved in the theft knew Adams wanted to return everything.

There is pictorial evidence that the FBI's undercover man, John Arellano, knew it, too. For an unshown ABC-TV film depicts Arellano, in his Indian pose, sitting right there when Adams announced the documents would be returned "in a short period of time."

An ABC film crew for the "Reasoner Report" set up their camera in Adams' apartment not far from the White House on January 18. The producer, Aram Boyajian, told us a number of Indians are shown clearly in the film. Among them is none other than the FBI informer, John Arellano, who was listening as Adams spoke.

Boyajian read us Adams' exact words from the transcript: "We have some information on the nature of the documents that were taken and know that these documents also will be returned in a short period of time. And then the government will continue to lie. They'll say, you know, they weren't really returned or some were still missing."

INDIANS REMEMBER

The incident is also recalled by two prominent Indian journalists, Richard LaCourse and Tom Cook, who were present. "Johnny (the FBI undercover man) was only four feet from Hank when he was talking about getting the things back," said LaCourse. Cook also recalled Adams' words.

This evidence of the FBI's duplicity is supported by massive additional documentation about Adams' innocent role as the middle man trying to persuade his more militant Indian colleagues to give back the stolen papers. From the White House on down, Adams spoke to government officials about retrieving and returning documents. Here are just a few of the witnesses who are available:

A few weeks after the documents were taken last November, Los Angeles Times reporter Paul Houston spoke with Adams. Houston remembers that Adams gave him a large manila envelope to mail. Houston recalls clearly that it was addressed to the FBI with Adams' return address. The FBI knew, obviously, that the enclosed documents came from Adams.

A New York Times story, featured prominently, reported that Adams told a press conference on December 8 that the Indian papers would be returned "as fast as is humanly possible," after they had been copied for the edification of the tribes.

By January 11, Adams had dropped the idea of waiting for the documents to be copied. He told a National Press Club conference, as also reported by the New York Times, that he "would personally endeavor to obtain and return" the stolen documents. He set an outside target date of February 10.

On January 24, the communications director of the Bureau of Indian Affairs, Tom Oxendine, wondering whether to start reconstructing certain BIA files, asked Adams whether he still hoped to get the documents back by mid-February. Adams, as quoted by Oxendine, said: "It's in the process of happening."

On January 29, Adams personally informed Jane Wales of the Congressional Quarterly that he hoped to have the documents back at least by February 10. She published the tip in CQ's highly-respected "News Features" report for editors two days later.

On January 31, even as CQ was informing editors of the imminence of the papers' return, Adams had a 10 a.m. appointment at BIA with Dennis Creedon, an investigator for the House Appropriations Subcommittee. Adams planned to turn over the documents to Creedon, though he did not inform Creedon of his plans. Thirty minutes before the arrest, Adams called Creedon to say he was "on the way."

FBI KNEW TRUTH

Certainly, the FBI agents, who had been scurrying all over the country in a futile search for the Indian documents, read the press accounts and their own informer's reports on Adams' activities. They knew Adams was trying to collect the stolen documents from Indians around the country and return them to the government. Yet the FBI arrested the innocent negotiator, Hank Adams, after the first large stash of stolen documents reached him.

Their real object, of course, was to nail Whitten, who had persuaded Adams to let him witness the return of the documents as a reporter. Whitten, of course, had no part in stealing the documents and at no time possessed them.

Then what was his crime? He was enterprising enough to track down the documents that the embarrassed FBI couldn't find. He extracted the news from several documents and wrote the saga of the Broken Treaties Papers for our column.

Our stories told how the Nixon Administration, like those that preceded it, had cheated and neglected the Indians. We reported that the Indians wrongfully had stripped government files. But we also laid out evidence from the

papers that the government had helped white exploiters to steal the Indians' water rights, mining claims and other resources.

Whitten is guilty only of embarrassing the Nixon Administration. The White House, apparently, would like to make this a crime.

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Mr. WHITTEN. Mr. Adams, to be sure, did not tell Mr. Creedon he would have the documents, but the appointment was firm as you can see from the above. Mr. C. R. Anderson, a frank, articulate man, and Mr. Creedon can, and I suspect will, confirm the above to the committee if it asks them. Mr. Gray, in these two statements, has left a stain on me, Adams, and this committee's record which I hope the committee will ask him to wipe off.

And now, I have an insert in my testimony which is made only because I ascertained it this morning, and it goes in right here. Mr. Chairman, I have only learned this morning of a grave untruth told to this committee by Mr. Gray. Mr. Gray, as I noted above, swore under oath, "We have checked with everyone at the Bureau of Indian Affairs that we could check with, and not one of them said that they had any such appointment with Mr. Adams."

This morning I was able to speak directly with Mr. Creedon with the permission of Mr. C. R. Anderson, who is the regular spokesman for their office.

Despite what Mr. Gray swore—that "not one" had confirmed Mr. Adams' crucial appointment—Mr. Creedon told me that two of Mr. Gray's agents spoke with him the day after our arrest. Mr. Creedon told me that he forthrightly confirmed to the FBI agents that Mr. Adams indeed had an appointment with him at the BIA at 10 a.m. on the morning of the arrest.

This, of course, flatly contradicts what Mr. Gray told you under oath.

Moreover, Mr. Creedon told me—though he did not tell the FBI this detail—that he had cleared Adams through the security guard at BIA for the appointment. This, of course, should show up on the BIA's security records. Didn't the FBI make this fundamental check? Surely, the security records and security personnel at BIA were among "everyone at the Bureau of Indian Affairs that we could check with."

Finally, at 2 p.m. on the day of the arrest, Creedon told me, the guard came up and said that if he was still expecting Hank Adams, he wouldn't be showing up because the guard had heard on the radio that Adams had been arrested.

Mr. Chairman, I believe that this false statement to you by Mr. Gray under oath cries out for clarification.

Points 3 and 4: Mr. Gray says his information is that the three cartons of documents "were initially going to be delivered at North Carolina to representatives of this column for a sum of money." Both parts are again totally false. There was never any plan for the three cartons to be delivered to us in North Carolina, nor would we or did we pay or offer to pay for any of the documents. The documents came from South Dakota, I understand, and we never offered to spend anything but freight charges on them and that only if Mr. Adams was going to have to dip into his own pocket. Mr. Adams refused, in any case. Indeed, we have never given Mr. Adams anything and never spent anything, to my knowledge, on this story for anything but meals, motels, and some ordinary travel and reporting expenses.

Point 5: At another point, Mr. Gray says "the transfer of money was to be made," according to his information. This statement is false as explained above.

Points 6 and 7: Mr. Gray says his information was that "Anita Collins and Hank Adams had been conferring with Jack Anderson to buy documents stolen from the Bureau of Indian Affairs." This is wildly false, as Jack has pointed out. I had never known he had ever talked with Anita and I know he had not talked with them prior to the arrest. I think the first time that it could have been was probably at the court when the thing was dismissed or when we were testifying.

Moreover, both Miss Collins and Mr. Adams have confirmed to us that they never said anything about selling documents to us in any conversation with the FBI informant, John Arellano. Testimony by Mr. Adams, Miss Collins, and Mr. Arellano would seem to be warranted to see how Mr. Gray came to base his case on these false statements.

Point 8: Mr. Gray initially said the documents were kept in Mr. Adams' home "which I believe was a Holiday Inn." This is false. The FBI's own complaint says the documents were at 1464 Rhode Island Avenue NW., an apartment house. That was the complaint sworn out against us. The Holiday Inn is at 1501 Rhode Island Avenue NW. Mr. Gray later caught his error, I understand. His initial statement, however, is evidence of his willingness to guess before the committee under oath, instead of knowing.

One point where Mr. Gray's omissions badly misled the committee is also worth noting. Mr. Gray says his agents spoke with a BIA official named Tom Oxendine. Mr. Gray testified that Mr. Oxendine told the agents he (Oxendine) had seen Mr. Adams in passing with regard to the documents and that Adams told Oxendine, "Maybe they will be returned, maybe they won't. I don't know." I challenge the accuracy of Mr. Gray's account. What he failed to tell the committee was that on February 3, 1973, the Washington Star-News reported:

Tom Oxendine, the director of the Bureau's office of communications, said he had a brief conversation with Adams on January 24 at the BIA building. At that time Adams indicated to him that plans to return the material, taken from BIA during the Trail of Broken Treaties protest in November, were being carried out, Oxendine said.

I submit the Star-News story for the record.

[The news story referred to follows:]

[From the Washington Star, Feb. 3, 1973]

BIA OFFICIAL SAYS ADAMS PROMISED TO RETURN PAPERS

(By Fred Barnes)

An official of the Bureau of Indian Affairs says that he was told by Hank Adams, a militant Indian leader, that documents and artifacts stolen from the bureau would be returned by mid-February.

Tom Oxendine, the director of the bureau's office of communications, said he had a brief conversation with Adams on Jan. 24 at the BIA building.

At that time, Adams indicated to him that plans to return the material, taken from BIA during the Trail of Broken Treaties protest in November, were being carried out, Oxendine said.

Adams has served as a principal negotiator with the government for the Indians who seized the BIA building during the protest.

But he, Anita Collins and Leslie H. Whitten Jr., an investigative reporter for columnist Jack Anderson, were arrested Wednesday and charged with possession of government property stolen from the bureau.

Police seized three boxes of material in the arrest. Adams contends that he was taking the material back to BIA and Whitten said he was along to get an exclusive story on the event.

In a television appearance yesterday, Whitten cited the conversation between Adams and Oxendine as evidence that BIA officials knew that Adams was involved in attempting to return material stolen from the bureau.

There were these other developments in the case yesterday :

A government investigator confirmed that Adams was scheduled to meet with him at the BIA building on the morning of the arrest. Adams said he was on his way to hand over the stolen material to the investigator.

Whitten said he will cite the 1st Amendment's guarantee of freedom of the press in seeking to have the charge against him dismissed at a preliminary hearing on Feb. 15.

Anderson said that he will seek to have the FBI agent who arrested Adams and Whitten ousted from his job.

Anderson claimed that the agent, Dennis Hyten, knew that the material in the possession of Adams and Whitten was on its way back to BIA, since an undercover officer was informing the FBI of Adams' moves.

If Hyten had thought the material was going elsewhere, Anderson said, he would have followed Adams and Whitten to find out the destination rather than immediately arresting them.

Anderson also said that the arrests will dissuade other Indians from returning items stolen from BIA. "No one is going to return any documents now," he said. "They'll be afraid."

Mr. WHITTEN. Further on this, Oxendine, whom I have known for some time, told me that Adams had advised him on the return of the documents that "It's in the process of happening." This is a far cry from "I don't know." We used Oxendine's quote to us in our above-mentioned column of February 12. It is also in my notes and I quoted it on the channel 5 "Panorama Show" within minutes after Mr. Oxendine said it. Mr. Gray's quote, therefore, simply does not ring true and I suggest that Mr. Oxendine, Mr. Fred Barnes, the highly respected Star-News reporter, and Mr. Gray be invited by the committee to straighten out this misleading statement by Mr. Gray. The matter goes directly to the intent of Mr. Adams to return the papers. I wonder if Mr. Gray can even find that quote of his in his own FBI reports.

In his testimony to you, Mr. Gray also failed to tell you of other evidence both in his own files and in public print that show Mr. Adams' intent to help turn in thousands of pounds of documents.

This evidence is very important because it shows that Mr. Adams was the accepted conduit by both the Indians and the Government for getting back the papers. Mr. Adams' purpose, as he has described it to me, was to get back the documents as an act of good faith so that he could recommence negotiations he had been having with the White House on the Indians' demands.

The evidence also goes to the heart of Mr. Gray's judgment. Clearly, his arrest of Adams blocked or delayed the return of these thousands of pounds of documents sought and needed by the BIA. Mr. Gray's arrest of Adams was not a precipitate act. He has told you that he personally was aware of the documents question as early as January 24, 1973, a week before the arrest. Perhaps he knew from the newspapers of the general problem much sooner. Yet, he chose to ignore the evidence listed below and to move on Adams with disastrous results for the documents' return, and with a setback to his credibility as an investigator since the case was thrown out.

If I may I will run very rapidly through these 10 points. Cumulatively they are important:

Item 1: On November 22, 1972, Adams, who had been the negotiator with the White House for the Caravan of Broken Treaties, wrote President Nixon, telling him that he (Adams) had "acted through all forms available to me for the protection of such materials"—meaning the documents and other items taken from the building—"during all the days of this month," according to the Washington Post of February 12, 1973. I submit that article also for the record.

[The news story referred to follows:]

[From the Washington Post, Feb. 12, 1973]

TWO ASKED TO TALK BY JURY

INDIAN ACTIVIST, WRITER CALLED IN BIA PROBE

(By Donald Baker)

A federal grand jury here, investigating the theft of documents from the Bureau of Indian Affairs, has asked reporter Leslie H. Whitten, Jr. and Indian activist Henry L. (Hank) Adams to testify before it Wednesday.

Whitten, Adams and Anita Collins are scheduled to appear at a preliminary hearing in U.S. District Court on Thursday on charges of possessing stolen government documents.

They were arrested Jan. 31, while carrying cartons of items that had been stolen from the Bureau of Indian Affairs during the occupation of that government building last Nov. 2 to 8.

The grand jury heard testimony Friday from two young Indians who have been granted immunity from prosecution by the government.

Adams, an Assinboine-Sioux from Frank's Landing, Wash., has been the chief negotiator between the federal government and the coalition of Indian organizations that came here last November to protest federal treatment of Indians. The Trail of Broken Treaties Caravan erupted into a violent demonstration and documents, artifacts and equipment were stolen at the end of a six-day siege of the BIA building.

Adams contended at the time of their arrest that he was attempting to carry out a promise to return the documents and that Whitten was along to cover the story. Whitten is an investigative reporter for syndicated columnist Jack Anderson.

The two men were arrested as they carried two cartons of government documents from Adams' apartment, at 1464 Rhode Island Ave. NW, to Whitten's car. A third carton was recovered in the building lobby. Miss Collins was not with them, but she also was charged.

The two Indians who appeared before the grand jury on Friday, Allison Cerri and Daniel J. Pigeon, earlier had invoked the Fifth Amendment and refused to testify. They were asleep in Adams' apartment when Adams and Whitten were arrested.

FBI agents also arrested them, but the charges were dropped later that same day.

Miss Cerri, who also is known by the Indian name Puma Jackson, said that after testifying she was convinced that prosecutors "apparently realize they can't pin Hank with the documents, because of all his public statements that he planned to return them, so now they want to get him for something else."

JURY ASKS INDIAN, REPORTER TO TESTIFY

Pigeon said the grand jury questioned him about 30 minutes, "mostly about Hank, Anita, and Les Whitten."

Both said the prosecutors directed questions to them about Whitten, columnist Anderson and a typewriter that FBI agents seized in a search of Adams' apartment following the arrests.

"They asked me if I knew Whitten on sight," Pigeon said. "I said that I didn't even know his name, or that he was a reporter for Jack Anderson. Of course, I do now."

Pigeon said no questions were asked about undercover policeman John G. Arellano, who posed as an Apache Indian for four months and provided the FBI with information that led to the arrests. "But I mentioned Johnny in some of my answers," Pigeon said.

He said he testified that Adams at one time told him he was going to return some documents to the BIA building, but that he was unaware that the cartons were being transported on Jan. 31 "until after I was arrested."

Pigeon said he was asked to describe the confiscated typewriter, and also testified that he had seen Adams use it at different times over a period of weeks. (Adams contends the typewriter was given to him several years ago in Olympia, Wash.)

Miss Cerri said she testified that she first saw the three cartons of documents when she and Pigeon returned from a shopping trip the afternoon before the arrests.

"They asked me if I had ever seen Les Whitten in Hank's apartment (to which she answered no) and if Jack Anderson's name was ever mentioned" Miss Cerri said.

"I told them that was really absurd (asking about Anderson)," she said, "because a name like that is going to be mentioned."

She said she had asked FBI agents the morning of their arrest, "Who was that guy (Whitten) who got busted with our group."

Whitten, who has supplied Anderson with columns about alleged injustices to Indians by the government, said he had offered the use of his car to Adams in exchange for an exclusive story on the return of the documents.

"I even had a lead written in my head," Whitten said yesterday. "It would go something like 'Hank Adams, derided by the White House for his efforts, has quietly returned the largest stash of stolen documents to the FBI.' It would have been a neat trick, what with the FBI looking all over the country for the stuff."

Whitten said that "the only reason to arrest a reporter with documents is to keep the information away from the public, because a reporter has no use for the documents except for his stories."

Whitten said he could not say whether he would appear before the grand jury because his attorney has told him not to discuss the matter. Whitten and Adams were not subpoenaed but were asked to appear by letter.

Miss Collins has said that she and Arellano picked up the cartons at the bus station the day before her arrest and took them to Adams' apartment. Adams said the documents had been sent to him from South Dakota, for return to the BIA.

Adams and Miss Collins contend that Arellano knew they planned to return the documents to the government and that the FBI moved in before they could accomplish it.

Shortly before their arrest, Adams and Whitten said they wrote on the cartons the name and telephone of Dennis Hyten, a special agent assigned to the Washington field office of the FBI. Adams said he previously had returned other BIA material to Hyten, at a meeting in his apartment, and even got a receipt from Hyten listing the recovered items.

Adams said the plan on the day of the arrest was to transport the cartons to the BIA building and show them to an investigator for the House Appropriations Committee and then call agent Hyten.

Adams frequently had been quoted as saying he was working for the return of the documents. Adams contended the thefts had obscured the valid complaints that had brought the Indians to Washington.

In an interview filmed by an ABC television crew in Adams' apartment on Jan. 18, undercover agent Arellano sat four feet from Adams and listened as Adams promised that the documents would be returned "in a short period of time," according to ABC staff members.

The interview was taped for a "The Harry Reasoner Report" but has not been shown. Producer Aram Boyajian said Arellano can be seen in the film.

Boyajian said the transcript shows Adams saying: "We have some information on the nature of documents that were taken and know that these documents will be returned in a short period of time. And then the government will continue to lie. They'll say, you know, they weren't returned or some were still missing."

After the White House officially rejected the 20 proposals of the trail of Broken Treaties, in a note to Adams on Jan. 10, Adams revealed that he already had returned "several thousand dollars worth of documents and paintings." He then

set a date of Feb. 10 for return of the other property, allowing 30 days to gather them from across the U.S.

Bradley H. Patterson, Jr., executive assistant to Leonard Garment, the presidential assistant who was cochairman of a task force studying Indian complaints, recalled yesterday that he told Adams: "Hank, if you know where any of these documents and other things are, or if you have any yourself, I encourage you to return them to the Washington field office of the FBI."

There is other evidence that government officials suggested that documents be returned in the manner Adams said he was attempting to do.

On Nov. 14, a BIA spokesman said he had told several anonymous callers that stolen items could be returned to the FBI.

On Nov. 22, Adams wrote to President Nixon to complain about the failure of the government to clean up the BIA building. Adams noted that he had "acted through all forms available to me for the protection of such materials during all the days of this month."

After the White House officially rejected the 20 proposals of the Trail of Broken Treaties, in a note to Adams on Jan. 10, Adams revealed that he already had returned "several thousand dollars worth of documents and paintings." He then set a date of Feb. 10 for return of the other property, allowing 30 days to gather them from across the U.S.

Mr. WHITTEN, Item 2: Sometime in November, or at least early December, according to a Los Angeles Times story of February 2, 1973, which I submit, Los Angeles Times reporter Paul Houston dropped a letter in the mailbox for Adams addressed to the FBI with Adams' return address on it. Adams tells me it contained information for the FBI aimed toward the return of documents to the Government. I have talked with Paul Houston, he can't remember the FBI agent on it but Adams recalls it as Dennis Hyten.

[The Los Angeles Times news story referred to follows:]

FBI "DOUBLE-CROSSED" INDIAN WITH DOCUMENTS, ANDERSON AIDE SAYS

(By Jack Nelson)

WASHINGTON—Investigative reporter Les Whitten dealt with 20 to 30 different Indians in four states and here as he inspected documents that were stolen from the Bureau of Indian Affairs in November, he said in an interview Thursday.

His reports led to eight Jack Anderson columns that severely criticized the BIA and accused the Nixon Administration of violating Indians' rights and favoring special interests at the expense of Indians. The columns also ridiculed the FBI and Washington police for permitting "the biggest document heist in history."

FBI agents Wednesday arrested Whitten and two Indians—Hank Adams and Anita Collins—and charged them with receiving and possessing government property.

Whitten said that he and Adams were preparing to return three boxes of stolen documents to the BIA when they were arrested. The reporter said that the FBI had "doublecrossed" Adams because it had been working with him in recovering documents and art treasures that were stolen when a group of militant Indians ended a six-day take over of BIA offices.

RETURN ADDRESS

(About three weeks after the siege Adams permitted Times reporter Paul Houston to examine several BIA documents. Houston later mailed an envelope for Adams addressed to an agent at FBI headquarters and containing Adams' return address.)

The case against Whitten and the two Indians apparently is based largely on the testimony of an undercover Washington policeman who infiltrated the militant group as its members headed for Washington to occupy the BIA building.

The government complaint quotes the informant as saying that he learned Tuesday Whitten would pick up the stolen government documents for his own use Wednesday. Whitten said he and Adams were taking the documents from Adams' apartment to the BIA when they were arrested.

"It was a double-cross of Adams to get him and me," Whitten said.

"I had even written the name of an agent investigating the case on the boxes so the documents would eventually go to him. He was the same agent who signed the complaint against us."

Whitten said that the arrest of Whitten was part of a deliberate attempt by the White House to halt all criticism of government policies.

He added that the Nixon Administration had "cast aside" the constitutional right of the public to learn what the government is doing by misusing a criminal statute intended to apprehend "fences" who receive stolen goods.

One of the Anderson columns told how Whitten flew to Phoenix, Ariz., for his first meeting with the militant Indians.

"At the airport, Indian security men one jump ahead of the FBI told him to wait on a corner away from the terminal building," the column continued. "They hustled him by a devious route to a motel where some of the Indian leaders were assembled."

The column said that meetings were arranged in a bowling alley, a coffee house and other places and that Whitten finally was instructed to fly to another city hundreds of miles away where he was locked in a room with a guard outside while he inspected some of the stolen documents.

Another column said that Washington police "rushed a 40-car Indian caravan through the city" after the BIA takeover, unaware "that they were unwitting accomplices to the biggest document heist in history."

Anderson wrote that the document theft took place "under the noses of the FBI" and that it was "unlikely federal bloodhounds will ever be able to track down all the papers."

'DIDN'T BOTHER'

"This time I didn't even bother," he said, "because it was so innocent. I knew we were going straight to the Bureau of Indian Affairs and I thought I would have an exclusive story. I was already working out the lead in my mind, something like: Hank Adams, much derided by the White House for his part in the broken treaties paper situation, had quietly returned the largest stash of stolen documents so far . . ."

In another development Thursday, Rep. Lloyd Meeds (D-Wash.), chairman of the House Indian affairs subcommittee, invited Whitten and Anderson to testify before his subcommittee about the stolen documents. He said the documents were vital to an understanding of past BIA activities.

Meeds also said: "I am extremely upset with the implied harassment and intimidation of the press inherent in Mr. Whitten's arrest. But our main concern is that the public be aware of the information in the papers before they are once again locked away from public view."

* * * * *
 Mr. WHITTEN. Item 3: On December 9 the New York Times, reporting a press conference by Adams, said, "Mr. Adams said that all stolen documents would be returned to the bureau 'as fast as is humanly possible, after they have been copied and indexed and sent to the individual tribes concerned, so they can educate themselves.'" I submit the article as evidence.

[The New York Times news story referred to follows:]

[From the New York Times, Dec. 9, 1972]

LAPSE BY INDIAN BUREAU IS CHARGED

WASHINGTON, Dec. 8—A leader of the militant Indians who seized the Bureau of Indian Affairs headquarters here last month alleged today that documents taken from office files during the occupation showed that bureau officials had helped a white man with a criminal record for fraud enter a business partnership with a tribe of South Dakota Sioux without checking on the man's background.

The leader, Hank Adams, said at a news conference that analysis of the stolen documents had shown that "a 62-year-old" man known to the Sisseton-Wahpeton tribe as "John W. Cabot" had persuaded tribal leaders to seek Federal funds to build a paint factory in which he and the Sioux tribe were to be virtually equal partners.

According to Mr. Adams, the man, who has a record of arrests and convictions for forgery, fraud and larceny reaching back to 1934, met here in April with

officials of the bureau and the Interior Department to explain the project to them. Mr. Adams said that "no questions were asked" about the man's background.

\$25,000 LOAN REPORTED

The officials, Mr. Adams said in the six-page analysis, "were satisfied simply that the impressive spokesman had gained the confidence of the . . . tribal leaders, and was willing to help them out."

The man, who has been adjudged criminally insane and spent time in a mental institution as well as in state penitentiaries at Sing Sing and San Quentin, was said to have been directed to officials in the bureau's economic development division by Wilma Victor, a special assistant to Secretary of the Interior Rogers C. B. Morton.

Mr. Adams said the documents showed that a loan of \$25,000 from the bureau's revolving fund was made last December to the Lake Traverse Paint and Chemical Corporation, from which "Mr. Cabot," who has used at least 15 other aliases in the past, would receive 49 per cent of any profits, with the rest going to the tribe.

A spokesman for the bureau said that none of the officials named by Mr. Adams as having been involved in making the loan could be reached for comment.

Miss Victor, told of Cabot's background, expressed surprise and explained that she had "made arrangements for Mr. Cabot to meet with people" at the bureau only because Moses Gill, the chairman of the Sisseton-Wahpeton tribe, had asked her to do so.

"His [Cabot's] original contact was with the tribe, and whenever a tribe wants us to look into the possibility of [such] dealings, the tribal chairmen sometimes call me and ask where should we send these people," Miss Victor said.

Asked whether she had any suspicions about Cabot's credentials or motives, she replied: "No, none at all. My, I am so sorry that's true. I sure hope the tribe didn't lose out on this."

However, Mr. Gill, reached by telephone at his office in Sisseton, S. Dak., contradicted Miss Victor's account, saying he could not recall ever asking her to assist Cabot. The only time the three of them had been together, Mr. Gill said, was at a luncheon in Washington last June.

OPERATIONS SUSPENDED

"I did not request Wilma nothing," Mr. Gill repeated emphatically.

Mr. Gill conceded that developing the paint company, which was to have trained 50 tribe members in management, chemistry and salesmanship, had been Cabot's idea. But, he said, the operation had never really gotten "off the ground," employing only "seven or eight people" at most, and was now temporarily out of operation.

Before Cabot disappeared in August, Mr. Gill said, he had received no salary but had worked on the strength of an informal agreement that he would receive a 49 per cent share of the profits once the operation moved into the black.

Asked why Cabot had left in August, Mr. Gill said that word of his background had reached the tribe at about that time. "I confronted Jack, I showed him the whole thing, he denied it, but he said, 'If I fight it, nothing is going to be accomplished except the paint company is going to get hurt.' He handed in his resignation, and we accepted his resignation."

* * * * *

"This case involves a situation where a tribe is vulnerable to losing millions of dollars and still winding up without jobs in a community which is economically depressed, and yet no one's concerned with anything except protecting the reputation of John Cabot."

Officials of the Sisseton-Wahpeton tribe would not say how much of the tribe's money had gone into construction of the paint factory.

In response to another question, Mr. Adams said that all the stolen documents would be returned to the bureau "as fast as is humanly possible, after they have been copied and indexed and sent to the individual tribes concerned, so they can educate themselves."

Mr. WHITTEN. Item 4: On December 11, in our first story on the Broken Treaties Papers, we wrote that the Indians had given us a message for President Nixon. In this column, Jack, quoting the Indians, said:

Tell the President that Indians do not want the documents any longer than it takes to duplicate and index them so that every tribe in America can educate itself to the double-dealing of the federal government and find ways to forestall it.

I submit the full text of our column for the record.

[The document referred to follows:]

[From the Broken Treaties Papers, Dec. 11, 1972]

(By Jack Anderson)

WASHINGTON—The Broken Treaties Papers, which were smuggled out of government files by wrathful Indians during their occupation of the Bureau of Indian Affairs building, have been scattered in secret stashes across the United States and Canada.

We have had access to them. We have also been given a message for President Nixon. "Tell the President," we were asked, "that Indians do not want the documents any longer than it takes to duplicate and index them so that every tribe in America can educate itself to the double-dealing of the federal government and find ways to forestall it."

We have inspected thousands upon thousands of documents, some almost brittle with age, others fresh as today's headlines. They tell a shabby story.

Some documents describe multimillion-dollar land deals in South Dakota's Black Hills. Others reveal how the White House played politics with Indian rights.

There are also poignant papers, like the account of an Indian woman whose foot was broken by the police but was left to spend the night in jail untended.

But above all, the documents indict the bureaucrats who have pretended to help the Indians but have often exploited them instead. Indians whose forebears fought the cavalry have been reduced to battling the bureaucrats. It has been a tawdry, tedious war without glory.

Like the cavalry, the bureaucrats have remorselessly driven the Indians deeper into their reservations. The stolen documents contain evidence that Indians have been cheated out of their land, robbed of their water rights, deprived of their fishing streams and hunting grounds.

GRIM STATISTICS

As in any war, the statistics are grim. Indian life expectancy is 47 years compared with 71 for other Americans; the Indian unemployment rate is 45 per cent compared with 5.8 per cent for the nation at large; the average Indian family struggles along on \$4,000 a year, less than half the \$9,867 median for the rest of the country; and finally, the Indian suicide rate is twice the national rate.

Ever since the Indians ransacked government files and carted off boxes full of documents, several newsmen have tried to get a look at them. Some offered money for the story; we offered only our record for championing the downtrodden. The Indians spurned the money and voted to show us the Broken Treaties Papers.

The FBI, meanwhile, has been searching up and down the country for the stolen documents. Except for one small seizure in Oklahoma, however, the documents remain in Indian hands.

We learned they had been broken down into several caches and hidden in diverse locations at the far ends of the United States and Canada. Some were secreted in automobile trunks, in old phonograph cases, in obscure corners of private homes. Others were stashed in remote hiding places on Indian reservations.

My associate Les Whitten flew to Phoenix for the first tryst. At the airport, Indian security men one jump ahead of the FBI told him to wait on a corner away from the terminal building. They hustled him by a devious route to a motel where some of the Indian leaders were assembled.

FURTIVE MEETINGS

The Indians wouldn't talk about the papers in the motel or even inside their cars for fear of FBI bugging. Furtive meetings were arranged, instead, at a bowling alley, a coffee house and on a parking lot.

Next day, Whitten was instructed to fly to another city many hundreds of miles away. He was met by one of the leading Indian militants, who questioned him closely. At last, Whitten was given four documents and questioned again about

their meaning to find out what he knew about Indian matters. Then, for 12 hours, he was deserted.

The following morning, many thousands of documents were delivered to him. The door of his room was bolted and a tough Indian security man planted himself in a chair pushed against the door. As Whitten waded through the papers, Indian experts helped him with the unfamiliar tribes and names.

Except for protecting our sources and keeping the hiding places secret, we have been placed under no restraint by the Indians. They have made no attempt to tell us what to write.

In future columns, we will describe how the Indians pulled the greatest document hoist in history right under the noses of the FBI. We will also reveal, in detail, the contents of the Broken Treaties Papers.

Footnote: The Indians, in their black hats with the beaded hatbands, looked tough and grim. However, they not only turned out to be friendly but they laughed easily. Once they left Whitten behind to work while they went out for a beer. When Whitten jokingly complained, one Indian cracked: "You know how whites go crazy when they drink firewater."

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Mr. WHITTEN, Item Five: Also, on December 11, Adams returned valuable property to the FBI. The FBI knew Adams was the conduit for the materials as is evidenced by a receipt given Adams by FBI agent Dennis Hyten, the very agent who later was to swear out the complaint against us after our arrest. The report of this receipt is in the aforementioned Washington Post article of February 12, our own February 12 column, and other papers. I submit a copy of this receipt from Special Agent Hyten of the Washington Field Office for the record.

[The receipt referred to follows:]

3 drawings by R. C. Gorman; IBM portable dictaphone and case and batteries; plastic container with 5 IBM typewriter heads; plastic container with 1 IBM head; 3 IBM dictaphone belts; 1 Sony foot switch; 1 IBM foot switch.

Above items received from Hank Adams, 1464 Rhode Island Ave. NW, Washington, D.C., apt. 563.

DENNIS P. HYTEN,
Special Agent, FBI.

Affirm the above, Hank Adams, December 11, 1972.

Mr. WHITTEN, Item Six: January 11, Adams had dropped the idea of waiting on the copying for return of the documents. That is 20 days before our arrest. On January 12, the New York Times, under a four column head, large enough for many Government officials to read, said "An Indian Leader Pledges Return of U.S. Property." This story details Adams' plan for getting the documents back to the Government, with many explicit quotes. It is a vital piece of evidence and I submit it for the record.

[The New York Times news story referred to follows:]

[From the New York Times, Jan. 12, 1973]

AN INDIAN LEADER PLEDGES RETURN OF U.S. PROPERTY

WASHINGTON, JAN. 11.—The documents, paintings and other property taken from the Bureau of Indian Affairs after its four-day occupation by Indians last November will be returned by Feb. 10, a negotiator for the group said today.

Citing "a division in the philosophies and personalities" of members of the coalition of tribes that made up the Trail of Broken Treaties caravan, Hank Adams, the Indians' principal negotiator with the Government, said at a news conference that he would personally endeavor to obtain and return the pilfered property.

Mr. Adams, an Assinaboine from Puyallup, Wash., who is a lawyer, also said he had received information that he and seven other caravan leaders would soon

be charged by the Government with criminal conspiracy to come to Washington, trespass and destroy and steal Federal property. A spokesman for the Federal Bureau of Investigation, which has recovered a small amount of stolen property, refused to comment on the possible arrests.

Caravan leaders have maintained that the Indian Bureau was seized by the 1,000 members of the caravan after attempts to obtain food, lodging for participants and interviews with key Government officials failed.

According to Mr. Adams, who said he had returned several thousand dollars worth of documents and paintings, "the intended uses of the documents weren't fully effective."

"We had planned to use them to educate our many tribes and to use them in the news media to document Government impropriety," he said.

"But unfortunately, the announced study of the documents never took place," Mr. Adams said. He said that poor communications and fear of Federal surveillance had resulted in a situation that made it impossible to manage the documents.

He said the coalition had splintered and that there was a "great gap in the cohesiveness and coordination of activities."

Mr. Adams said, however, that there was growing acceptance among Indian nations of the list of 20 concerns forwarded to the White House during the occupation of the bureau.

In a series of national, regional and state meetings of Indian tribes during the last two months, officials from more than 150 tribes have endorsed the 20-point proposal in principle and spirit, according to Mr. Adams.

On Tuesday, however, the White House rejected the proposals and criticized the caravan for what officials described as the "wanton destruction" in the bureau building and the theft of property.

"As we now proceed to work and look ahead with the entire Indian community, we hope that the theft of its contents will be seen as the distracting and divisive act that it was—an act which served only to impede the progress already being achieved by the Administration and responsible Indian community," the White House's written response said.

One of the primary requests made of the Government was for renewed treaty-making authority and creation of a commission to review treaty commitments and violations.

"To call for new treaties is to raise a false issue, unconstitutional in concept, misleading to Indian people and diversionary from the real problems that do need our combined energies," the White House statement said.

It was signed by Leonard Garment and Frank Carlucci, who took over negotiations between the Government and the Indians after talks between Interior Department officials reached an impasse.

Mr. Adams said response was virtually devoid of positive content and reflected the hostile attitude that Federal agencies and officials have maintained against independent and creative Indian thought, expressions and proposals.

Mr. Adams said a White House official had told him that the Federal Bureau of Investigation was concluding investigations that would allow it "to get as many of you guys as we can."

Mr. Adams read from a Department of Interior memorandum about \$65,000 in new funds to bolster the security force at the Pine Ridge Indian reservation. He said the agency had been encouraging and funding the expansion of security forces on reservations to harass caravan members and prevent their holding meetings with tribal members. The author of the memo could not be reached for comment.

Mr. WHITTEN. Item 7: One of the most interesting things that we turned up in our investigation: On January 18, an ABC "Reasoner Report" film crew set up at Adams' apartment. With Adams was the FBI informant, John Arellano, who has been quoted so trustingly by Mr. Gray in his testimony to you. As the FBI undercover man listened, Adams said, and I quote from the film's transcript, which I submit, "We have some information on the nature of documents that were taken and know"—my emphasis on "know"—"that these documents also will be returned in a short period of time. And then the Government will continue to lie. They'll say, you know, they weren't returned

or some are still missing." The Reasoner report was shown last weekend and pointed out the FBI undercover man as Adams talked, designating him in the show.

[The document referred to follows:]

REASONER REPORT, SATURDAY, MARCH 3

Harry Reasoner—voice over.

This is a parley of the militants after the take over—talking of what they have done and hoped to do. Hank Adams and Anita Collins were arrested by the FBI and were charged with stealing documents.

Adams says he was falsely identified by a man posing as an Indian during the take over: in reality a Washington undercover police agent—This man, John Arellano. The FBI charge went to grand jury—but it refused to make indictments.

Hank Adams—we know, you know, that these things aren't true, because we have some information on the nature of documents which were taken and know that these documents also will be returned in a short period of time, and then the government will continue to lie . . . they'll say you know that they weren't returned, or some are still missing. They'll still use this as a device for explaining their failures which were in force, evident even before there was a take over of the BIA.

Mr. WHITTEN. Mr. Gray failed to tell you of this absolute evidence of Adams' intent to return the documents and of the presence of Mr. Gray's FBI plant while Adams spoke of the return. Indeed, Mr. Gray says the FBI had no knowledge Adams was returning documents. May I respectfully suggest that this ABC segment be shown to the committee, to Mr. Gray, and to Mr. Arellano so the latter two may be questioned as to whether Mr. Arellano informed the FBI of this statement by Mr. Adams. If Mr. Arellano did inform the FBI, then Mr. Gray arrested Mr. Adams with full knowledge Mr. Adams was aiding the return of the papers. If Mr. Arellano did not inform the FBI, then he is a slipshod undercover man and why has Mr. Gray put so much faith in him that his agents arrested Mr. Adams, Miss Collins, and myself on Arellano's word?

Item 8: On January 29, Adams personally informed Jane Wales of Congressional Quarterly that he hoped to have the documents back—all the documents—by February 10. CQ published this information on January 31, ironically, the day we were arrested. The CQ item is submitted.

[The document referred to follows:]

[From the News Futures, Jan. 31, 1973]

✓ INDICATES FIRST LISTING

SATURDAY, FEBRUARY 10

✓The documents, paintings and other property taken from the Bureau of Indian Affairs after its four-day occupation by protesting Indians last November will be returned by this date, according to the Survival of American Indians Association. See *CQ Weekly Report*, p. 85; also *1972 CQ Almanac*, p. 840; also *E.R.R. Report of Nov. 8, 1972*.

Mr. WHITTEN. Item 9: On January 29 or 30, Adams made the original appointment with Mr. Creedon, according to Mr. C. R. Anderson. That was 30 minutes before we were arrested and I outlined this item earlier.

Item 10: Twenty-five or thirty minutes before his arrest, Adams wrote on the boxes, with my help, the name "Dennis Hyten, WFO—

FBI—meaning Washington Field Office—and Hyten's phone number. He knew Hyten would be getting the documents from the BIA—Hyten had been coordinating the return—where Adams and I were taking them in my car. The man Adams had hoped would help transport them to the BIA was none other than the FBI's undercover man, John Arellano. But he failed to show up. Mr. Gray neglected to tell you of the lettering on the boxes.

Now, if I may, two quick areas of observation and then I am done.

By arresting Adams, as I say, I believe Mr. Gray effectively blocked the return of the thousands of pounds of documents still outstanding. Vine Deloria, Jr., the Indian author, has told me that Indians all over America knew Adams was trying to get the documents back as a means of showing good faith so the White House talks could be renewed.

My own problems with Mr. Gray aside, the arrest of Adams was a colossal error in judgment by him. He arrested the one man who was capable of getting the valuable documents back into Government hands.

And finally, Senator Cook and Mr. Gray have cast doubt on my sworn testimony to the grand jury and here that the documents were going back to the BIA. To begin with, if the FBI had really wanted the documents, they would have had their informant, Arellano, who picked them up, drop them off at the FBI on the way back from the bus station which is only a few blocks from the field office of the FBI.

Second, the FBI waited all night before pouncing on Adams. If you accept Mr. Gray's view of Mr. Adams, how did the FBI know Mr. Adams wasn't going to flush documents all night?

Third, the FBI arrested me at Adams' apartment, an odd departure from ordinary police procedures. Ordinarily they would have followed me to where the documents were going so that the crucial element of their charge—that I was converting the documents to my "own use"—would stand up. My belief is that the arrest was a harassment of Jack Anderson. We have written columns with bite about the FBI and about this and previous administrations. Moreover, the FBI had chased all over the country for the documents and Hank Adams was within a few blocks of making monkeys out of Mr. Gray and many of his agents by getting the first big cache of documents across the country and back to the Government right under the FBI's noses. The combination of Adams and Anderson, I believe, proved too tempting a morsel for the FBI to let a little thing like common sense and the first amendment stand in its way.

After all, is it really imaginable that Hank Adams would try to sell a batch of documents whose only value was for the tribes; the three cartons were full of old land decisions and the like? Is it imaginable that at 10 a.m. on a bright morning I would park—illegally—in front of an apartment house at 14th and Rhode Island in a little Vega hatch-back, a bright yellow-orange Vega which is practically wrap-around glass, with the intent to steal big boxes of documents? Wouldn't I be pulled up in an alley instead of parked where a traffic policeman writing me a ticket might have seen boxes with FBI written all over the top? Would we have written the name of the agent for whom the documents were eventually destined—this same Hyten—on the top if we planned to lug them to our Xerox machine at 16th and K and up nine floors in a crowded elevator?

I am foolish, but not that foolish.

Thank you for your patience. I have laboriously outlined my case because only by doing so could I show that it touches on Mr. Gray's judgment, credibility and mostly on his abilities as the Nation's top policeman.

Therefore, I, too, oppose Mr. Gray as Director of the FBI. But I pray that if he is approved, he will become such a fair, nonpolitical, hard working and proficient Director, despite my fears, that 3 years from now I can voluntarily eat each page of the printed testimony in a gustatory mea culpa I would gladly make.

Thank you very much, Mr. Chairman, for your courtesy.

Senator TUNNEY [presiding]. Senator HRUSKA.

Senator HRUSKA. I will defer to the Senator from Kentucky for questioning.

Senator COOK. Thank you.

Let me check with you, Mr. Whitten, first, because in going through this, your testimony, there are some things that I don't quite understand.

I thought that Mr. Arellano is a member of the Metropolitan Police Department, that he is not an FBI agent, that he is not on any payroll of any Federal agency. Is that not true?

MR. WHITTEN. I think if you will check my testimony, Senator Cook, you will find that I did not say he was an FBI agent.

Senator COOK. Well, you call him an FBI informant.

MR. WHITTEN. That is correct.

Senator COOK. It is my understanding the information he had was given to the Metropolitan Police Department and then passed on to Federal agents.

MR. WHITTEN. You are correct. He is not an FBI agent but he is an FBI informant.

Senator COOK. I think the inference in all of your testimony was that he is an FBI informant and Mr. Gray relied on that information. I think the inference is that Mr. Arellano is somehow or other associated with the FBI, when, in fact, he is not.

MR. WHITTEN. Senator Cook, it was Mr. Arellano's information, as you suggest, that Mr. Gray, Acting Director of the FBI, did rely on in my arrest.

Senator COOK. Are you sure it was Mr. Gray, are you sure it wasn't somebody else in the Federal Bureau of Investigation?

MR. WHITTEN. Either way, sir, I would suggest it makes a connection between the FBI and Arellano.

Senator COOK. I wish to say that, somehow, the association that you make, that an informant of the Metropolitan Police Department of the city of Washington is connected with the FBI, is hard for any of us on this committee to believe.

MR. WHITTEN. The Metropolitan Police Department did not arrest me, Senator Cook.

Senator COOK. That is correct.

Now, Mr. Whitten if, in fact, you were delivering 150 pounds of documents to Mr. Creedon, why did you put Mr. Hyten's name on the boxes or why did Mr. Adams put Mr. Hyten's name on the boxes? Is this what we commonly refer to as a passthrough?

Mr. WHITTEN. I don't know what passthrough is. If you will explain it to me I will be glad to hear you.

Senator Cook. If the intention of Mr. Adams, and you were in Mr. Adams' apartment with him at that time, was to return these documents to Mr. Creedon, who, by the way, is not an employee of the BIA but of the House Appropriations Subcommittee, why did you put Mr. Hyten's name on them, who is in the FBI, when, in fact, there was no intention of returning them to him? Apparently, from your testimony, you were taking them to Mr. Creedon, you weren't taking them to Mr. Hyten, therefore, do you have any knowledge why Mr. Adams would put Mr. Hyten's name on them when in fact he was returning them to Mr. Creedon at an office that the House Appropriations Subcommittee has at the BIA?

Mr. WHITTEN. Senator, you lost me about four questions ago.

Senator Cook. I didn't think so.

Mr. WHITTEN. If I could take them one at a time I would be very pleased to answer them now. First, you were telling me about passthrough.

Senator Cook. Were you there when Mr. Adams put Mr. Hyten's name on the boxes?

Mr. WHITTEN. And I also wrote on one.

Senator Cook. Did you?

Mr. WHITTEN. Yes, sir.

Senator Cook. And yet you say you were going to return them to Mr. Creedon.

Mr. WHITTEN. At the BIA; yes, sir.

Senator Cook. What was the purpose of putting Mr. Hyten's name on them when they were going to be returned to Mr. Creedon?

Mr. WHITTEN. As I said in my testimony a few minutes ago, as I understand it, Mr. Hyten was coordinating the return of the documents. Mr. Adams was taking them back to the BIA, I would assume quite symbolically knowing that they would then be taken to the FBI, to Mr. Hyten who was coordinating them——

Senator Cook. If all these documents——

Mr. WHITTEN. Could I finish, sir?

Senator Cook. Sure.

Mr. WHITTEN. They were, as I understand it, to be taken back to the BIA where Mr. Hyten would most assuredly have been called and the number itself was written on the top of the boxes, so that he could be summoned. They came from the BIA, and Mr. Adams, who is a very dedicated Assiniboine Sioux Indian leader, wanted them to go back to BIA.

Senator Cook. If Mr. Creedon knew he was coordinating the return of all of these, and you just finished saying that you did this, I think you said that Mr. Creedon was coordinating——

Mr. WHITTEN. I think Mr. Hyten——

Senator Cook. Why weren't they delivered to Mr. Hyten?

Mr. WHITTEN. Are you talking about Mr. Creedon or Mr. Hyten? The first name of each is "Dennis."

Senator Cook. I have no intention of using their first names.

Mr. WHITTEN. You confused Mr. Creedon and Mr. Hyten.

Senator COOK. I am not confusing them at all. I just don't get your own testimony at all. I have prosecuted long enough so I don't confuse them at all.

Mr. WHITTEN. I can believe that.

Senator COOK. You wrote on three boxes that contained 150 pounds of documents, the name of Mr. Creedon—Mr. Hyten. [Laughter.]

On the basis of having written Mr. Hyten on those three boxes, why was it your intention or why was it Mr. Adams' intention to deliver them to the BIA?

Mr. WHITTEN. I believe I have explained that.

Senator COOK. Why don't you explain it to me again.

Mr. WHITTEN. Very well.

Senator COOK. If I have a box I wouldn't put on the box Senator Hruska's name when I intended to deliver it to Senator Tunney.

Mr. WHITTEN. I am sure you wouldn't, Senator.

Senator COOK. By the way, their first names are not the same.

Mr. WHITTEN. I am aware of that, Senator, having written both of them many times.

Senator, as I explained, I believe Hank's desire—

Senator COOK. Let's use last names, shall we, Mr. Whitten, so that we don't have the problem that you have with first names.

Mr. WHITTEN. I believe it was Mr. Adams' desire to return the documents to the BIA because that is where they came from. Symbolically it was important that they go back, this first major cache, to the very place they had come from. It was his desire to show his good faith so negotiations with the White House could be recommenced. However, he had on December 11, returned documents, returned materials, from the BIA to Agent Hyten.

Now, knowing that Agent Hyten was coordinating the return he put the name of Agent Hyten, the ultimate receiver of the documents, on the boxes. I wrote on one and he wrote on two.

Senator COOK. Did he express that theory to you when you were writing the names on the boxes?

Mr. WHITTEN. Then or close to it, I do not know whether it was exactly at that time or just before it.

Senator COOK. I still have to figure out in my own mind why, if it was so symbolic that they be returned to the BIA, they would be returned to an employee of the House Appropriations Subcommittee located at the BIA and have the name of Mr. Hyten, an FBI agent, on them. Especially when they were to be delivered to Mr. Creedon, who was not an employee of BIA, and who happens to have an office in the BIA building.

Mr. WHITTEN. Is that a question?

Senator COOK. No; it is just an analysis of mine.

May I also say that if, in fact, these were to be delivered in this symbolic fashion, which you so indicated, it would have been just as easy for either Mr. Adams or you, as a matter of fact, with this great effort to provide transportation, to have the 150 pounds of documents that you didn't want to look at, picked up by the BIA.

Mr. WHITTEN. I will correct you, sir; I did look at some of them.

Senator COOK. You could have notified either the FBI or the BIA that the night before the documents were in a locked box at the Greyhound Bus Station and could have been picked up there.

Mr. WHITTEN. Is that a question?

Senator COOK. Would you think that would be just as easy?

Mr. WHITTEN. I don't understand what you are asking me.

Senator COOK. Do you think it would have been just as easy to symbolically advise the BIA that there were 150 pounds of stolen documents from the BIA building and they were located in a box, number so and so, at the Greyhound Bus Station, and that they could have been picked up there?

Mr. WHITTEN. Well, you are asking me to speculate on Hank's, on Mr. Adams'—

Senator COOK. Well, there is great speculation. Mr. Whitten, when you say these boxes that had the name of Hyten on them were going to be delivered to Mr. Creedon and Mr. Creedon was patiently waiting to receive them, that this was, in fact, what was going to occur.

Mr. WHITTEN. Mr. Creedon, as I said, Senator, earlier in my testimony, was not aware that the documents were coming back to him. I made that explicit and I don't—

Senator COOK. Why do you think he didn't indicate this to Mr. Creedon when he was talking to him?

Mr. WHITTEN. Sir, if I could finish my answer.

It would be a great disservice for me to suggest that Mr. Creedon, the House investigator, knew that there were going to be documents coming back. He did not know and I want to make that very explicit.

Senator COOK. But yet, once before, Mr. Adams advised agents in the FBI that he had material that had been stolen from the BIA and that he was bringing it back. Why do you think he would fail to do that on this occasion?

Mr. WHITTEN. This was the first major cache of BIA documents to be returned through the good offices of Mr. Adams in line with the numerous statements that he had made about trying to get them back.

Senator COOK. So we do have a situation here where there were three boxes and you helped deliver them and you brought one of them out of the house.

Mr. WHITTEN. No, I did not help deliver them.

Senator COOK. You were in the process of helping, were you not?

Mr. WHITTEN. This is a bit of difference. If I had delivered them I never would have been arrested because the FBI would have seen them there at the BIA.

Senator COOK. Were you in the process of delivering them?

Mr. WHITTEN. Yes, sir.

Senator COOK. It was your automobile?

Mr. WHITTEN. I explained why, sir.

Senator COOK. And you carried the box out of the apartment?

Mr. WHITTEN. I would willingly have carried all three boxes out of the apartment. Mr. Adams was shot some 2 years ago in the stomach by white vigilantes. He was in an automobile accident a few weeks before and he had severe chest pains. Had he let me I would have carried all three of them out there as well.

Senator COOK. I don't blame you.

Mr. WHITTEN. Thank you. I know you would be a man of good will, you would have helped.

Senator COOK. Mr. Whitten, you said the three cartons were full of old land decisions and the like, so you did review the documents in the boxes?

Mr. WHITTEN. Very briefly, Senator.

Senator COOK. Well, it would have had to be very briefly because the record shows you were in there 15 minutes, or 15 to 20 minutes, and that was all.

Mr. WHITTEN. Yes, sir. I was unable to look at them for all 15 minutes but they did look—

Senator COOK. Those are all the questions I have for Mr. Whitten, Senator.

Senator TUNNEY. Mr. Whitten, what did you say to the FBI agents at the time of your arrest? Did you advise the agents, for instance, of the numerous statements that had been made by Mr. Adams that he planned to return the documents?

Mr. WHITTEN. No, Senator. Mostly I put up a great howl about the first amendment being violated in my case. I mentioned to the agents that if they looked at the top of the boxes they would see they were going back to the FBI anyway through an intermediary, and I know that "intermediary" is an unusual word and it stuck in my mind. I meant by that the BIA but I did not recite to them Hank Adams' efforts to get the documents back prior to that. Perhaps I should have.

Senator TUNNEY. Did Mr. Adams, to your knowledge, relate to them?

Mr. WHITTEN. I don't know, Senator.

Senator TUNNEY. At any time before you were jailed did you have occasion to mention to the agents the nature of your assistance in returning the documents to the Government?

Mr. WHITTEN. Well, yes, as I said a moment before, I said if they looked at the tops of the boxes they would see they were going back to the FBI anyway and then I said through an intermediary. I did make clear they were being returned to them, to the U.S. Government.

Senator TUNNEY. What did the agents tell you?

Mr. WHITTEN. They seemed almost as nervous as I was. Senator Tunney. Well, there was a lot of sort of ritual stork dancing around there. I was reciting my first amendment rights and they said "We heard you." And I said, "I wish you would let me take notes on it," because they had taken them and they said "My memory is good," and I said, "I wish you would record it so my protest could be made public," and they said, "We have good memories," and I said "Could you record it," and they said "We don't have tape recorders," and I said, "Can't you record it on your car radio," and they said that the car radio didn't have facilities. Also I asked them about an arrest warrant and numerous other things.

Senator TUNNEY. Did they ever mention to you why they were arresting you?

Mr. WHITTEN. I believe they did. Certainly at one time they did. They told me I was being arrested and charged with possession of stolen Government property or documents. They were, except for the one incident of taking the notes away from me, which were later returned, they were very courteous to me, I have to say that, although it still makes you a little uncomfortable.

Senator TUNNEY. To your knowledge, did Mr. Gray have any personal knowledge of Mr. Adams' desire to return the documents to the Government?

As I listened to your testimony, it is clear that there were many published reports that Mr. Adams was intending to deliver these documents to the Government. Do you know whether Mr. Gray had any personal knowledge?

Mr. WHITTEN. Senator, I can't say that I do know that. I can't believe that a man as well read and in as sensitive a position as he is in does not read such papers as the Times and the Post where all of this was made perfectly clear.

Senator Cook. Careful, Mr. Whitten, don't push him on the Post. [Laughter.]

Senator TUNNEY. You quote in your testimony Mr. Gray's testimony to this committee that "We have checked with everyone at the Bureau of Indian Affairs that we could check with and not one of them said that they had any appointment with Mr. Adams."

Do you have any knowledge of who the collective "we" is besides Mr. Gray himself? Was he referring to agents of his in the Bureau of Indian Affairs with any inside knowledge? Do you know who those other people would be besides Mr. Gray himself?

Mr. WHITTEN. No, Senator. In context, it looks like only Mr. Gray and his agents. It was obvious that he had been briefed, prior to testifying here, upon what he had to tell you, although who briefed him, I don't know. But that is presumptive rather than certain.

Senator TUNNEY. At any time before your jailing did you explain clearly to anyone in authority, the sergeant who booked you or whoever it was who booked you, what it was that you were doing?

Mr. WHITTEN. You mean before I was jailed? I think I could really not have been more explicit to the FBI agents that I felt I was doing my job under the first amendment and that the documents were going back to the U.S. Government. That I did make clear, although I didn't give them any formal statement when I was in custody.

Senator TUNNEY. Now, prior to going before the grand jury, did you have any contact with the U.S. attorney or with any of his people as to what it was that you were attempting to do? Did you have any opportunity to explain thoroughly what it was that you were doing in helping Mr. Adams?

Mr. WHITTEN. Senator, we, for better or for worse, fought it in our column and in person. I went on television and said it and I know that the FBI and Justice Department knew about that because they questioned me about what I had said on the television show. They had a transcript of it apparently. They were asking me questions about what I said so I knew they knew what my view was, and Jack wrote quite a few columns about it, and I wrote a piece for the New York Times about it.

Senator TUNNEY. This was all before.

Mr. WHITTEN. Before I went before the grand jury. And my lawyers of course were talking with the U.S. attorney's people.

Senator TUNNEY. What did the U.S. attorney's office say to you and your lawyers with respect to why it was that they were prosecuting the case?

Mr. WHITTEN. Well—

Senator COOK. May I ask Mr. Whitten: at the time that this occurred, were you with your attorneys when they were talking with the U.S. attorney? Or was it your attorneys who were talking with the U.S. attorney?

Mr. WHITTEN. It was my attorneys, Senator Cook.

Senator COOK. And you were not present with them?

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

Does that preclude my answering?

Senator COOK. No, it doesn't.

Senator TUNNEY. It would in a court of law but not here.

Mr. WHITTEN. I don't know how much I am supposed to say about what the lawyers tell you, but just in a general way, within a few days after they had arrested us they apparently sort of wished they hadn't, I mean everybody seemed to be looking down there for some way to get the egg off their face, but that is just in a general way what I gathered. I am not sure I should be explicit about what the lawyers told me about what—

Senator COOK. Mr. Whitten, you certainly can. That is a client-attorney relationship and you are the client so you are free to say anything.

Mr. WHITTEN. I don't think it would be fair to their lawyers and to my lawyers and, to tell you the truth, it probably wouldn't be fair to the DA's down there. The one DA at the grand jury, although he was the same fellow who knocked off our records, was at least, in questioning me, eminently fair. They agreed—here is something that was done and was said publicly—they agreed in the grand jury not to ask me about my sources, and the DA, a fellow named Rudy, was just absolutely meticulous about that. I don't mean to go afield with it.

Senator TUNNEY. The reason that I ask you that question: it has been my impression, perhaps it was in a column that I read, perhaps it was something that you said earlier, that in effect this was a political arrest, an attempt to harass Jack Anderson. I am curious to know, besides what you have told us, what conversations or communications you had with Government agents that would lead you to that belief, other than what you have testified to already.

Mr. WHITTEN. Okay. I have two quick ones, and then Jack has a lot more on that. Would that be okay?

Senator TUNNEY. Yes.

Mr. WHITTEN. All right. I personally got, from three pretty good sources, honestly it wasn't good enough for me to write it, in my view, but good sources, three statements:

One was that the White House had said they were out to get us and that they were maybe going to plant some phony documents on us, that is the FBI, OK.

The second was that the FBI might be going so far as to do what is called a bag job on us, which is a burglary where they come and take your things while you are out of the house.

The third one, which contradicts both of those two, is that it was just an episode in which the police had, i.e., the FBI, had blundered.

In answer to your question I am saying that the information that I had, in my view, wasn't good enough to write, and so I put it forward on that basis without meaning to draw, to have people draw, the conclusion that it is necessarily true. Jack has more information that he knows from direct reporting on it.

Mr. ANDERSON. My own White House sources say that the word was passed down from the White House to try to make a case against us, to go after both us and the Washington Post. That information came from extremely reliable and reputable White House sources.

They say that they were not present when the instructions were passed from the President and they were very protective of the President. They said they were quite sure that probably the President was irate over something he had read in a column and said, "We have got to stop those leaks," or something like that. But whatever it was the President said, and they were confident that the President would not have ordered the arrest of Les Whitten, they felt that the President must have made some general statement and then H. R. Haldeman, his chief of staff, implemented that by sending word to the FBI and the Justice Department they wanted to do something about it and about the Washington Post. That came from inside the White House.

Senator TUNNEY. Mr. Anderson, is the FBI still calling people whose phone numbers appeared on the phone lists?

Mr. ANDERSON. As far as I know they are not, not since we wrote the story that they had gotten hold of these toll calls. I think maybe it would be helpful if we did this chronologically, in view of what Mr. Whitten found out this morning from Mr. Crendon. Mr. Crendon told Mr. Whitten that he had told the two FBI agents on February 1 that Mr. Adams did indeed have an appointment with him. That the story that Mr. Adams was telling, in other words, that his purpose was to return the documents, that that story was true. That was confirmed on February 1 to two FBI agents by Mr. Crendon. The subpoena for my toll records went out on February 2. This was after the FBI, therefore, knew that no crime was being committed. You see it is not a crime to return documents. So on February 2, after the FBI had already had their conversation with Mr. Crendon, they still asked the Justice Department—the grand jury to subpoena my home and office telephone numbers. I appeared before the grand jury, Senator, and when I appeared, Mr. Rudy, the U.S. attorney, made a point, emphasized strongly, that I was in no way involved in this, that no criminal charges or criminal suspicions were to be lodged against me, and yet it was my home telephone calls that were being subpoenaed. I am in no way involved in this matter by their own statement, by the U.S. attorney's own statement before the grand jury, and yet my home telephone calls going back to July were subpoenaed. I suggest that this disputes, this absolutely contradicts, what Mr. Gray testified under oath before this committee.

Senator Cook. Senator Tunney, would you yield for just a moment?

Senator TUNNEY. Yes.

Senator Cook. Mr. Anderson, did you just say, and it kind of went past me, but if it is in the record it is, did you say that Mr. Crendon told you or told somebody that on that occasion he was to receive these documents?

Mr. ANDERSON. No; that he had an appointment, which confirmed Mr. Adams—

Senator Cook. All right. I thought you said something about an appointment for the return of the documents. I thought Mr. Whitten made it clear that he did not know that these documents were to be returned.

Mr. ANDERSON. That is correct, Mr. Creedon—

Senator COOK. All right.

Mr. ANDERSON [continuing]. Simply confirmed that Mr. Adams had a 10 o'clock appointment.

Senator COOK. Thank you.

Mr. ANDERSON. That is where obviously they were headed because if they had a 10 o'clock appointment they could have gone nowhere else if they were to keep that appointment.

Senator TUNNEY. As I understood your testimony, some of your correspondents over the phone were questioned by the FBI regarding matters that had absolutely nothing to do with the case against Les Whitten?

Mr. ANDERSON. That is not completely accurate. What I said was that they became aware, by FBI inquiries. There was at least one, a Robert Updike, who did get a direct inquiry from the FBI. Most of the inquiries were not direct, but people in Government, in particular, who had received calls from me, or who had called me, became aware that the FBI was inquiring about them. People who were contacted by the FBI would tell them, "The FBI has been asking questions about you." And this coincided with the receipt of my toll calls, so I am just putting two and two together and assuming there is a relationship. I think there had to be a relationship.

Senator TUNNEY. But was the inquiry about these people in reference to the stolen documents?

Mr. ANDERSON. No; because these were people—there was actually one inside the FBI—certainly they didn't think that an FBI man would be stealing the documents. There was—

Senator COOK. Mr. Anderson, didn't you say, excuse me, Senator, but didn't you say in one of your columns that one of the calls was to Phoenix?

Mr. ANDERSON. Yes.

Senator COOK. Wasn't it reported in one of your columns that Mr. Whitten had been in Phoenix and that he had seen some of the documents in a Phoenix motel or in a Phoenix hotel?

Mr. ANDERSON. That is true, but Mr. Updike—

Senator COOK. All right.

Mr. ANDERSON [continuing]. Had nothing to do with it.

Senator COOK. Understand, I cannot condone the acquisition of your telephone records, and, particularly, I cannot condone the acquisition of your records prior to the date of the BIA situation, under any circumstances.

Mr. ANDERSON. And the calls—since you brought it up, let me amplify it so the record will be quite clear on it—the calls that were made to Mr. Updike were very recent, they didn't go back to November, they didn't have anything to do with the BIA. They had to do with the drunk driving charge against Senator Fannin. We used Mr. Updike's name in the column about Senator Fannin. Mr. Updike was an assistant prosecutor who had written a memorandum to his—

Senator COOK. I guess what I am really trying to show is that at least in one column you made it clear Mr. Whitten had been in Phoenix and that he had looked over some of the stolen documents while he was in Phoenix and this was a part of the trip that he had made.

Mr. ANDERSON. He had gone to Phoenix, that is correct.

Senator COOK. All right.

Senator TUNNEY. So that I am clear in my own mind: There is no specific evidence that you have that the inquiries that were being made of sources that had been in telephonic communication with you were with respect to matters other than the stolen documents from the BIA?

Mr. ANDERSON. Quite the contrary. The people who were being called were not people who—B-52 crewmen in Guam, and people inside—at least one source inside the FBI itself, people in the government, suddenly are having an interest taken in why I should be calling them. I don't know precisely, because it is hearsay, what the FBI was asking, but these people became aware of FBI inquiries about them, who was this fellow and what does he do, and questions about them, and this happened and began happening immediately after February 2. There was obviously a sudden and great FBI curiosity into people who happened to appear on my toll calls.

Senator TUNNEY. Thank you very much.

Senator HART (presiding). Senator Hruska.

Senator HRUSKA. Mr. Whitten, I notice in several places you seek to impeach Mr. Gray's testimony and cast discredit upon it. On page 2, for example, points 3 and 4 of your statement, you state that: "Mr. Gray says his information is that the three cartons of documents were 'initially going to be delivered at North Carolina to representatives of this column for a sum of money.'"

Then you go on to say, "Both parts are again totally false." Which parts do you mean were totally false?

Mr. WHITTEN. Well, sir, that we were going to North Carolina and that we were going to give them any money.

Senator HRUSKA. Do you deny that Mr. Gray had information to that effect?

Mr. WHITTEN. No; but I say that the information he provided you based on the information that he had, which he must have believed in or he would not have trotted it out for you, that that was false.

Senator HRUSKA. Mr. Gray's statement, of course, was that he received information to that effect. You don't deny that he got such information, do you?

Mr. WHITTEN. I assume that he got such information, sir.

Senator HRUSKA. Yes; well, it is not quite clear.

Mr. WHITTEN. And he presented it—

Senator HRUSKA. That same technique was used in the following paragraph: "At another point Mr. Gray says, 'The transfer of money was to be made' according to his information." Do you deny that he received information to this effect?

Mr. WHITTEN. No; but I do deny there was any transfer of money that was to be made.

Senator HRUSKA. That clarifies it.

Mr. WHITTEN. Not entirely, sir, he proffered that information to you.

Senator HRUSKA. Well, he says he did. I just wondered if you knew that he did not receive such information?

Mr. WHITTEN. No; I don't.

Senator HRUSKA. Still at another place, points 6 and 7, you state that "Mr. Gray says his information was that Anita Collins and Hank Adams had been conferring with Jack Anderson to buy documents stolen from the Bureau of Indian Affairs." Then you say in your testimony this is wildly false. So the falsity attaches to the information, not the fact that Mr. Gray received such information? Am I correct in putting it that way?

Mr. WHITTEN. You are correct in putting it that way, yes, sir.

Senator HRUSKA. Thank you. That is all I have for the time being.

Senator HART. I apologize for my temporary absence. I had an appointment of long standing which I had to keep.

Without naming individuals in this business of who was telephoned, can you be a little more specific? Mr. Gray said that "When the toll calls were obtained we looked only at those following the event itself in order to locate the papers. We weren't looking for something that had happened before." I take that to say that he looked at that list and called on those who he had reason to believe might know something about Mr. Whitten's part in this.

Mr. ANDERSON. It is very difficult without going into names. The only name that I am permitted to give you is Mr. Updike. He has agreed to that and is even willing to testify if you want to ask him about it directly. But the others don't want to be involved, and I am obliged to protect their confidence. But they were generally people, as I said, in Government. There seemed to be a particular FBI curiosity about people in Government who might be in telephonic contact with me, and people in the military, as I said, some B-52 crewmen.

I had been in touch with B-52 crewmen by telephone on Guam. I had been asking them about reports I had heard about the mishandling of the December raids over Hanoi. For 3 days B-52 bombers followed the same flight plan. The gunners in Hanoi knew precisely where they were coming and knew precisely how to knock them down. This caused unnecessary loss of life. There were some B-52 crewmen who were terribly upset about it. I spoke to them. This had nothing to do with Indian affairs. So far as I know there are no Indians on those B-52 crews, but the FBI seemed greatly interested in which B-52 crewmen I may have been talking to in Guam.

Senator HART. Senator Cook.

Senator Cook. Let me make some observations, if I may, Mr. Chairman.

These are not questions really. As I view the situation, Mr. Whitten, the boxes apparently consigned to Mr. Hyten were to go through Mr. Crendon. You have introduced news stories from the New York Times and from the Post and from the Star about Mr. Adams' desire to return these documents to the Federal Government. It would seem to me if in fact 150 pounds of documents were going to be returned to Mr. Crendon, who is not an employee of the BIA but of the House Appropriations Subcommittee, that with all the publicity Mr. Adams had gotten up to then about the fact that he wanted to return them, I would suspect that if I were he and really wanted to do a job for the Indians of the United States I would have had ABC, CBS, NBC, and everybody concerned, in Mr. Crendon's office there to witness the acceptance of the 150 pounds of documents. I would have wanted all the publicity that I could have received on the return of all these docu-

ments. Somehow this does not ring true to me that he would not want to take them to the highest official of the BIA he could have taken them to. Obviously, since he was going to put them in your automobile out on the street and not in an alley, as you put it, he would have been delighted to and could have gotten as much publicity as he wanted and returned some 150 pounds, out of 2,000 pounds plus, of documents.

Secondly, Mr. Anderson, I must say, in all fairness, regarding your analysis, that your sources at the White House couldn't pin down that the President specifically said:

We want to get the Post and we want to get Jack Anderson.

I would add that having just gone through putting on an inauguration, I got so tired of hearing from people at the White House what the President wanted, when, frankly, I knew damn well that the President wasn't interested in the things that they were discussing. I find it difficult to believe, although there is some reason to believe that the President might be a little unhappy at Jack Anderson. But, in all fairness, I must say I have to put it in perspective, because I ran into that for several weeks, believe me.

Mr. ANDERSON. I would be terribly disappointed if the President is not unhappy about what I write occasionally, but I certainly do agree with you. I doubt it, I really doubt, and I hope the record is clear on that, we certainly doubt, that the President of the United States ordered the arrest of Les Whitten. We don't believe that was true.

Senator Cook. Well, I feel that way, and I have to say that for some of us who have to live through that day-by-day up here that really does get a little bit tiresome.

Mr. ANDERSON. But there is no question, may I add, there is no question, from the reports I got from high White House sources, that H. R. Haldeman did pass down a general message, again his message was also not specific, but he did pass down a message, and he is in a fairly high level at the White House.

Senator Cook. I think I would agree with that. He is at a very high level at the White House.

Mr. WHITTEN. Sir, could I get in one comment?

Senator Cook. Yes.

Mr. WHITTEN. If we had done that, then I would have lost my exclusive. I really wouldn't have gone. This was a Wednesday and we were shooting for a Saturday column and what I happened to say was Hank Adams who has been——

Senator Cook. In other words, what you are really saying is that your participation in it then was for an exclusive story about the return of these 150 pounds of documents?

Mr. WHITTEN. Yes, if ABC——

Senator Cook. Mr. Adams had made an agreement if you would assist him you would get an exclusive?

Mr. WHITTEN. Well, it wasn't put quite that ironbound. He is really a nice man, and I said, "Hank, you know, could I have it, and then I will put it in a column on Saturday." This was Wednesday, when we write our Saturday column, and if ABC and everybody had been there, and I wish now that everybody had been, then we would have lost our story.

Senator COOK. I wish they had been, too, Mr. Whitten. If in fact 150 pounds of documents had been delivered to Mr. Creedon in boxes marked to be delivered to Mr. Hyten on a Wednesday, your exclusive would have been pretty old by your column on Saturday.

Mr. WHITTEN. You are right.

Senator COOK. Thank you.

Senator HART. We have discussed these reports that the Bureau has, including some apparently on Members of Congress. Mr. Anderson, you have had access to some of these reports. I will not ask you your source, but would you indicate when the last secret FBI dossier was leaked to you?

Mr. ANDERSON. I don't think I have received any actual documents from the FBI in the past 3 months.

Senator COOK. Do you think things are tightening up, Mr. Anderson?

Mr. ANDERSON. I am not certain, but I did bring some samples, I have them here, and it is up to the committee whether they want to look at them. Certainly the information in these, and I got it for only one purpose and that was to establish what I had been told, and what I had feared, namely that the FBI has been collecting raw gossip from unreliable informants, that the FBI has been putting into the files of non-criminals, wiretap and bugging information picked up on these devices, these insidious devices. I wanted to prove that, and I have, and the information is here. This is just a selective sampling of some actual FBI memos out of actual files. If you want to look at them, and I think you should if you have any doubt that the FBI is doing this, then I would like you to look at them. I would hope that in doing so, Senator, that you would not, and I am sure you would not because I certainly know the Senator's reputation for fairness and decency, but I would think that you would not want to make this information public, just as you would not want your file made public if it contained, as it most likely does, a lot of raw gossip.

Senator HART. I was curious as to whether in the incumbency of Mr. Gray any such files have come to your attention?

Mr. ANDERSON. I believe so. Certainly in the last 10 months we have received files from the FBI. I am terrible about dates, Les remembers some in December.

Mr. WHITTEN. They weren't very good.

[Laughter.]

Mr. ANDERSON. So the answer is yes; we have received them.

Senator HRUSKA. Would they be files which originated prior to the time Mr. Gray arrived there?

Mr. ANDERSON. I believe that most of these files, if not all of them, originated before Mr. Gray.

Senator HRUSKA. In Mr. Hoover's time?

Mr. ANDERSON. Yes.

Senator HRUSKA. I notice several of the examples you gave in your prepared statement were 1965, 1961, 1961, and so on, which would indicate that they were older documents.

Mr. ANDERSON. Yes. I made that clear in the testimony that this practice did not begin with Mr. Gray. I was troubled only when Mr. Gray said the files did not exist.

Senator HRUSKA. Is it indicated for what purposes those files were maintained? Would it have been for a position check, for example, or would it have been either to establish or to disprove the credibility of some witness? Do you know for what purpose these files, to which you referred in your statement, were prepared?

Mr. ANDERSON. I can only speculate on that. I think, judging from the kind of files that I have received, and the kind of information contained in them, I think these files were kept on people because they were prominent and controversial.

Senator HRUSKA. That is speculation?

Mr. ANDERSON. Well, the information contained in them would not—let me go beyond this. I talked to some of the people on whom I have files, and I know they did not apply for Federal jobs.

Senator HRUSKA. You mentioned that one file contained a reference to homosexuality. If that file pertained to one considered for promotion or appointment to high office, that would be a proper objective for accumulating a file of that kind?

Mr. ANDERSON. Senator, this was a prominent movie star who was not going to be promoted by the Government and was not likely to be appointed by the Government.

Senator HRUSKA. I asked you if you knew what the purpose was for these files. You say you can only speculate?

Mr. ANDERSON. That is right.

Senator HRUSKA. That is a fair statement?

Mr. ANDERSON. Right. I can only speculate and, as I quoted from one, there is a file on a man that begins "This subject," this individual, "is not the subject of an FBI investigation." Yet there is a file on him.

Senator HART. You may have been here this morning when Congressman Koch told us of his efforts to see his file.

Mr. ANDERSON. I almost volunteered to help him.

[Laughter.]

Senator HART. Can we be sure that his is not among those that you have offered to us?

Mr. ANDERSON. No: I don't think—let's check them off, but I don't think we have—

[Laughter.]

Mr. ANDERSON. We don't have any files on Members of Congress here. However, we have—yes: we do. I am sorry, we do have one file here on a Member of Congress. We have had access to the files that are kept on Members of Congress, and I noted this morning that you wanted to know whether they just contained biographical information. I can testify as an eyewitness on that. I have seen some of these files and they do contain gossip information, they do contain information taken from wiretaps, and bugging devices. I don't have any information, may I clarify the record, I have no information that any Member of Congress has had his own phones tapped or his own office bugged by the FBI. But what has happened is that the FBI has bugged Mafia members and lobbyists from time to time the name of a Senator or a Congressman might come up, and that information that comes on a bug will then go into the Senator's or the Congressman's file. In one specific case a lobbyist was boasting about how certain Senators and certain Congressmen followed his instructions and would do what

he wanted them to do. That information went into the Senators' and Congressmen's files although it was probably a very wild and inaccurate boast.

Senator HART. As you say, this predates Mr. Gray, but it remains one of the really most disturbing aspects of this hearing as far as I am concerned. We would not, to use a favorite expression, handcuff the police, but it would give every one of us confidence that except if there is some reason to believe that we are engaged in a criminal activity that we are free to move around and to speak and to write without it being put into a file.

Mr. ANDERSON. I certainly agree with you. It has a chilling effect upon a democratic society, Senator. The one great advantage that we have over totalitarian countries, I have always liked to feel, is we don't have to watch over our shoulder and now when you read through these files you wonder whether you have to begin watching over your shoulder. It does something to that feeling I have always had that in this country we are free. I feel less free when I know that the FBI may be listening or watching or tailing me. I lose that feeling, that wonderful feeling, that I get when I leave the Iron Curtain countries and come home and get a breath of good old American air, here we are free and I like to feel that I am free. Quite frankly, I feel less free knowing that the FBI is out shadowing and gathering gossip and scurrilous information and vile information, prying into the bedrooms of prominent people, I feel less free when I know this goes on. And I think, if I may be so presumptuous as to say so, that the Senate must do something about it, because L. Patrick Gray is not going to. This is quite clear to me from his testimony so far. I think that, gentlemen, that you are going to have to see that he does something about it.

Senator HART. That is not presumptuous and it states what I believe.

I would suggest that the files which Mr. Anderson has offered will be considered as available for any committee member who wants to take him up on it. I would suggest that we not receive them for our committee file. But there may be members who, for perfectly good reasons, may be in touch with you to see one or more of these files.

Mr. ANDERSON. I would be happy to make them available to a responsible Member of Congress who wants to satisfy himself on that point, certainly to any member of the committee who wants to satisfy himself on that point.

Senator HART. Thank you very much, both of you.

Mr. WHITTEN. Thank you for your courtesy, Senator.

Senator HART. Our next witness, whose name we have heard in the course of earlier testimony, is the national director, Survival of American Indians Association, Mr. Hank Adams.

Mr. Adams, we bid you welcome.

Senator Tunney.

Senator TUNNEY. Mr. Chairman, yesterday afternoon I made a statement before the committee that I did want to have the opportunity to have Mr. Dean and Mr. Gray come before the committee to answer questions under oath with respect to Mr. Dean's relationship with Mr. Liddy and any knowledge that Mr. Gray had of that relationship prior to forwarding documents from the FBI to Mr. Dean in the White House.

At 9 a.m. this morning, in response to my request last evening, two FBI agents came to my office with folders containing a number of interviews and I had the opportunity to read those interviews. I made a pledge prior to the time that I read those interviews that I would not reveal what I read, and I will not reveal what I read. But I would like to say that I still feel, as I did last night, that Mr. Dean and Mr. Gray should come before the committee and under oath testify concerning the circumstances of the FBI investigation and other facts concerning the connection between Mr. John Dean and Mr. Gordon Liddy.

Senator COOK. Mr. Chairman, as I understand Mr. Gray is still under oath before this committee and he is subject to being brought before the committee at any time.

Senator HART. I think you can go beyond that. It is understood he will return.

Senator COOK. All right.

Senator TUNNEY. I want to make it clear, Senator Cook, that I do not in any way want to reveal what I have read, but I do want to say for the record that the FBI was responsive to my request, that they came down and made everything available to me that I wanted to see.

Senator COOK. I understand.

Senator TUNNEY. I feel that both men should come before the committee and I do not want that request in any way to be interpreted as anything other than a reaffirmation of what I said yesterday.

Senator COOK. May I say, Mr. Chairman, not really in response to what the Senator from California has just said, but I have been asked by several reporters how I feel about Mr. Dean coming here, and I want to reiterate what I said in regard to the Flanigan episode some time ago: If I were this individual and something derogatory had been said of me in these hearings I would not only want to come but I have a notion that I would intercede with my boss to see to it that I could come. I want to make that very clear.

Senator HART. Good.

Mr. Adams, if you will rise.

Do you swear the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ADAMS. I do.

TESTIMONY OF HANK ADAMS, NATIONAL DIRECTOR, SURVIVAL OF AMERICAN INDIANS ASSOCIATION

Senator HART. Your prepared statement will be printed in full in the record.

You may read it or summarize it as you prefer.
[The prepared statement referred to follows:]

TESTIMONY OF HANK ADAMS, NATIONAL DIRECTOR, SURVIVAL OF AMERICAN INDIANS ASSOCIATION

STATEMENT IN OPPOSITION TO THE SENATE CONFIRMATION OF MR. L. PATRICK GRAY III TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION (FBI)

Mr. Chairman and Members of the Judiciary Committee, I respectfully request that my statements be received into the record of these hearings. I request opportunity to address the Committee partially to respond to FBI Acting Director Gray's personal attack against my motives, actions, integrity and character by his

testimony regarding my recent arrest by his agency. More importantly and purposefully, I want to point out certain deficiencies in the operational policies and practices of the FBI relating to American Indian people and federal criminal statutes under the enforcement or investigative jurisdictions of the FBI.

I oppose confirmation of Mr. L. Patrick Gray's nomination to become FBI Director because I believe his demonstrated disinterest and failure in eliminating discriminatory and negligent investigative and enforcement practices from his agency's operations has been harmful to the American Indian community and has denied many Indians the benefit and protections of laws within FBI jurisdictions.

Various other levels and divisions of the U.S. Justice Department and the Department of the Interior may well warrant the blame for the inequities and injuries which draw my concern, at least in greater measure than the FBI. However, I believe that Mr. Gray and the FBI have frequently betrayed whatever independence and good conscience that may be allowed them by statute and organizationally within the Justice Department—and as frequently have not been controlled by the obligations and responsibilities imposed upon them by law.

I call your attention to Wounded Knee, South Dakota. If Justice and the FBI might be inclined to invoke the same situation as refutation to my charges—as within hours they may regard it as basis for reputation and their future pride—I believe it provides essential proof to my complaints.

The FBI has gained its present high visibility at Wounded Knee for reasons arising from the fact that the Justice Department and its FBI chose to be invisible to Oglala Sioux Indians—seeking to preserve their personal liberties and lives—on the Pine Ridge Reservation for months preceding the takeover and occupation of that small town.

At time of this writing, the federal government has announced a 6 p.m., March 8, 1973, deadline for Indians at Wounded Knee to surrender or face police and military action to "arrest" them. The United States has claimed that it "has gone as far as it could go" to negotiate a settlement, but could not meet an "impossible demand" that the Department of the Interior suspend two of its BIA officials, Aberdeen Area Office Director Wyman Babby and Agency Superintendent or Police Chief Stanley Lyman, and remove tribal chairman Richard Wilson from his office in the Oglala Sioux government.

I urge this Committee to examine the FBI's experience in the maintenance or removal of Indian tribal governments. I appeal to this Committee for immediate examination of the FBI's relationship to the Oglala Sioux people over the past five months—as well as those of other authorities and officials in the Justice and Interior Departments.

During the week of November 26, 1972, the United States Attorney and the FBI Office in Rapid City, South Dakota, refused to receive or act upon complaints and requests for assistances against actions of Chairman Richard Wilson and other Oglalla tribal authorities which were lodged by several tribal members, including tribal council Vice-Chairman David Long and Russell Means. They claimed violations of their legal and civil rights as well as continuing threats against their lives and personal safety. They and other tribal members were convinced by the Justice Department's attitudes and inaction that additional requests or complaints would be futile. Both Interior and Justice agencies refused to investigate complaints of violations of Title 18 of the U.S. Code by tribal officials which were presented from a number of sources.

The following excerpts from newsclips relate the actions complained of by tribal members:

"Another AIM leader, Russell Means, was arrested on the reservation last week for allegedly violating a tribal regulation prohibiting AIM activity on the reservation.

Wilson said the Oglalla tribe has passed a resolution banning all AIM members from the reservation." (*Mitchell Republic* 11/30/72)

"Dick Wilson's contempt is uncompromising.

'They're a bunch of renegades,' he said, 'nothing but a bunch of spongers. Here in Pine Ridge they bum off my poor people—poor Indians living on welfare.'

'They're social misfits. Their lawlessness, their tactics of violence give the rest of us (Indians) a bad name.'

Wilson was so angry at the American Indian Movement (AIM) and its leaders that he had 60 men deputized, armed them with clubs and Mace and gave them a quick course in riot control in anticipation of a confrontation with AIM that never came." (*Minneapolis Tribune: Tribe Leader Says Militants Give Indians A Bad Name* 11/26/72)

And relating to ostensibly "official and legal" tribal council, tribal court, and tribal chairman's actions:

"At Pine Ridge on November 10 the Oglala Sioux Tribal Council, Dick Wilson, president, passed a "unanimous resolution" not to recognize the American Indian Movement in any of its actions.

On November 20 Theodore Tibbetts, chief judge of the Oglala Sioux Tribal Court, signed a restraining order to prohibit Russell Means and Severt Young Bear, as AIM leaders, from "joining any assembly for the next 30 days" * * *

On November 21 Wilson signed a memorandum suspending David Long as vice president of the Oglala Sioux Tribe saying: "It is now common knowledge that you have condoned publicly the American Indian Movement * * * contrary to the expressed action of the Oglala Sioux Tribal Council."

The day before Long's suspension, Means arrived on the reservation and was arrested on a charge of violating the restraining order." (*Rapid City Journal* 11/25/72)

Regarding efforts to secure federal (Justice—FBI) actions in Rapid City:

"Later Long and Means came to Rapid City where they called a press conference to denounce the arrest as a violation of constitutional rights to freedom of speech, religion and assembly."

"Long said he has been re-elected to the vice president's seat four times and plans to ask the United States attorney to investigate Wilson's "unconstitutional actions."

Long said his support has been with the Trail of Broken Treaties Caravan, which is not an AIM group. * * * The Indian leader said some of the worst failures are land management and care for the elderly. Long said the federal government has to recognize these problems, and that was one of the purposes of the caravan.

Long said, "Wilson is influencing the council in a violent way to keep people quiet. He is seeking power and authority. * * * He continued, "I have bullet holes in my windows and eight horses shot."

"The delegation charged that the BIA has hired 45 'unqualified' law enforcement officers to guard the BIA office and two white-owned businesses, but said there was no law and order on the rest of the reservation. They say it is unsafe to drive on the roads, many people are armed and others are wearing football helmets for protection.

Russell Means charges that Dick Colhoff, former head of law and order at Pine Ridge, was moved to a temporary assignment at Flandreau before the arrival of 40 caravan members because "Colhoff didn't want to issue weapons to 45 unqualified guys." (*Rapid City Journal* 11/25/72)

Tribal chairman Wilson extended his threats, invitations and challenges broadly:

"Means was arrested on the rolling Pine Ridge Indian Reservation late Monday and charged with violating a restraining order placed on him earlier in the day which prohibited Means from participating in any assembly.

* * * Dick Wilson, 38, Oglala Sioux tribal chairman for eight months, said he's received threats to his life and his family because of his opposition to AIM.

"If they want a showdown," Wilson said of AIM late Monday, "the Oglala Sioux are ready for it."

"We won't tolerate this clowning around any more. They used one of our dead people to capitalize on. Let them try some live ones now. We mean it out here."

* * * Wilson said Means arrived here Monday from Rosebud Reservation, also in South Dakota, and the restraining order was drawn last Thursday and issued to Means almost immediately.

Wilson said Means later attended a meeting at the small community of Oglala which had been called by tribal vice chairman David Long.

"Means went out there to talk to the group and try to justify the AIM actions in Washington," Wilson said, Means was arrested soon thereafter.

"It was just a small meeting, but I'm not a believer in AIM." (*Sioux Falls Argus-Leader* 11/22/72)

Means' attorney, Gary Thomas, legal aid attorney on the reservation, was also dismissed by the tribe, and requested to leave the reservation. Means was arrested for violation of a court order which restricted AIM activities on the reservation. In the face of the order, he called a meeting on Monday afternoon, at which about 25 Indians attended.

Tribal vice president, Dave Long, was suspended by Tribal President Dick Wilson, for actions in violation of a tribal order made on November 10 not to recognize the AIM in any of its actions. Long had apparently been furnishing AIM with information from Pine Ridge, in violation of this tribal order. His suspension is effective until further action by the Tribal Council, which is expected to meet Tuesday. (*Chadron Record* 11/23/72)

In my opinion, the deprivation of basic constitutional and human rights on the Pine Ridge Reservation is obvious. This Committee should be particularly concerned by the refusal of the Justice Department to give attention to such matters, inasmuch as these elementary rights were extended to Indian tribal members for protection against abuses of tribal governing authority only five years ago—after a near decade of persistent and conscientious work by the Honorable Senator Sam Ervin of this Committee in bringing about their enactment.

On November 22, 1972, I wrote separately to the President of the United States and to the Honorable Julia Butler Hansen, U.S. Representative, to express my concern—upon learning that the Bureau of Indian Affairs was funnelling generous amounts of new funds into the Pine Ridge Reservation to effect enforcements of these rights deprivations and denials, and to equip Chairman Wilson with all the armed manpower he required to enforce his personal and court-directed dictates. BIA Area Director Wyman Babby appeared to be the chief advocate of the increased spending for these purposes. (Also in mid-November, Director Babby had cut off disaster relief funds to Indians in Rapid City from a \$120,000 BIA allocation for victims of the flooding in that City.) My complaint to the President did not find routing to the Justice Department, but to Interior which merely affirmed that Pine Ridge and other reservations were being provided such funds. (Oddly, the President is requesting \$800,000 in new funds in Fiscal Year 1974 for Interior to commit toward the "implementation" of the 1968 "Indian Bill of Rights". Federal actions on the Pine Ridge Reservation have been nothing less than a mockery of that measure.)

Mrs. Hansen responded to my letter and the general Indian situation by initiating requests by the House Appropriations Committee to its Surveys and Investigations Staff to undertake an exhaustive inquiry into such matters. The FBI on January 31, 1973, seized various of the materials that I was acting to provide that investigative unit of the House at the time I was arrested. Those documents remain in the possession of the FBI—as do keys to my apartment, a typewriter belonging to my organization (SAIA), and apparently two (2) movie films belonging to organizations in the State of Washington and which are both produced between 1968 and 1971, one by myself.

Returning again to the issues represented by Wounded Knee and the relationships to the F.B.I., some comparisons to other recent actions can be instructive.

When the Bureau of Indian Affairs became dissatisfied last year with the Prairie Band Potawatomi Indians of Kansas tribal government, it requested an FBI investigation of the tribal chairman's management of tribal funds and governing authorities. When the FBI was not able to ascertain the commission of any criminal offenses, the Bureau of Indian Affairs acted arbitrarily on October 4, 1972, to cancel the Potawatomi's tribal constitution and to suspend their tribal government and officers. Brief excerpts from two news articles clarify that situation and its resultant effects upon that 2300-member tribe:

"The BIA has withdrawn recognition of the Prairie Band's current constitution, contending the withdrawal was at the request of the tribal leadership. The contention is denied by Lester Jessepe, tribal chairman." (*Topick Capital* 10/27/72)

The second article, titled, "Potawatomi Indians Sue to Reclaim Tribal Control", is indicative of the remedies Indians have to fight for to overturn decisions once made by the government:

"A federal court suit to force the U.S. Bureau of Indian Affairs to reinstate the Potawatomi Indian constitution revoked Oct. 4 in Washington has been filed by the tribal chairman and two other leaders of the tribe based in Mayetta, Kan.

The suit was filed Monday in U.S. District Court, Kansas City, Kansas, by the chairman, Lester L. Jessepe, and Frank Battese and Nelson Potts of the tribes' 7-member business committee.

Named as defendants in the action are Louis R. Bruce, Commissioner of Indian Affairs, Jack Carson, the Horton, Kan., BIA agency superintendent, and Rogers Morfon, Secretary of the Interior.

Presented by Mr. and Mrs. Malcolm Wheeler, professors of law at the University of Kansas, the petition contends the revocation will jeopardize the

tribe's chances to complete the transfer of 1,300 acres of land and buildings of the former St. Mary's College at St. Mary's, Kan. The Missouri province of the Society of Jesus last spring negotiated to complete the transfer without compensation after the Indians, led by Jessepe, contended the land rightfully belonged to the Prairie Band of the Potawatami Indians, the formal name of the tribe.

Wheeler also asserts that the legal grounds for revocation cited by Bruce under the U.S. Indian Reorganization Act of 1934 nowhere gives the commissioner the right to revoke a tribal constitution and in any case violates the rights of Indians to self-government." (*Kansas City (MO) Times* 12/13/72)

Aberdeen Area Office Director Wyman Babby has also had recent experience in revoking recognition of tribal officials and governments in his own jurisdiction. The Devils Lake Sioux Tribe of North Dakota held successive recalls and general elections on August 23, 1972; October 6, 1972; and November 6, 1972 before a slate of officers was selected with his liking and acceptance. Approvigly, Babby declared: "In the instances where written guidelines were not available, we feel good judgment was exercised and find no reason to take exception to decisions made." Apparently the Area Director did not bring the FBI into the Devils Lake Sioux Tribe's political processes—although there were matters involved there which would seem to have warranted it. Already the BIA had audit information that more than \$5,000.00 in tribal and tribally-controlled funds were missing, with substantial evidence that embezzlement by a tribal officer or employee had been committed.

The Phoenix Area Office Director John Artichoker has similarly refused to call in FBI investigators or BIA auditors, and refused to provide information to tribal members in a situation where San Carlos Apache tribal officials, past and present, have loaned themselves vast sums of tribal funds, owing the tribe \$184,307 as of October 1971, including a high amount of \$55,900 to the tribal chairman.

On the other hand, Area Director Artichoker did not hesitate for a moment to take the action federal officials now find impossible at Pine Ridge, South Dakota. He suspended the tribal government of the Fort McDowell Mohave-Apache Tribe on January 5, 1973. That situation provides some understanding to the incident now occurring at Wounded Knee. An article, titled, "CAP's Orme Dam is Unwanted by Indians, but No One Listens", provides the insight:

Their voices were pleading. There were no placards, no four-letter words, no threats of violence. They just said: "Don't take our land . . . We don't want the dam . . . Don't flood our reservation . . . We are not saying, don't bring in the CAP . . ."

Robert Doka, chairman of the Fort McDowell Tribal Council, called the community meeting yesterday afternoon so the people could be heard on the Central Arizona Project's proposed Orme Dam. He invited officials of the Bureau of Indian Affairs to come and listen, but they didn't come.

In authorizing the CAP, Congress directed that the tribe be paid the appraised price for the 12,000 acres of reservation land to be flooded by Orme Dam, plus recreation rights on the reservoir and 2,500 acres of other land, either upriver or to the east of their reservation. "We were given five minutes to talk to Secretary of Interior Rogers Morton two weeks ago," said Ben Kill, member of the council.

"We wanted them to select an alternate site for the dam, store water in Carl Pleasant Dam, use Granite Reef Dam, and not flood our reservation," Kill said. "But no one listens to us."

Throughout the afternoon, one by one, aging sons of the original Army scouts at Fort McDowell, the women, and the young, all spoke the same words.

"They say they don't want the dam," said Harry Jones, who acted as interpreter. (*Phoenix Republic* 12/27/72)

Followed a few days later, the news:

"John Artichoker, Phoenix area director for the Bureau of Indian Affairs, has refused to certify results of the Dec. 18 election of Tribal Council members on the Fort McDowell Indian Reservation, 25 miles east of Phoenix.

The action came to light yesterday when the Tribal Council met to prepare to seat the new council members Tuesday. * * *

The BIA action is the first reaction to a statement by the tribal leaders last week that BIA officials had not permitted them to tell Morton during a

Dec. 13 visit to Arizona how they felt about construction of the proposed Orme Dam." (*Phoenix Republic* 12/30/72)

* * * * *

Mr. CHAIRMAN: I respectfully request that this portion of my statement be accepted by the Committee at this time and that I be permitted to complete an additional statement for entry in the record relating more fully my reasons for opposing the confirmation of Mr. Gray to be FBI Director.

I would likely have completed my prepared statement on a more timely basis, or by now, but as I've indicated previously, Mr. Gray has my typewriter. There are a number of incidents which have occurred in my relationships and contacts with the FBI, which I think would be helpful to the deliberations of this Committee and the Senate in this matter.

I sincerely appreciate your every consideration.

Respectfully submitted,

Hank Adams,
HANK ADAMS, SAIA,
National Director.

Enclosures.

Two letters written by Hank Adams; one to the President, and one to Chairman of the House Appropriations Subcommittee on Interior and Related Agencies, Julia Butler Hansen, are reproduced here. Adams' letter to the President calls for Executive Inquiry into "the failure to restore and care for records . . . in the Bureau of Indian Affairs Building," following the November occupation, and "the use of federal and tribal funds to form a personal and private militia for . . . Dick Wilson on the Pine Ridge, South Dakota Indian Reservation. . . ." The letter to Mrs. Hansen particularly emphasizes this latter point.

NOVEMBER 22, 1972.

THE PRESIDENT OF THE UNITED STATES,
RICHARD M. NIXON,
The White House,
Washington, D.C.

MR. PRESIDENT: Two matters involving the present actions of certain federal officials and the use of federal funds, representing an intolerable disregard of any public trust or legal responsibilities and restraints, are extremely distressing to us and warrant an intense concern and corrective action by responsible public officials. These actions relating to (1) the failure to restore and care for records and documents remaining and maintained in the Bureau of Indian Affairs Building, and (2) the use of federal and tribal funds to form a personal and private militia for the service of Mr. Dick Wilson on the Pine Ridge, South Dakota, Indian Reservation, appear totally out of character with positive attitudes and actions demonstrated by Messrs. Leonard Garment and Frank Carlucci in my recent negotiations with them in behalf of Indian people comprising the Trail of Broken Treaties Caravan".

With respect to the Pine Ridge Indian Reservation situation, it is my understanding federally-commissioned Bureau of Indian Affairs (BIA) [personnel] from a number of Reservations are being used to comprise a private police force for the tribal chairman of that Sioux Tribe. Additionally, tribal funds are being used, wholly on Chairman Wilson's personal authorization, to hire and arm a band of "special citizen deputies" to supplement and increase the strength of the federal police force. The focus of these forces appears to be tribal members who were part of the Trail of Broken Treaties Caravan and who are now attempting to return and remain in their home communities, but who are being threatened with violence and serious injury and harm by irresponsible tribal officials who are abusing their positions in a most flagrant and unacceptable manner. Also, I understand that Mr. Wilson has suspended all other tribal officials who are in disagreement with his actions—effectively has suspended tribal government altogether, except for his own command and personal dictates—and has declared that impeachment proceedings which had commenced against himself some time ago, as well as new tribal elections, cannot now be honored or held nor proceed to a constitutionally-mandated conclusion. I am requesting U.S. Representative Julia Butler Hansen to seek a General Accounting Office (GAO) examination into the misuse of federal funds and personnel, as well as any wrongful use of tribal or trust funds, in this situation. However, it seems a matter that the Administration should examine to ensure that any unlawful uses of federal funds, personnel, or tribal and trust funds shall not be permitted or continue.

In the other matter, in the course of a survey of the BIA Building today, I was shocked that there had been no efforts made on the first and second floors to protect, recover or restore documents and records that ostensibly are essential to a continuation of federal services to numerous Indian tribes and a multitude of Indian people. In fact, all papers are being exposed to greater disorder, disarray and damage under the practices adopted since the November 8 evacuation of that building. As one who has acted through all forms available to me for the protection of such materials during all the days of this month, I find the actions of departmental-level federal officials controlling this matter as being both unconscionable in the present instance and demonstrative of the uncaring attitudes and culpability which has characterized their actions during the same time period. I urge and respectfully appeal to you to direct that a higher standard of concern be invoked, that there be some cognizance given to the fact that there is a public trust involved in the care of the public records involved and in the custody of tribal and other Indian records and documents, and that there at least be an exercise of elementary good judgment in acting by appropriate processes for the collection, restoration and protection of record materials inside the BIA Building.

If the Administration is alternatively going to permit the departmental officials to pursue their "the Indians be damned" policy with respect to these materials and to other future actions, then that decision should be publicly announced in order that Indian tribes and Indian people whose rights and interests are yet being disregarded, denied or sacrificed within the Bureau of Indian Affairs Building may proceed to other legal recourse, remedies and protections, which may be required to be undertaken. We would hope instead that your office might act immediately to institute responsible and appropriate actions in these matters.

Most respectfully yours,

HANK ADAMS.

*SAIA National Director and Principal Negotiator,
Trail of Broken Treaties Caravan.*

NOVEMBER 22, 1972.

U.S. Representative JULIA BUTLER HANSEN,
*Chairman, House Appropriations Subcommittee on Interior and Related Agencies,
House Office Building, Washington, D.C.*

DEAR MRS. HANSEN: I trust you shall consider the matters of concern which I have communicated in the enclosed letter to the President of the United States. The particular issue which I believe merits your own attention and possible action relates to the use of federally-commissioned Bureau of Indian Affairs police officers, as well as the expenditure of tribal and/or trust funds for the hiring and arming of "special deputies" on the Pine Ridge Indian Reservation of South Dakota.

There is no need to repeat the information provided to President Nixon. I do know that the use of federal funds and personnel in this instance was certainly not contemplated, nor could it be imagined, during the congressional appropriations process for the current fiscal year (FY-73). It is not an emergency situation which is being confronted on the Pine Ridge Reservation, but rather the conversion of federal and tribal resources to the operation of a private militia and personal police force to respond to the personal paranoia of the Tribal Chairman, Mr. Richard (Dick) Wilson. It could lead to tragic consequences.

Oglala Sioux participants in the Trail of Broken Treaties Caravan present no threat to the personal safety and security of Mr. Wilson. However, they do live upon the reservation of the Indian tribe of which they are members—and should be permitted to return to their homes there, without having their own personal safety and security being threatened or themselves attacked. Caravan Indians have met in recent days with responsible officials of other South Dakota tribes to explain their constant purposes and objectives, as well as provide the details of what actually happened while the Caravan was in this city.

The posture of the other South Dakota officials has generally transformed in nature as to be consistent with that expressed Sunday by the 36 Washington Tribes and urban Indian organizations represented on Governor Evans' Indian Advisory Committee: "We are in a society that can take the Watergate incident, Kennedy assassinations, and My Lai massacre in stride. Under these circumstances it is very difficult to get the truth and undivided attention of the public. We have been getting lip service from a good-intentioned, no-action, white-dominated government for too many years. Our urban brothers are themselves

the product of a failure of the BIA called the Relocation Program. They are very understandably impatient and want affirmative action by the government but would be satisfied at this critical time with a show of sincere intent to negotiate."

We are hopeful that you may consider requesting the General Accounting Office (GAO), as the agent of Congress, to examine the propriety and legal implications relating to the use of the federal and tribal resources in the Pine Ridge situation. I believe that the findings of such a GAO examination would be extremely helpful in the Appropriations hearings and actions of the next Congress. Knowing your own concern that the BIA's "Law and Order" budget requests have followed a pattern of giving lowest priority to human values and community improvement, as in the present year's commitment of major new funds to the purchase of new BIA police cars while still failing to seek provisions for suitable rehabilitation and treatment facilities in an attack against accelerating crime rates, the flagrant abuse of spending and police authority at present on the Pine Ridge Indian Reservation could contribute to the reordering of program priorities that you and so many other people among Indian communities have sought.

Joe DeLaCruz, the Quinault tribal chairman, can inform you of the disgraceful disregard of Indian and public interests that is being evidenced by federal officials in relation to records, documents, and other materials within the Bureau of Indian Affairs building. He is a member of the newly-established, NCAL-initiated "Special Impact Survey Task Force", chaired by Navajo chairman Peter McDonald, and was with us on yesterday's "tour" of the building.

Another matter which I believe should be examined at your next appropriations hearings involves questions relating to the roles played by the Vice President's National Council on Indian Opportunity (NCIO) and its creation or creature, the National Tribal Chairman's Association (NTCA), in the incidents, occurrences, consequences, and aftermath evolving from the federal reaction to the "Trail of Broken Treaties Caravan" and the BIA Building occupation. They appear mutually reliant upon one another for justifications in support of either's continued existence—and, in that relationship, necessary to each other's federal funding support. I fully anticipate that numerous tribes shall act immediately to evaluate the propriety or impropriety of continued participation in the NTCA—and would hope that the Congress might be prepared to closely question the need and propriety of providing continued funding to the NCIO. (I do not suggest that the Vice President himself became involved actively or acted wrongly in the activities occurring this month. There has been ample evidence in these days to convince most people that the highest level officials in the Administration are deliberately insulated from, or not provided, the informations and facts which would compel that better judgments be exercised and wiser forms of action be followed.)

I look forward to meeting with you upon your return in early December. I will provide all information we have to your staff in the interim, and sincerely hope that your office might proceed to act on our request relating to appropriate involvement immediately by the GAO.

With best wishes and kindest personal regards, I remain

Respectfully yours,

HANK ADAMS.

My name is Hank Adams. I am an Assiniboine Sioux and National Director of the Survival of American Indians Association.

Briefly, I oppose confirmation of Mr. L. Patrick Gray's nomination to become FBI Director because I believe his demonstrated disinterest and failure in eliminating discriminatory and negligent investigative and enforcement practices from his agency's operations has been harmful to the American Indian community and has denied many Indians the benefit and protections of laws within FBI jurisdictions.

Various other levels and divisions of the U.S. Justice Department and the Department of the Interior may well warrant the blame for the inequities and injuries which draw my concern, at least in greater measure than the FBI. However, I believe that Mr. Gray and the FBI have frequently betrayed whatever independence and good conscience

that may be allowed them by statute and organizationally within the Justice Department—and as frequently have not been controlled by the obligations and responsibilities imposed upon them by law.

There are a number of areas of law, criminal law, that relate to Indian people of today that fall under the jurisdiction of the FBI, and these range, well, generally called assimilated crimes act and pertaining to 11 major crimes. This is an everyday relationship that Indian reservations and Indian people have with the FBI, and although I do want to clarify certain points raised about the arrest action of myself here in Washington, D.C., I do want to relate more fully to our everyday relationship with the FBI within our own communities, and where you have FBI investigating a one time thing or one major event, the Watergate incident, we had become concerned where there is an FBI intervention in the everyday politics—Indian politics, tribal politics—in our whole community. They are not investigating, they are involved.

There is some real problem with Indians now fully understanding their relationship to the FBI, which has, of course, investigative enforcement jurisdiction over certain crimes occurring by or against Indians on Indian reservations. The difficulty that we have is that the FBI has never been a service, a police service, agency for Indian people but, not only, for the Justice Department, but also the Department of Interior; and frequently political decisions are made, both by the Justice Department and the Department of Interior, where the FBI should become involved in a matter that they are bound to enforce under law on an Indian reservation. And these are generally matters that the Director becomes involved in, and I have seen some of these transmittal statements from, under the name of Patrick Gray to the Commissioner of Indian Affairs relating to Indian individuals within the community who may be challenging a favored tribal council of the Department of Interior—and usually being negative information in nature being transmitted.

When you see what is happening out at Wounded Knee, today there is a large force of policemen, many of these people are FBI men, and the jurisdiction that carries them there is the fact that Indians are involved on an Indian reservation. But why the Indians are in Wounded Knee is because the FBI and the U.S. Attorney for South Dakota, or its probable one district, but operating out of Rapid City, has chosen to ignore complaints lodged with them by Oglala Sioux Indians for at least the last 5 months: complaints that were drawn against an abuse of tribal authority, an abuse of Federal funding procedures whereby BIA funds were funneled in at a higher than budget level to build up a private security force for a tribal chairman who maintains a bunch of nonuniformed special deputies who go out and beat up people who oppose the tribal chairman.

This committee, the Judiciary Committee, worked from the late 1950's until 1968 trying to develop a bill of rights for American Indians to protect them against abuses of tribal authorities, and Indian people have only had benefits and protection of the bill of rights for the past 5 years on their reservation, not 200 years under the U.S. Constitution. And here you have the FBI in South Dakota, aware of what is going on and choosing to do nothing about it, that could have

well turned into an event as was investigated and prosecuted by the United States in Mississippi relating to three civil rights workers some years ago.

Here you have it at a higher level, you have a tribal chairman, an area superintendent at the Bureau of Indian Affairs, using Federal funds to deprive individual Indian people of liberties and potentially a loss of their lives, and you have the BIA on there yesterday saying "We cannot intervene in tribal politics." But last October, or prior to last October, in Kansas the FBI was sent in to investigate a tribal chairman who was objectionable to the Bureau of Indian Affairs, and apparently nothing criminal was disclosed in that investigation, because the Bureau had to rely upon some other nonexistent authority. They cited authority of 1934 Indian Reorganization Act and they cancelled the constitution of the Prairie band of Potawatomi Indians in Kansas, and suspended their government.

In other cases where embezzlement of tribal and tribally controlled funds has been made a Federal crime under the jurisdiction of the FBI when tribal members take complaints to the FBI, the FBI will not act upon that information unless the Bureau of Indian Affairs approves an action. It does not, as in Mr. Gray's observations on my own case, occur because they saw an offense happening or an offense that had happened. They ignore it altogether unless they get this political approval to act, and when they don't act the BIA uses this information in an extortive way against Indian tribal governments.

In other cases, going back prior to Mr. Gray's becoming Acting Director, there have been a number of instances where the FBI has been called in to investigate certain cases relating to Indians, where their investigating have been totally inadequate and negligent. And I would raise a couple of them now because I don't see any improvement under Mr. Gray, and I don't see anything but absolute indifference to most offenses occurring against Indian individuals in Indian country by Mr. Gray.

In one case there was a shooting of an Indian by a police officer. The police officer, there were three police officers, who shot this 15-year-old Indian boy, and the three police officers refused to talk to the FBI. The Indian victim talked to the FBI or was available to them. However, the shooting incident was also investigated by a former FBI agent who said the officers were justified in shooting this person. And from that point forward, well, that former FBI agent was then named U.S. Marshal for the Western District of Washington, but the FBI then immediately would refuse to receive any more information on the case.

The case went into a court of law, and there was sworn testimony by all the parties involved. No FBI investigators were there, although the case was still active. Under the questioning of a superior court judge, the officers' contradictions and justifications became—the deficiency of justification—became real apparent, and the evidence was there in a transcript. And the FBI on this active case refused to get the sworn testimony, and the judge acquitted the youth of precipitating his being shot by an attack. And then later with myself acting as a guardian recovered some money from this officer for having shot this youth. But the FBI's involvement was completely unhelpful and an abandonment of their obligations under the law, the laws relating to

Indians and the laws relating to Indian lands. This is an everyday thing.

In other cases on Fort Berthold Reservation there was a young man who was missing, and his family feared something had happened to him, and so they went to the FBI and said they thought he might have been abducted or killed or something, and the FBI refused to act for more than 4 months. However, within that 4-month period that young man was drafted into the U.S. Army and as soon as he became a delinquent draftee, well then the FBI started hunting around for him in a lot of communities. And they did ultimately find his dead body buried away. But there were other laws on the books that should be for the protection of those families and those persons under FBI jurisdiction. But it is not there when Indians ask for it. It is there—if BIA directs it, or if the U.S. attorney directs it.

In other cases in another Indian reservation, my former sister-in-law took a number of complaints to the FBI and U.S. attorney but they refused to act upon it, relating again to, say, embezzlement of tribal funds, and there was no action.

Another case was complaints relating to armed vigilantes operating on the Puyallup Indian Reservation, that the FBI and Justice Department both refused to act on, and including where we were able to prove involvement of State police officers, uniformed State police officers who under the cover of night came down and started threatening Indians when they were engaged in the exercise of their treaty rights. When vigilantes would come on the reservation when we would—not with attorneys but just by ourselves—go into court and get restraining orders against State police action, because it is a Federal reservation where they lack jurisdiction, well then they come down in the vigilante forces and the FBI would not act.

The FBI did come down immediately when, in the same place, I was shot, where they had refused to act before, but then again it was primarily because it was on pressure. It was covered fully in the press, and there was a lot of pressure put on the Justice Department and on the Department of Interior. But when it happens everyday to Indians who don't have public recognition or name, well it just goes by unnoticed and still there is no action by the Federal Government—again unless the BIA has some recent requests for it. And frequently, as I say, they request that the FBI not act, or refuse to supply information to the FBI, if they want to, say, preserve a certain tribal government or to preserve certain tribal officials.

Now, relating to my return of documents to the Federal Government: Director Gray—it would be real unlikely that the FBI acted on any information that documents had come from North Carolina and there was going to be a transfer of money on the next day. The search warrant that was used some 5 hours, 6 hours after my house was ransacked, or my apartment, included information that the informant, John Arellano, had peeked into the corner of a box when it was slightly open to see there were folders in there, notebook filler-type binders, and he identified the contents. I mean this is on a search warrant issued sometime in the late afternoon of January 31, which is still after our 10:15 in the morning arrest, but on the outside of those boxes were a number of return addresses that were labeled. And, prior to taking these three boxes from my apartment, their handling had

been totally by this informant, and he knew they were from South Dakota. There was no reference or mention of North Carolina and in the same way there was no mention of transfer of money or payment, and I think it is, you know, highly unlikely that their agent, their informant, would have indicated this. And the boxes were not being returned to be turned over to Mr. Creedon, but they were going to be taken to the Bureau of Indian Affairs building and Mr. Creedon being able to witness both the nature of the contents and their re-delivery.

Hyten's name I was putting on all three boxes. However, Mr. Whitten put the names on the last one for identification of those boxes down at the Bureau of Indian Affairs building without knowing how soon the FBI might come to pick them up but also to just indicate for people around the Bureau that they were to go to the FBI.

Senator HART. May I inquire: You say that they were to go to the FBI. Did you mean to the Bureau of Indian Affairs?

Mr. ADAMS. No, they would have been transported to the Bureau of Indian Affairs building and at that point I would have called from the security area, and Mr. Creedon had indicated that he would meet me at the backdoor, which was the only door opened in the BIA building at that time, and then call Mr. Hyten from the phones there.

Now, when I previously had matters in possession, office machinery, and I maintained them in my apartment for as much as 5 days at the request of Mr. Hyten, because he indicated that he wouldn't be able to come around prior to that time. Like once, on a Thursday, he asked if I could hold on to them until Monday because he couldn't—he was busy on something else—and couldn't come around. So I didn't know how long the boxes would be at the BIA building either and that is one of the reasons I put this identification on them as well as the telephone number in order that I might call him from the area.

Additionally, the FBI secured from me, right after my arrest, and copied, Xeroxed a copy of a note which had been left for me the previous afternoon when I was asleep and when this informant transported these three boxes from the bus station and carried them into my apartment. There was this five-part note, part of it in the informant's handwriting, because apparently he was answering the phone and writing down messages for me. But the last message on that note, which the FBI had immediately indicated, "We'll be over first thing in the morning." And that, to me, demonstrated, you know, their knowledge that, in fact, I was expecting him initially to transport those three boxes to the BIA building. And it was only after calling Anita Collins, calling the house to which she had moved 3 days previous, to find out just what time they would be there because I had to take these down to the Bureau.

I am not certain why they made the arrest. I am certain they knew that I wasn't attempting either to sell these things nor to convert them to my own personal use. One of the things I am certain is that the informant thought that I was leaving town. On the Monday of that week he drove me to my bank for closing out my account, and was under the impression, I am certain, that I was leaving town for the State of Washington for a while. And he knew also that there were some documents probably in North Carolina. That—you see I have not known where properties and documents are in the country. But I had information on my own inquiry that some were in North Carolina.

and I had information that perhaps even the largest bulk of documents was in North Carolina, and they would have been traceable perhaps through people that I didn't know but people who, perhaps, Anita Collins knew. So she and this informant were going to the Bureau of Indian Affairs building on most of the days of the previous week trying to call to North Carolina to try to make contacts in order that we could go down to North Carolina and pick them up and bring them back to the Government as we had indicated we would do.

Second, this informant had volunteered his Volkswagen van to go down to North Carolina and pick up what was expected of a sizable volume of missing properties. I had not told him that he couldn't do that but independently I had sought other transportation because I did not know Johnny Arellano very well and he really didn't have that much communication with me.

There was some alternation in situation in relationship between myself and the FBI in January, and I had not had any direct contact with Agent Hyten since the middle or latter of December. And the last time I had seen him in person was on December 11, when he had come to my apartment to pick up different materials which he had asked me to hold there until he could get by. And he had indicated prior to that and at that time that the FBI, through the Director, had requested Justice Department to make an arrangement with me, whereby, or establish some system for a return of documents without everyone being under a threat of arrest and prosecution, just for having received something into their possession. And subsequent calls to him were in relation to whether or not this neutral system for return of properties had been approved or disapproved. But there was never any answer stated to us regarding that letter—if, in fact, that letter or written request had actually been made.

However, on January 10, I talked to Brad Patterson, an Indian affairs specialist in the White House, and he had made two separate statements, one to the effect that the FBI is completing its investigation, and then in a slightly removed context but relating to prosecutions, he said "We are going to get as many of you guys as we can." And that did indicate a change in relationship between myself and the executive branch of the Federal Government.

Briefly, Mr. Patterson had acknowledged to reporters that even prior to the breakoff of negotiations last November 13, and subsequent to that, that I had requested meetings with the White House and Justice Department people to arrange a system for return of properties. This was reported by William Blair in the "New York Times" in that week or, or at the same time he reported on our return of 31 paintings through the YMCA building here in Washington. And also, as I said, when the White House negotiations were broken off, and there was refusal to discuss this, to discuss return of properties, then we did call John Dean to ask him why they wouldn't talk to us on this. And I am not certain who called, secured the information, but they said, no, that it was just on attorney's advice that they would not work with us any more until the FBI had done all the work that it was going to do.

Let's see, just finally, I would—additionally, in relation to the arrest action, I do find the form and method of the search that was made of my house as being offensive and somewhat unlawful. There was no

search warrant. I guess the undercover agent had secured copies of keys to my apartment, and these keys were used to enter my apartment. And a typewriter that has been in my possession for 5 years was taken and remains under the jurisdiction of Mr. Gray. And a number of documents not stolen, but dealing with Federal activities, were taken and remain with Mr. Gray.

My apartment keys, one set, remains under the jurisdiction of Mr. Gray. The two films that they seized, one which I produced between the years of 1968 and 1971, was missing and not receipted, and apparently remains in the possession of Mr. Gray. And another film produced by a British television company in 1969, dealing with Indian matters, was taken unreceipted and apparently remains under the jurisdiction of Mr. Gray.

The search warrant wasn't received or wasn't secured from a court until late on the afternoon of my arrest. When reporters went to my apartment and knocked they said that they were only there to wait perhaps to arrest another accomplice, Michael Hunt, who, if they were relying on their informant's information, they would have known that Mr. Hunt had been gone from Washington, D.C., and in fact had left some time before Christmas. And they weren't there for any reason other than to look through my possessions.

Well, equally offensive was their going over to this young Indian woman's house and occupying her house all day, again without a search warrant, and more or less arresting her house and throwing herself and her two or three little kids out, and then belatedly securing a search warrant late in the evening.

From my apartment they took nothing that belonged to the Federal Government: they took nothing that was stolen or wrongfully in my possession. From the other house they did, I know, take a mail bag that had BIA marking on it, and which I understand some Indians had been using to hold their clothing stuff as they hitchhiked or traveled around the country.

I think it has been an unwise waste of manpower for the FBI to attempt to harass a number of Indian people, not only here in Washington, D.C., but through a number of their field offices, relating to these missing properties, rather than engage a system that would have effectively brought about their return. Any number of Indian families have had, have been called upon by FBI agents, most of them not any persons who even came to Washington, D.C., last November, but who have some relationship, primarily families or relatives' houses. And I know that the FBI does not commit this level of activity when an offense occurs against an Indian person. And you have Indian people confronted with the type of attitude that was revealed in the Richard Oakes trial this last week, Richard Oakes being a major Indian leader in this country. And you find the guy who is on trial for his death being charged with involuntary manslaughter and the testimony that came out in the court was, you know, "Well, it is open season on coons and Indians." And because that attitude is, perhaps even prevalent, in areas where Indians live, we do need that protection of the FBI. But Mr. Hoover didn't afford it; the law says it is there. There is no indication that Mr. Gray is going to afford that protection or be bound by the obligations and responsibilities of that law in Indian country.

I would hope that this committee, whether or not it confirms Mr. Gray, secures from him some statement of policy on relationships with Indian people on Indian reservations and the categories of law, title 18, United States Code, that fall under its jurisdiction; so that, you know, Indian people can also know just what we can expect of the FBI and not find them, find us dealing with them, only when they come in against us in an adversary prosecutorial way—but also when we need them for the protections and benefits of the laws that are on the books.

That concludes my statement.

Senator HART. It is an excellent statement, Mr. Adams, and I thank you for it.

What was the date on which your arrest occurred?

Mr. ADAMS. It was January 31, 1973.

Senator HART. Did I understand you to say that on an occasion or occasions before that you had actually been dealing with the FBI agent, Mr. Hyten, with respect to the return to the Government of other of the stolen property?

Mr. ADAMS. Yes, I had. I first met Dennis Hyten on, I think, November 13, and last saw him on December 11, when he did pick up some office equipment and paintings, and then had subsequent telephone conversation with him relating to establishing, or getting Justice Department approval, or someone's approval, for an expedited system of return. Additionally, an attorney for a thing called NALDEF, Terry Sidley, also had been in communication with him, and he had been informed that this request had been submitted from the FBI to Justice for the return and he never got any final negative or affirmative answer either. And this was based upon the fact a number of innocent people just had some things dropped out at their houses around the Washington, D.C., district, and didn't want to just destroy them or throw them away but to return them, and had approached this organization NALDEF, which had supplied attorneys during the Trail of Broken Treaties, to see if they could establish some system of return.

Senator HART. Am I correct it was this same FBI agent, Mr. Hyten, that—

Mr. ADAMS. That coordinated the arrest action.

Senator HART. That obtained the warrant that precipitated your arrest on January 31?

Mr. ADAMS. Yes. He obtained the search warrant some hours after my apartment had been searched. It was Dennis Hyten.

Senator HART. Was this the Dennis Hyten who knew, because you had done it before January 31, that properties of the Government obtained from the Bureau of Indian Affairs which had come into your possession had been returned by you to him?

Mr. ADAMS. Yes. Yes, the same Dennis Hyten.

Senator HART. I would not suggest that it was a pattern, but it had occurred at least once? Is that right?

Mr. ADAMS. It occurred by myself, solely by myself, at least three times previously. Once by mail, once by Mr. Hyten coming to my apartment and looking at some documents and taking copies of some, and third, on December 11, picking up this office equipment and these

Navajo paintings. Additionally, I had a hand in returning 31 paintings through the YMCA in early November.

Senator HART. Was Mr. Hyten involved in that transaction?

Mr. ADAMS. I don't know if he was.

Ralph Erickson in the Justice Department was involved in the first one. However, I had discussed it with Mr. Hyten on the YMCA paintings.

Senator HART. At least you had indicated to him it was your intention to return that property, namely the paintings, by delivery to the YMCA?

Mr. ADAMS. They had been delivered to the YMCA during the course of the BIA occupation, they had been removed, cut from their frames and packed for the purpose of protecting them from destruction, when there was some threat that the Bureau of Indian Affairs building and its content might be destroyed. And so they had been taken in the course of the occupation to the YMCA building and had never left there again. There were some discussions, by a number of persons who became aware of them, whether or not they should be returned or whether they should be taken to some other part of the United States for the exclusive benefit, use, and pleasure of Indian people. I took a position in favor of their return.

Senator HART. So there were three occasions when you returned to Mr. Hyten property that had come into your hands from the Bureau of Indian Affairs? Three times?

Mr. ADAMS. Yes. That is, prior to my arrest.

Senator HART. Prior to your arrest. And there was a fourth time, namely, the arrangement with respect to the picking up at the YMCA of the paintings?

Mr. ADAMS. Yes.

Except in that case I did not have direct contact with Justice at that point.

Senator HART. I understand that, but I am trying to find out whether Mr. Hyten was aware that you were seeking to insure that those paintings also were returned.

Mr. ADAMS. Yes; he was aware of it. I discussed it with him and some of the additional things that were returned to him had direct relationship to the paintings. At that point, even with YMCA, there was a real question of whether they should go back to the BIA or whether they should be turned over to Justice Department. At that point there had been scheduled a press conference by the YMCA to return these with press coverage. However, the Justice Department—there was to be, it was to be a transfer to BIA. But then that is when the Justice Department entered, and they took the paintings and indicated that things should be returned to FBI and Justice rather than to the BIA.

Senator HART. Do I understand correctly that on one of the occasions you offered the Government property to Mr. Hyten and he looked at it and said, "I can't get there, keep it for several days."

Mr. ADAMS. He didn't look at it on the occasion that he asked me to hold on to it. I had offered to bring it with me to this place that I was going where Peter McDonald was holding a press conference; but on the way, I told him, that I would drop some paintings off with him, not at a press conference or anything. And he said he couldn't do it then. And I said, "What about tomorrow, or Friday?" and he said, "No. Can you hold on to them until Monday?" I said "Okay."

Then by Monday some additional items had come into my possession, namely office equipment, and so that was all returned at the same time. He had asked me if I could just hold on to it until he was available on Monday.

Senator HART. So he was comfortable, at least at that time, in telling you to keep for him and the Government materials that you had offered to return?

Mr. ADAMS. Yes. He seemed quite comfortable with it. However, I was somewhat uncomfortable and I informed a couple of persons that to use a search warrant and just come in and go through my things. And I told them about it in case that did happen. However, he didn't do that. He came around on the following Monday and picked it up.

Senator HART. So your promise was kept?

Mr. ADAMS. Yes.

Senator HART. The materials that you returned to, or through, Hyten then included some paintings, some office equipment, what else?

Mr. ADAMS. Some few documents.

Senator HART. Some documents were also included?

Mr. ADAMS. Yes; just a couple. It was primarily paintings and office equipment. Then January 31, was the first return, major return, of documents or papers.

Senator HART. So on an earlier occasion some documents, a few documents, were returned?

Mr. ADAMS. Yes.

Senator HART. And the bulk you had, as you have described, you intended to make delivery of and then were arrested?

Mr. ADAMS. Yes.

Senator HART. Senator Hruska.

Senator HRUSKA. One time you sent him an envelope, a legal-sized envelope, 10 by 14?

Mr. ADAMS. Yes.

Senator HRUSKA. There were some papers in there that were quite illegible and Mr. Hyten didn't think they were pertinent. He didn't think they were of any value or any meaning. Did he give those back to you?

Mr. ADAMS. No; he didn't. Those particular items related to the values of painting that were reported stolen. These were price tags, names of paintings—which did verify, in fact, that price levels were greatly exaggerated. The paintings that were taken from the Bureau of Indian Affairs were reported to have numbered between 600 and 700 at an average value or possible value of \$1,000 a piece.

Senator HRUSKA. What kind of papers were there that were delivered?

Mr. ADAMS. These were packaging papers.

Senator HRUSKA. Brown papers?

Mr. ADAMS. Yes; but they had titles, names, artists' names on them, and these were not valueless. They would be important for both identification and value, they would be important for identification of the actual paintings, and the owner.

Senator HRUSKA. Mr. Hyten said they were illegible. Could you read them?

Mr. ADAMS. Yes; I could.

Senator HRUSKA. He said he couldn't read them, that they were illegible fragments of brown paper, and that he didn't see any value to those bits of brown paper.

Can you read better than he can? Is that what you want us to understand?

Mr. ADAMS. You can understand that they were legible enough for me and others to read them.

That was the only basis for preserving them, because they were useful for identification. I am certain that if Mr. Hyten took any of those particular paintings into court that he would appreciate having that identification and value information on the papers.

Senator HRUSKA. I don't know. He reported that they were not legible.

Mr. ADAMS. I am saying that they were legible. I can't speak for Mr. Hyten's ability to read anything.

Senator HRUSKA. Thank you very much.

Mr. ADAMS. One additional matter is that they also retained in their possession a number of documents, personal documents of my own, which I was taking to Dennis Creedon at the Bureau of Indian Affairs building relating to the House Appropriations investigation of Federal programing for Indians, the involvement and residential background of participants in the trail of broken treaties. They took a list of some several hundred names of people involved in the trail of broken treaties, and took this type of information—which on a different area of concern we had promised to congressional committees that were investigating the trail of broken treaties in the Bureau of Indian Affairs—and they continue to possess those as well.

Other areas which they did pass up was like the accounting of \$66,650 that was given the trail of broken treaties caravans to return from Washington, D.C. last November. They did not take that but they took the other information I was supplying to the House investigating and surveys team from the Appropriations Committee.

Senator HART. Did I understand you to say that there were some 600 or 700 paintings with an estimated average value of \$1,000 each? Was that a fact or was that what the Government was saying?

Mr. ADAMS. That was not factual at all. And these illegible, allegedly illegible, papers that went to Mr. Hyten through the mail demonstrated the fact that the prices on paintings was substantially less than that claimed when this public relations effort was going on to develop adverse attitudes toward Indians who were in the BIA building.

Additionally, another document that the FBI took from me is a letter to a company in London that the Bureau was telling them that they had to pay for certain matters that they had on loan and it wasn't up to them to wait for their insurance company to act but to provide compensation. And no public mention has been made of these pieces of art that were lost in London. But I am certain that they were just added to the inventory that was charged against the Indians who took over the BIA building last November.

Senator HART. You were present in the room, were you not, Mr. Adams, when Mr. Jack Anderson and Mr. Les Whitten were testifying?

Mr. ADAMS. I did not hear Mr. Anderson's statement. I heard Mr. Whitten's and I heard the questioning afterward.

Senator HART. With respect to events described in the testimony of Mr. Whitten, and raised in the questions, do you have any corrections or modifications to make?

Mr. ADAMS. I think I clarified that the boxes were going to the FBI, and just to be shown to Mr. Creedon in the context of the investigation that he is conducting, and then to be called into the FBI and just let them pick them up there. There wasn't an intention to turn these over to Mr. Creedon, but let him observe that they were being returned as well as, if he wanted to, the nature of their contents.

Now, you see, just prior to that, or, well, in mid-January, Congresswoman Julia Butler Hansen had shown me this letter of a number of Congressmen to Appropriations chairman, Mr. Mahon, and it showed the specific areas of interest that the Appropriations Committee wanted this survey team to examine into, and one related to missing properties and their nature and their return, level of return, and what their impact would be. And so I thought that this was in the context of that investigation, and rather than just be salted away forever with the FBI that the committee or its staff should have a chance to see them then as well. I got a mental inventory of the contents of the boxes and only I would be able to affirm or deny what had come in and what still remained out as far as I can remember.

Senator HART. So that you would not be left simply to be believed by reciting what you had turned over?

Mr. ADAMS. Yes.

Senator HART. Your purpose was to insure that the congressional investigating committee, represented by its staff counsel, would see the materials as you were in the process of returning them to the Bureau, is that correct?

Mr. ADAMS. Yes; like there would be no question of their legibility or whatever, or their existence.

Senator HART. With respect to specific matters testified to by Mr. Whitten, are you in agreement with his description, explanations, and characterizations?

Mr. ADAMS. Generally. I think frequently, you know, like he might be inclined to guess at what was in my mind at different points in time. I mean like why was I writing this name on all three boxes and that was just to maintain an identification if they had remained there for any length of time.

Senator HART. I think your testimony is most useful. You have been a very impressive witness.

Mr. ADAMS. Senator, I would hope that when Mr. Gray comes back this committee might learn, if Mr. Gray, if confirmed, would offer to come before certain of the other hearings that will be held relating to Indian affairs—and particularly in the areas of the implementation of the 1968 Bill of Rights for Indians, as well as some of the law enforcement questions that will be examined by certain other committees of Congress.

Senator HART. I think I can promise you that the committee will ask that. Knowing Senator Ervin's concern that Indian rights have substance rather than just promise, I would anticipate that if he is present he will make that inquiry himself. If he is not, I will.

Mr. ADAMS. Thank you.

Senator HART. Thank you very much.

Mr. ADAMS. May I offer just two other things for you?

Senator HART. Yes; if you will just identify them as you turn them over.

Mr. ADAMS. One is a background statement on myself and the other is a press statement of February 7, 1973, relating to the arrest actions and various items taken from my possession by the FBI.

Senator HART. Thank you. They will be received and printed.
[The documents referred to follow:]

EXPERIENCE BACKGROUND & REFERENCES FOR HANK ADAMS

Age: 28.

Tribe: Assiniboine-Sioux of Fort Peck Indian Reservation, Montana.

Education: Moelips High School; University of Washington (2 years) (1963).
Recent Awards: 1971 Human Rights Award of National Education Association (NEA).

Publications: YOUTH MANIFESTO ADDRESSED TO THE PRESIDENT OF THE UNITED STATES, Macmillan Company (1970, New York); UNTITLED MANUSCRIPT to be published 1972, Holt, Rinehart & Winston; Editor, "The Renegade" (SALA) 1969-1972; Numerous other articles, chapters, and essays in books & periodicals.

Films: Production Supervisor, "AS LONG AS THE RIVERS RUN" (SALA-Carol Burns, 1971). Consultant, "NOW THE BUFFALO ARE GONE" (Thames Television, London 1969).

Job Experience: ** Executive Director, Survival of American Indians Association 1968-1972; Consultant (and selected for staff employment) for U.S. Senator Robert F. Kennedy, 1968; Member, National Steering Committee (12), Poor Peoples Campaign—1968 Chaired by Martin Luther King, succeeded by Ralph D. Abernathy; Director, Quilente Tribe Community Action Program (OEO), LaPush, 1967-68; U.S. Army (Editor, post newspaper Ft Belvoir: troop movement control) 1965-67; Staff Student Assistant, United Scholarship Service (Denver) 1965; Research Secretary, National Congress of Am. Indians (Washington, D.C.) 1964-65; Special Projects Director, Nat'l Indian Youth Council, (nationwide) 1963-67; Laborer-Choke Setter, Stream Clearance Project, Quinault Reservation, 1963; Laborer-Sawyer-Offbearer, Cedar Shake Mill, 1962; Fishbuyer (evening and graveyard), Quinault River, 1960-61; Clamdigger & Fisherman, Quinault Reservation, 1957-1961; Shed and Field Digger Laborer, Bulb Farms, Sumner-Puyallup, 1957-60; Self-supporting berry, cherry, bean & cucumber picker, 1949-1958.

Advisory & Consultant Work Positions: Screening & Review, Episcopal Church NW Gen'l Convention Youth Program 1971-72; Screening & Review, Episcopal Church nat'l Gen'l Convention Special Programs 1970; Presiding Bishop's Episcopal Church ad hoc Com. on Indian Involvement; Bi-Lingual Education Project, Yeshiva University, New York, 1967; National Indian Advisory Board, GEO UPWARD BOUND program, 1965-1968; Multi-organization Council on Native American Educational Opportunities, 1964-65; Task Force Development, Citizen's Advocate Center (Wn, D.C.) 1967-68; Community celebrations & Taholah Youth Fraternity, Quinault Res., 1960-1964, 1972—Congressional Candidate (Rep.) Primary election (Appr. 40% of vote).

STATEMENT OF HANK ADAMS, PRINCIPAL NEGOTIATOR, TRAIL OF BROKEN TREATIES CARAVAN

The criminal methods, Gestapo tactics, and Watergate Affair mentality relied upon by the FBI—in breaking into my apartment to steal various of my personal possessions and working materials—apparently represent the character of unconscionable and revolting actions which the Administration envisions as the standard for its "Spirit of '76".

**The nature of work in the various positions of recent years have ranged from research and report writing, writing for publication, fund-raising, project development, action organizing, preparing congressional testimony, para-professional legal work, legal research and briefing and argument, public relations, supervising work activity and employment of other laborers and students, and assisting various Indian individuals, families, communities and tribal governments.

Among the items stolen from me by the FBI were :

1. An IBM Selectric typewriter given to SAIA in 1968, which we had repaired and reconditioned to make workable by IBM repairmen at Olympia, Washington, at an initial cost of \$250.00, plus subsequent repair costs.

2. Private documents, records, publications, and papers, relating to the Trail of Broken Treaties and its participants, which were being made available to the U.S. House Appropriations Committee's survey and investigative staff.

3. Source materials secured or furnished me from several sources for writing an extensive draft for a final report of the "American Indian Impact Survey Team", organized last November with Peter MacDonald (Navajo Chairman) as survey team chairman and Bili Farrison (Papago) as working Vice Chairman.

None of these items, nor other papers taken, were improperly nor unlawfully in my possession. Thousands of other papers were left in my apartment or possession. A search warrant was not obtained, nor its "justification" contrived, until after the eight-hour police foray through my apartment was completed.

Among the items taken by the FBI were documents including such information as :

1. A statement prepared by Interior Department staff members which states that Interior officials were notified that angry Indians had decided to "take over the BIA" nearly an hour before the TBT arrived at the building left in shambles 7 days later. According to the paper, Sgt. Ralph Smith of the Interior Park Police (phone 426-6817) "radioed this information to his superiors" at that time. Another statement taken provides the information that Sgt. Smith was protected by myself from Indian security forces, who had moved to take away his radio and police equipment, to permit him to make radio calls and act otherwise without interferences on the morning of November 2, 1972.

2. An HEW Social Rehabilitation Service's statement criticizing federal regionalization and state administration of certain services and programs—allowing "legalized starvation and the deprivation of rights to life" for Indian children; failing to require States' conformity to federal standards in welfare assistance programs, such as Aid to Families with Dependent Children; not acting to disallow the dissipation of assistance benefits by uncontrolled and excessive food prices on Indian reservations (noting that some Trading Posts on the Navajo Reservation were surveyed and found to be 3 times as high as food commodity prices at Safeways in Albuquerque); among other deficiencies and needs for other corrective actions cited.

3. A copy of a letter from former Commissioner of Indian Affairs Louis R. Bruce to the Director of the Office of Minority Business Enterprises (OMBE) charging that Indian people were not securing fair and equitable assistances from OMBE, primarily because of a failure and refusal of OMBE to cooperate and coordinate activities, or have continuing relations, with BIA—thereby keeping the development of Indian-owned businesses at a minimum and far below the level of immediately available opportunities.

4. A copy of a briefing paper to Interior and BIA personnel outlining the necessary application of the National Environmental Policy Act in the management and leasing of Indian properties—premiered upon the asserted judgment that the language of the Act made it mandatory for application by BIA and Interior—before Interior assumed the position that the measure did not apply "because tribal leaders did not want it" and that "Indian lands are private property".

5. Copies of documents detailing the suspension by BIA of tribal governments and constitutions (A) preventing the Prairie Band of Potawatamie Indians (Kansas) from receiving in trust a grant of 1300 acres of land, including former college facilities, from a church group; (B) limiting the ability of Fort McDowell Indians (Arizona) to prevent their being inundated or displaced by the reservoir waters behind a dam, or from asserting their own rights in the matter.

6. Copies of documents relating to the expedited transfer of \$70,000 in tribal funds, following earlier transfer of \$400,000 to the San Carlos Apache (New Mexico) Tribal Council in mid and late 1972—at a time when tribal members were calling for audits and protections of all tribal funds by the federal government in the face of information that nearly three-quarters of a million dollars in tribal monies had reportedly been privately loaned to present and former tribal officials, that the Tribe owed creditors and contractors nearly another half-million, and that the Tribe was seriously threatened with bankruptcy through unchecked mismanagement of tribal funds.

7. Information that the federal government—which returned (rightly) 21,000 and 67,000 acres respectively to the Yakima WA and Warm Springs (Oregon) Tribes to include within land bases already exceeding a million acres each—could not prevent the displacement of the Bridgeport California Indians by a housing development upon lands they've lived upon for most of the past century—nor grant them rights to an available twenty acre tract of nearby surplus land, because their eligibility can not be established in the absence of present land ownership.

Additionally, the FBI has secured a copy of more than 400 names, ages and addresses, of Indian persons who had come to this city with the Trail of Broken Treaties, together with information where the other half of the participants list could be obtained. This was to be provided to the congressional investigative staff to disprove the erroneous statements that mostly "urban" Indians were involved, by allowing accurate information on precise residences. It shall undoubtedly be used as a treasure map for FBI investigations, harassment, and intimidations.

Also, the FBI did not include upon their receipts the address books of Danny Pigeon and Alison Corri which were taken from my apartment within the course of their searching and seizing.

I can understand the FBI agents desire to seize upon several hundred pounds of documents in a dramatic arrest action less than fifteen blocks before these records reached their destination at the BIA—where congressional staff investigator Dennis Creedon would have witnessed their return at approximately 10:30 last Wednesday at the BIA backdoor entrance, where I planned at the same time to call FBI Special Agent Dennis P. Hyten at 324-2810 to declare their delivery.

The FBI record of recovery of properties taken from the BIA last November has, in the subsequent 3 months, been embarrassingly dismal. After an automobile accident in Oklahoma, some items were recovered—as were a few others after they surfaced in the BIA's Haskell Junior College at Lawrence, Kansas.

Other than the four occasions I had had or personal involvement in returning properties quietly to the FBI here in Washington, D.C., the recovery effort has failed. The determination that only a punitive method of recovery might be employed has been the cause for failure. The government could hardly tolerate their embargo against the return of properties to this city. Therefore, the arrests of last Wednesday.

I'd point out that police agencies have always had more information about the taking of properties and the people involved than I have had—or myself been able to secure. Their system of undercover agents was, and has been, operative during the entire process. I was first informed about the matter by Mr. Leonard Garment, Special Consultant to the President, on November 8, 1972. Although I was advised that his reports were unfounded, I promised the White House representatives that I would use whatever influence I might to prevent the taking of documents and records—additionally, to undertake my own inquiry into the matter, and to act to secure return of properties which might be, or have been, taken. After those assurances, there was a concluding of negotiations and actions which enabled the termination of the BIA occupation—without violent confrontation, serious injuries, or loss of life.

Subsequently, I have not had control over the handling or use of documents and records, although I have continued to work for their return. With respect to news reportage of their content in limited nature—I supplied some news outlets with a number of telephone contacts in different parts of the country, while supplying any number of Indians with names and telephone numbers of news media personnel for whatever arrangements might be possible or made—again as incident to their return—but without knowledge of or any power over any decisions made or materializing from contacts.

I learned additional details of the taking of properties for the first time later following articles written about them. At times, I have discussed the importance and significance of information contained in document copies with Les Whitten, but have not been involved directly in providing him with stolen documents or their copies. On occasion, I have offered additional information or leads to information not contained in missing documents.

I still do not know who took documents and records—and I do not know who sent three boxes from South Dakota. Deliberately, I have not sought specific names. In communicating the general information that I would help return materials, I've indicated that I would inventory materials received which have not been copied, for either use in news stories or for later attempts at acquisition

under the Freedom of Information Act. Additionally, we have been concerned by false statements made by government officials relating to the impact of "lost" materials—with various Tribes and projects being told that actions were being delayed because of missing records. (The Yakima & Walker River Tribes have made repeated statements about missing tribal records—where there is no reason to believe that such records were affected by the BIA occupation. NCIO Executive Director has played on the matter of lost records in threatening a juvenile rehabilitation center near Tucson with closure, before claiming that his personal efforts came into play to save it.) So, inventory of documents returned without other review or copying has been essential.

THE ARREST ACTION

Last Tuesday, I received notice that 3 packages were at a local bus station with a \$38.50 COD charge. When Nita Collins and Johnny Arellano arrived around 1 p.m., I gave Nita the notice and asked if she could pick them up for me. I gave Johnny a telephone message, just before he received a repeat call asking him to drive a student to American University for classes. Nita asked him if he could hurry—and although she knew nothing of their content—because the packages were "important". Shortly after that, I laid down to sleep—and did not see Nita again until inside a jail cell the following afternoon. While I was asleep, Nita and Johnny, the undercover policeman, picked up the packages at the bus station, transported them to my apartment, and left them in the center of my apartment—with Johnny doing all the handling of the boxes. When I woke up later, the boxes were there, still sealed. I did look through all the materials, and made mental inventory of them.

Shortly after 8 a.m. Wednesday, I called Nita Collins asking what time she and Johnny would arrive at my apartment to go to the BIA building. She said he was to be there by 10. I told her that was the time of the appointment with congressional investigators, that I thought they knew that, and could she call Johnny to get him by a little earlier since I was taking those three boxes to the BIA for delivery to the FBI at that time. She said she didn't have a number for Johnny, but that he would probably show up earlier anyhow.

About 8:30 a.m., I called Les Whitten, telling him I had received three boxes of documents and had looked through them, and that I was returning them to the BIA and FBI at 10:00 that morning. He asked if he could come along to do a story, coupling it with how I was coming through on my promise to secure the return of properties while the White House was continuing to attack and snipe at me privately and publicly. (I had told him of Brad Patterson's calls to LaDonna Harris, American Indian Press Association, and other Indian organizations around town, as well as his statements to Associated Press, denying his own statements to me in mid-January, as well as to attack me on other grounds.) I told him to come along, noting that I might have a transportation problem anyhow. He asked if the boxes would fit in his yellow Vega, describing its carrying capacity. I told him we could probably use it, if my other transportation didn't show up. He said he'd be by my apartment around 9:30.

Shortly after 9, Les' wife Phyllis called to say that Les was on his way, but that it would probably be a little later than 9:30 when he'd arrive. When he did arrive, I was preparing four short paragraphs of information which I hoped he would try to fit into his article, relating to my relationship with the Trail of Broken Treaties and the BIA occupation. (The FBI confiscated that draft within thirty minutes of its writing.) Shortly before 10 a.m., I called Dennis Creedon at the BIA building to say that I'd arrive a little late, around 10:15, hopefully, but not later than 10:30. He asked if he should meet me at the back door, and I said I'd prefer that for reasons that we need not discuss. I then began writing the FBI agent's, office's, and phone numbers on the boxes, so that I could call them from the phone in the BIA's entryway—and because I knew that the FBI was requesting first examination of all properties returned.

Shortly after 10 a.m., I moved the boxes to the hall of my fifth floor apartment, near the elevator, then putting them on it. When we took all three boxes off at the first floor, Les told me where his car was parked, and when I began lifting a box, he grabbed the other side—and asked if he was certain I could "make it". (In mid-December, I had been in a head-on collision which totally demolished my '71 VW, and which had left me with continuing shoulder-chest-and-back pains for some time afterward. Les was aware of this, having made an appointment for me with his doctor in late December (which I did not keep), and had—like

many people—been concerned about my health and physical condition since the time I was shot in the stomach in 1971 by vigilantes). I told him I could make it, and carried one box out to his car; he carried another; and as I returned to the apartment door for the third, the FBI made their moves to arrest both of us, seeming to materialize from everywhere.

Senator HART. Our concluding witness this afternoon, who has been very patient, is Mr. Edward Scheidt, of Reston, Va.

Mr. Scheidt.

Do you swear that the testimony that you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF EDWARD SCHEIDT, RESTON, VA.

Mr. SCHEIDT. I do.

Mr. Chairman, my name is Edward Scheidt and I live in Reston, Va. My background briefly is that for over 21 years I was with the FBI, 15 years of which I was a Special Agent in Charge. At one time or another I was in charge of the FBI offices in Charlotte, and in New York City, and in Detroit. After between 21 and 22 years of service in the FBI I retired, at age 50, and went back to North Carolina where I was commissioner of motor vehicles for 13 years, serving under four different Governors. I became very well acquainted with one of the distinguished members of this committee, Senator Ervin, who was then a Supreme Court Justice in North Carolina.

I might add that during the time that I was a special agent in charge of the Detroit office of the FBI I had the pleasure of knowing the distinguished Senator Hart. I read in the paper the other day where he spoke of his limited experience as a prosecutor. I think he was being entirely too modest, because I can tell you that the agents of the FBI in Detroit thought he was a top notch U.S. Attorney.

Senator HART. I am glad you said that. Thank you. [Laughter.]

Any time we won it was because your men had done such a good job we couldn't lose.

Mr. SCHEIDT. Well, I felt that you were marvelous then and I think you still are.

I am in somewhat of a dilemma. The material that I have to present might take as much as an hour. I am perfectly willing to take that hour now, or to come back later, whichever the committee prefers.

Senator HART. Are you retired literally? Could you conveniently come in?

Mr. SCHEIDT. Yes, indeed; I would be pleased to.

Senator HART. Fine. I don't want to ask you to repeat what a great prosecutor I was, but I would like to have my colleagues hear the material.

Mr. SCHEIDT. I might say, Senator, that what I have to say is in a spirit of helpfulness to the committee. I have certain thoughts and ideas which I sincerely believe might be of value to this committee in its important deliberations here.

Senator HART. I know the committee will be the better for any suggestion you have. If, in fact, it is not inconvenient for you, it would be helpful if we do postpone it.

Mr. SCHEIDT. Thank you; I'll be delighted to do so.

Senator HART. On that basis we will recess.

I will pause for a moment to learn if Chairman Eastland has suggested whether we will resume on Monday or on Tuesday.

Assuming power that nobody gave me, we will set it at 10:30, Monday morning. We will hear Mr. Scheidt. At that time I believe also we will hear from Steve Schlossberg, general counsel of the UAW.

Thank you.

Mr. SCHEIDT. Thank you, sir.

[Whereupon, at 4:55 p.m., the committee recessed, to reconvene on Monday, March 12, 1973, at 10:30 a.m.]

NOMINATION OF LOUIS PATRICK GRAY III

MONDAY, MARCH 12, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:40 a.m., in room 2228, Dirksen Senate Office Building, Senator Philip A. Hart, presiding.

Present: Senators Hart and Cook.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Ilite McLean, professional staff members.

Senator HART. The committee will be in order.

Today two witnesses are scheduled.

Mr. Scheidt has been patient with us all week and I wonder if I could ask him to delay a little longer in order that an out-of-town witness may testify.

Mr. SCHEIDT. It is all right with me, Senator.

Senator HART. Our first witness then will be the general counsel of the United Automobile Workers, Mr. Stephen I. Schlossberg.

The committee welcomes you, Steve.

TESTIMONY OF STEPHEN I. SCHLOSSBERG, GENERAL COUNSEL, UNITED AUTOMOBILE WORKERS

Mr. SCHLOSSBERG. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate very much the opportunity to appear before you on this important matter and to state the position of the International Union, the United Automobile, Aerospace and Agricultural Implement Workers of America, commonly known as the UAW, with respect to the nomination of L. Patrick Gray to be Director of the Federal Bureau of Investigation.

The UAW is an industrial union whose members number more than 1,400,000. Our interests have never been parochial and confined to narrow problems of self-interest. The UAW constitution and its conventions have mandated the leaders of the union to take positions on matters of general interests and to do everything in their power to improve the quality of life, not only for the members of the UAW, but also for the whole society. Certainly, as a responsible institution in this society we are concerned about the quality of justice in America. In view of the unique and sensitive position of the Federal Bureau of Investigation in our national life, we are naturally concerned about who shall be the Director and the course this crucial bureau will pursue in the future.

We do not appear here at this time to ask this distinguished committee either to consent to this nomination or to reject it. We do want to raise a number of matters we consider significant and important and to make a procedural recommendation to this committee.

Even though the Senate has had an advise and consent role with respect to the nomination of the Director of the FBI only since 1968, the Congress has always had the duty of overseeing the operation of this important Bureau and of approving its budget. We suggest that the failure of Congress over the years to scrutinize more carefully the operation of the Bureau is understandable in view of the strong personality who headed it for so many years.

Now, however, when the President has nominated a new Director, not a caretaker but a new Director, it seems entirely proper for this committee to inquire into the past operations of the Bureau, as well as the past record of the nominee, and in advising and consenting on this important post try to project what kind of FBI it can expect under a new Director.

I am going to deviate now, Mr. Chairman, if you please, from the text of my prepared statement to bring to the attention of the committee a speech made by L. Patrick Gray III less than 1-year ago.

On March 24, 1972, when this nominee was Assistant Attorney General of the United States, he made a speech before the Wage-Price Control Institute. I have given copies of this speech to the committee and I ask that it be inserted into the record.

Senator HART. Without objection.
[The address referred to follows:]

REMARKS BY L. PATRICK GRAY III, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION,
AND DEPUTY ATTORNEY GENERAL DESIGNATE, DEPARTMENT OF JUSTICE

Nearly a hundred years ago a journalist was interviewing the railroad magnate, William Vanderbilt, about his plans for discontinuing a rail line.

"And what about the public?" asked the reporter.

"The public be damned!" answered Vanderbilt.

As you can see, this was well before the term "public relations" had been invented. And as you can imagine, this startling statement stirred a tremendous hue and cry from the enemies of American business. They said it simply expressed what everyone knew—that businessmen were running roughshod over the public interest. Among those who were loudest in their denunciations were leaders of the labor movement.

In the last three days the Nation has been treated to another spectacle of the same type. When the Pay Board made a decision that the AFL-CIO didn't like, its president and three other labor members of the Board walked out.

Public relations has come a long way since William Vanderbilt, and George Meany did not say, "the public be damned!" But that is the full and complete meaning of his action. Not since the so-called robber barons of the 19th Century has a special interest group demonstrated such blatant contempt for the public interest. Let's look at the record.

Our most recent inflationary spiral began in 1964. For the first five years of this raging inflation, a Democratic administration was in Washington. What did it do to stop this inflation? Nothing. During that same five years, what did the leaders of organized labor demand of that Democratic administration, in order to stop inflation? Nothing.

Just three years ago, after President Nixon took office, he applied his existing powers to try and stop inflation. As you know, these were indirect powers—credit restrictions, the tax structure, and so forth. He also called upon business and labor for voluntary efforts in controlling inflation. What was the result?

In general, organized labor continued to make strong and inflationary demands at the bargaining table. And in too many instances, business gave in to these demands and simply passed the added costs on to the consumer, in the form of higher prices.

Lest I be accused of coming here just to blame organized labor for the inflationary spiral, let's recognize that it takes two sides to negotiate at the bargaining table and two sides to sign a contract. If labor was wrong in demanding inflationary increases, business was wrong in granting them.

The one side that wasn't represented at the bargaining table was the side of the consumer. He is the one who, in the end, had to pay the price.

Now, as you know, President Nixon preferred not to apply direct controls to the economy, if it could be avoided. He knew that such controls can stifle our free and competitive economy. He had hoped that inflation would be curbed by indirect and voluntary means. And, in fact, there *was* some reduction in the rate of inflation. But by mid-1971 the Nixon administration realized it was not enough.

All this time the Democrats—those whose party had done nothing to stop the inflationary spiral in the first five years—were blaming the President and were calling for more drastic and direct controls.

Leaders of organized labor, led by George Meany, were calling for direct controls. They said that was the only way the President could curb inflation.

Then on August 15, President Nixon announced his wage-price freeze. Well, George Meany said that wasn't exactly what he had in mind. He was in favor of freezing *prices*, but not *wages*. And since public relations has become an important factor since the days of William Vanderbilt, Mr. Meany didn't say, "The public be damned." No—instead he claimed that labor was being asked to bear the brunt of the fight against inflation, and he threatened to ignore the wage freeze.

Then, after the 90-day freeze the President established Phase II—the economic stabilization program. It embodied the most scrupulous attempt to administer wage and price controls that would be fair to all concerned. Not since the national crisis of World War II was everybody in America so united in one cause—the need to buckle down—pull together and break the back of the psychological inflation as well as the real inflation.

Everybody, that is, except the likes of George Meany. At first he hesitated to serve on the Pay Board until his terms were met. Then he reluctantly agreed, saying, in effect, that he would do so only as long as it served labor's interest to do so.

While I am not here to throw bouquets at business, I must observe that the management representatives on the Pay Board did not come in with their fingers crossed. They did not hang onto their hats and keep one foot outside the door.

Now, let's look at the record of the Pay Board and see whether its performance justified George Meany's fears.

Out of 54 votes on major issues by the Pay Board, more than half were unanimous. The majority voted the way the labor members voted 36 times.

Let's cut it another way. The Pay Board agreed that 5.5 percent was a permissible increase, considering productivity gains, and that 7 percent was reasonable where there was some "catching up" to do. Yet in the soft coal settlement the Board agreed to 15 percent. In the aerospace settlement it agreed to 8.3 percent plus an additional 4 percent in the second year. The United Transportation Union got 10 percent.

The full Pay Board has acted upon eight major wage cases. In five of these the position of the labor members prevailed.

Does this record look like the Pay Board was stacked against organized labor?

Meanwhile, what was the Price Commission doing?

The weighted average price increase it has allowed—and bear in mind it has denied any increase at all in a number of cases—has been 3.16 percent for applicable sales, and 1.55 percent for total revenues. And whereas the Pay Board allowed the soft coal workers a 15 percent wage increase, the Price Commission established a policy that even in such cases, no more than a 5.5 percent increase in wages would be accepted as allowable cost to be passed on as a price increase.

How has all this affected the cost of living? The President has indicated that his goal is to get the cost of living index down to an annual increase of 2 to 3 percent. Since the start of economic controls last August, the consumer price index has increased at an annual rate of just over 3 percent.

It is true that here and there you can find prices that have exceeded this goal. Mr. Meany's game is to pick and choose such exceptions—food prices, for example—to try and build a case.

It is also a fact that the cost of living index, long since computed by the Bureau of Labor Statistics to reflect the cost of living for the average American family, shows only a very small increase since last November despite the jump last month in the consumer price index, three quarters of which was due to the rise in food prices.

This is an increase below the average wage increases permitted by the pay board.

This is an increase far below the higher wage increases allowed by the board.

The fact is that retail food prices have risen just one-tenth of 1 percent on the average in the last six months. It is also a fact that only 16 percent of the typical family's income goes for food today compared with 23 percent in 1952.

Now comes the dock strike settlement, in which the Pay Board is asked to approve a whopping 20.6 percent increase.

As you know, this followed a dispute that kept West Coast ports and shipping tied up for many months. This strike was terminated when the President invoked the Taft-Hartley Act on the 98th day, and a court ordered the strikers back to work 112 days after the strike began. The cooling off period expired after 80 days, and the dock workers were out again. They did not return again until 35 days had elapsed.

Reasonable observers declared that if the Pay Board caved in and allowed anything like the 20.6 percent increase, the whole economic stabilization program was liable to go down the drainpipe.

When it's decision of 14.9 percent was announced it created a furor—but not just on the side of labor. Those who had feared the Pay Board would "cave in" were just as adamant on the other side. They pointed out that the dock workers increase was comparable to the soft coal increase that had already been criticized as excessive. But Mr. Meany and three other labor leaders affiliated with the AFL-CIO walked out, hurling thunderbolts over their shoulders.

As he had warned, Mr. Meany had been willing to stay on as long as things were generally going his way, but when an important decision went the other way, he picked up his marbles and went home.

Of course, he invoked the help of public relations and put out an explanation that took nearly half a page of newspaper space. He didn't say, "The public be damned." But he did use as one of his excuses that he and his colleagues had "a deep disbelief in and distrust of the aims and purposes of this administration's economic and social policies * * *."

I would like to be charitable and believe that this, and not just pure narrow self-interest, explains Mr. Meany's problem. He doesn't trust this administration, so he pulls out of the game and goes home.

It's not really a question of trust with Mr. Meany—it's a question of power—the raw and unbridled power to pull the strings and manipulate to achieve his own objectives and the public be damned.

But when Mr. Meany says that he doesn't trust the administration, the trouble is that at present it's the only administration we have.

At the present time this is the administration in office and headed by a President elected by the people of the United States.

At the present time it is charged with the responsibility of conducting the affairs of the Government, and it's the only Government we have.

It is administering the only economic stabilization program that Congress has authorized.

At the present time it's the only weapon the Nation has that can win the battle against inflation.

So even if Mr. Meany isn't satisfied with this game, the fact is that it's the only game in town.

Walking out on that game is an indulgence in personal prejudice that the rest of us can't allow ourselves to enjoy.

In my opinion the American labor movement has the right to expect reasoned and responsible leadership from its chieftans. Instead it has now received a buckshot load of irrational irresponsibility.

I believe that the workingman and his family have suffered heavily under the inflationary scourge. They have seen their wages increase but their purchasing power has declined. They deserve the responsible representation that the AFL-CIO potentates may have been able to provide had they placed public interest above self-interest and raw power.

I believe that the overwhelming majority of Americans, including many members of organized labor, will applaud the fairness, the courage and the performance of the Pay Board.

I believe that the overwhelming majority of Americans recognize the need for the economic stabilization program, and for all Americans to put national interest ahead of special interest in supporting that program.

I believe that the overwhelming majority of Americans do not allow themselves to be ruled by suspicion and distrust. They know that if we are to continue to accomplish great things as a Nation, we must maintain confidence in each other and in the leaders we elect.

I predict that, together, we Americans will beat this specter called inflation—with or without Mr. Meany.

In the process we will validate an article of faith—not “the public be damned,” but “the public be served.”

MR. SCHLOSSBERG. I will not read the whole speech, but will only call attention to some parts of the speech and to the tenor of the speech, and call to the attention of this committee what I consider to be an unfortunate aspect of this speech made by the Assistant Attorney General, who is now under consideration as the head of such a legendary law enforcement agency as the FBI.

Less than 1 year ago Mr. Gray, as Assistant Attorney General for the United States in charge of the Civil Division, made this speech to a wage-price control workshop, and at that time, I might add, he and I were lead counsel in a piece of litigation affecting the subject matter of this speech.

As this committee may know, and may take notice of, the UAW sued the Boldt pay board over its actions in the *Aerospace* case and we had been in litigation. Mr. Gray as the chief counsel for one side, the Government side, and I as the chief counsel on the other side, some 7½ weeks when he made this speech. That is significant for a number of reasons. As a lawyer, I deplore the practice of trying lawsuits and attacking the motives of opponents before public groups rather than in the court when you are litigating. I also deplore inaccuracies, which were later proven to be inaccuracies, by the Federal district court in the District of Columbia and I will call attention to one particular inaccuracy in this speech.

On the first page of this speech, Mr. Gray refers to the robber barons of the last century and particularly to the famous quote from Commodore Vanderbilt, “The public be damned.” Then he talks about the exodus of the responsible labor leaders of this country from the Pay Board in protest against the policies of the administration at that time, and he said, and I quote :

In the last three days the Nation has been treated to another spectacle of the same type.

He is referring to the “public be damned” attitude.

When the Pay Board made a decision that the AFL-CIO did not like, its President and three other labor members of the Board walked out.

Further down the page he says :

Not since the so-called robber barons of the 19th century has a special interest group demonstrated such blatant contempt for the public interest.

Later he talks about—

Organized labor continued to make strong—

Senator Cook. Can you give me the page, please?

Mr. SCHLOSSBERG. On page 3 of the speech, Senator Cook.

Senator Cook. Thank you.

Mr. SCHLOSSBERG. At the bottom of the page he says:

In general, organized labor continued to make strong and inflationary demands at the bargaining table.

I note parenthetically that the UAW has been praised not only by employer members of the Pay Board but by public members of the Pay Board for having made responsible noninflationary contracts long before any wage and price controls were in existence.

I turn now to page 5 of the speech. At the bottom of the page, Senator Cook, he says:

Leaders of organized labor, led by George Meany, were calling for direct controls. They said that was the only way the President could curb inflation.

At this point he is talking about the Congress, and the Democrats in particular, blaming the President and asking for more drastic and direct controls. I point out again, as an inaccuracy, that the UAW is publicly on record as not having been one of those who called for direct controls. Indeed, we opposed the carte blanche that was given to the President by the Democratic-controlled Congress in the first Economic Stabilization Act.

He then says on page 6, at the top of the page:

Then on August 15, President Nixon announced his wage-price freeze. Well, George Meany said that wasn't exactly what he had in mind. He was in favor of freezing prices, but not wages.

I do not pretend to speak for President Meany. I do think he is a great American and I know he did not say that and he did not mean that. As I remember his public statements, which are well laid out in the record of congressional committee hearings and are known by the administration and by the routine partisans who make speeches for the administration's whole program, they are based on equality of sacrifice. He said that labor would be willing to suffer the stringencies of wage controls if there were truly price and profit controls. I think that is an injustice to Mr. Meany, but I do not pretend to defend him and I say it only as a member of organized labor who has some association with the problem.

At the bottom of that page, on page 6, he says:

Not since the national crisis of World War II was everybody in America so united in one cause.

He is talking about the fight against inflation. Then he says, after having compared this to a war in which the national life is at stake and really bringing in the question of patriotism:

Everybody, that is, except the likes of George Meany. At first he hesitated to serve on the Pay Board until his terms were met. Then he reluctantly agreed, saying, in effect, that he would do so only as long as it served labor's interest to do so.

His next paragraph is interesting:

While I am not here to throw bouquets at business, I must observe that the management representatives on the Pay Board did not come in with their fingers crossed. They did not hang on to their hats and keep one foot outside the door.

I suggest there is good reason for that because the so-called public members and the management members ran the Pay Board and they knew it from the very beginning.

Turning now to page 8, and this is the part of the speech that, because of my personal involvement, particularly irritates me, in the next to the last sentence of the last paragraph on page 8, he says, "In the aerospace settlement it"—meaning the Pay Board—"agreed to 8.3 percent"—he means for a first-year increase—"plus an additional 4 percent in the second year."

Now, Mr. Chairman, at that very moment we were litigating, the UAW was litigating, in a case known as *UAW v. Boldt*, the very question of the aerospace settlement, in the District Court for the District of Columbia.

Mr. Gray was lead counsel on the other side. Our complaint, which was a lengthy complaint, based itself almost entirely on count 1, which said the Pay Board had erred so grievously in the aerospace contract that they had given us no first-year increase, none whatsoever, that they had given us a wage increase of zero percent, and that they had taken an old contract and called it a first-year increase. That case is now in the emergency court of appeals and I think this committee should know, despite what Mr. Gray says here, that Judge George L. Hart of the District Court for the District of Columbia remanded that case to the Pay Board to consider what the first-year increase should be because the money they had given us as a first-year increase was old money due under a contract which was not covered by wage controls. In other words, as the case now stands, and I hasten to add it is pending a decision in the emergency court of appeals, we got zero percent for the aerospace workers for the first year and Mr. Gray at least knew our contention.

What really disturbs me, Mr. Chairman, about that speech is the tendency to stereotype, to class all labor leaders together and to think of them derogatorily.

I have read the reports of Mr. Gray's testimony before this committee and I was struck with one remark. In dealing with Mr. Dean and in dealing with the Nixon administration, Mr. Gray told this committee that he worked under a presumption of regularity. I wonder if so partisan, so vicious, a speech as this against the leaders of American labor means that he, as Director of the FBI, would work with a presumption of irregularity when he was dealing with the members of organized labor and their leaders. I wonder if a person so partisan at the time he was litigating and holding such a high position in the Government is the proper man to head this great Bureau, the FBI.

I have, Mr. Chairman, an editorial from the Detroit Free Press, an independent Knight newspaper in Detroit, which was written on Thursday last, March 8, and I will submit this to the committee and ask that it be included with my statement.

Senator HART. It will be printed.

[The editorial referred to follows:]

[From the Detroit Free Press, Mar. 8, 1973]

PARTISANSHIP TAINTS GRAY AS PERMANENT FBI HEAD AS WE SEE IT

(By John S. Knight)

FBI charges, revealed this week, that officials of President Nixon's re-election campaign sent "agents on fishing expeditions to keep them from getting the truth" about the Watergate break-in and bugging reflect poorly on both the President and his choice for director of the FBI, L. Patrick Gray.

Whether the interference came from "campaign officials" or "White House officials" makes little difference. The President bears ultimate responsibility for both, and the way the Nixon campaign was run, you couldn't tell them apart anyway.

And Gray was responsible for telling the officials, whoever they were, to keep away from the investigation. We recognize that it may be difficult for a presidential appointee to defy the man who appointed him, but that's sometimes his job, and he must either do it or admit he isn't fit for the position.

Gray apparently had no desire, or at least no stomach, to go against the wishes of the President.

Gray allowed presidential counsel John W. Dean to sit in on FBI interviews with White House staffers. It isn't likely that any of these loyalists would have told tales on their bosses, but Dean's presence virtually assured tight lips. Anything said would certainly have reached the President or the appropriate member of the palace guard through Dean.

The acting FBI director said he had no choice but to allow Dean to sit in because that was the White House's desire. Bunk. The head of the FBI must be a person with the backbone to do what he thinks is right regardless of the consequences.

The President may fire him, but no qualified FBI director would let the President or anyone else push him around.

The Senate is now considering Gray's nomination as permanent director of the bureau, and confirmation appears likely. But the Senate should carefully weigh the consequences of a possible Gray appointment.

Gray's actions, not only in the Watergate investigation, but in other events leading up to last fall's election, make clear the fact that he is a partisan Republican. It is reasonable, of course, to expect a Republican President to appoint Republicans.

But an FBI director, like a Supreme Court justice, should identify with no party after appointment, temporary or permanent. Neither justice nor law enforcement mixes well with politics. Departmental morale and public confidence are both damaged by the knowledge that politics may influence policy.

It's a cinch, if Gray is confirmed, that he will be replaced by the next Democratic President, which could lead to FBI directors coming and going through a revolving door.

We would not expect, and would not want, the next FBI director to match the 48-year tenure of his predecessor, J. Edgar Hoover. But we would hope that he could come close to matching Hoover's record for staying out of the partisan arena. L. Patrick Gray cannot.

Mr. SCHLOSSBERG. I would like to read the last paragraphs of that editorial.

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Mr. SCHLOSSBERG. The FBI is an almost legendary law enforcement agency. It is essential in a democratic society that such an instrument be kept free from politicalization. For if the head of the FBI, with tremendous power, funds, and network of agents, becomes a partisan political figure using the awesome apparatus under his control to further the political aims of a President, the democratic society is in danger.

Daniel Webster has said :

Justice is the greatest interest of man on earth. It is the ligament that holds civilized beings and civilized natures together.

And as Costa Gavres, the motion picture director who gave us the movie "Z," said :

Official injustice is the greatest of all violence, because that's where violence begins * * * always from injustice. And the worst is injustice in the name of justice.

We would hope the committee would inquire further of this nominee, in view of his present role as Acting Director of the FBI, along the following general lines :

1. What is the role of informers in the Bureau's operation? How are they paid, recruited, and used? Are particular areas of American life more infiltrated with professional informers than others? Is there special emphasis on certain civil rights or political groups?

2. What of the wiretapping activities of the Bureau? What kinds of politicians, newsmen, officials and others have been wiretapped? Are the pronouncements of the Supreme Court in this area of the law being observed in letter and in spirit?

3. What has the Acting Director ordered done with the FBI's data bank? What are his policies as to the dissemination of materials in the FBI files?

4. Is there a different standard in the Bureau for dealing with citizens from diverse walks of life and different races?

5. What is the Acting Director's record with respect to his views for the future in this area?

6. How about cooperation with local and State police forces—what is the record and what are future plans?

7. How does the Acting Director of the Bureau see his duties with respect to violations of federally protected civil rights and civil liberties?

Turning now to matters particularly germane with respect to this nominee, we suggest that further study is in order in connection with this nominee's role in the last national election and his direction of the Agency during the campaign.

How well did the FBI under Mr. Gray perform the sensitive and important task of investigating the political sabotage, wiretapping, burglary, and espionage alleged to have occurred during the last election campaign?

Walter Lippman once said :

In the democracies that are foundering, and there are many of them, the underlying bonds have been ruptured which hold men together through all their differences in one community. The parties deny the good faith and loyalty of the opposition. Partisanship is a license to outlaw and ruin political opponents. When such a rupture of faith and confidence has occurred, democratic government and free institutions are no longer workable.

Free men have found no alternative to tolerance for opposing political ideas. There is the beginning of the end of liberty when a difference of opinion becomes confused with treason or disloyalty. The strength of the parliamentary method is in the contest for men's hearts and minds, with both majority and minority content to abide the result. Once the power of government is used to defame the character of public men and so crush the opposition, the parliamentary system begins to crumble and the seeds of dictatorship are sown.

Now, we are certain that this committee takes seriously all allegations of political sabotage and espionage. Indeed, we expect that

thoughtful and fair persons of all political persuasions are disturbed by the disclosures and the allegations of misconduct growing out of the Presidential election. Based on our study of the answers Mr. Gray has already given this committee, and reports in the press with respect to the FBI performance in this area, we suggest the committee might wish to explore more thoroughly, among others, these areas of inquiry:

1. Where allegations were made that White House personnel was involved in Watergate and related matters, was it proper to turn over FBI files to the White House? I refer, of course, to Mr. Dean. What will be the future policy in such cases?

2. Where a witness is reported to have been coached on the basis of FBI files prior to his grand jury appearance, was it proper to accept the mere assertion of one person, again Mr. Dean, that the witness had not been shown the files by him and not to investigate further?

3. Where a top campaign official and former Assistant Attorney General, I refer to Mr. Mardian, is alleged to have engaged in massive destruction of campaign finance documents, was it proper to drop the matter because of the simple assertion of an attorney-client privilege?

4. Where FBI agents recommend the questioning of the wife of a former Attorney General, should the Acting Director decline to follow through because the husband objected to the interrogation? I refer, of course, to Mrs. Mitchell.

Who concluded that no FBI investigation should be made of certain acts of political sabotage, apparently not directly connected with the Watergate burglary, and on what basis?

I turn now to highly publicized reports of FBI involvement in partisan political activity during the recent elections.

1. Were FBI crime statistics and derogatory information and other information supplied to the White House supplied to the Nixon campaign apparatus for political use, and if so is not the Acting Director responsible for the use of FBI statistics and material from FBI files in a political campaign by a partisan political outfit?

What is the propriety of the Acting Director making speeches around the country during the political campaign? Have the speeches been analyzed? Who scheduled the speeches? Are there FBI files, correspondence, and other material, which might show who arranged the speeches? How did the Acting Director travel to and from these speeches? Did he meet with any campaign officials on these trips?

I was particularly impressed with the committee's exploration of the Cleveland speech, and as I recall the testimony on the Cleveland speech there first was Mr. Gray's recollection of an independent invitation to make a speech in Cleveland and then that turned out not to be true.

I understand Mr. Gray said to this committee that the speech had not been cleared with the White House or with the committee to reelect the President. But I suggest to you, Mr. Chairman, that it might be proper to find out what contacts were made with people in either the White House or the committee to reelect the President, with Mr. Gray's staff, with his speech writers, what input went into the FBI before the Gray speech in Cleveland which was so important to the Nixon political campaign.

We respectfully suggest that this record is far from complete. More in-depth investigation is required. I hasten to add: there are surely

areas of inquiry which might tend to show the wisdom of the confirmation of this nominee. Those areas also need development.

Doubtless Mr. Gray is an efficient and able administrator. Surely the committee will want to explore how well he has dealt with the permanent staff and the policies of the FBI since he took over as Acting Director. Perhaps by training or experience he is uniquely qualified in this law enforcement position. The press has reported that Mr. Gray has tried somewhat to "open up" the FBI. I believe that he ordered a search for "secret files" and I believe he did that his first week in office. He is reported to have announced an affirmative recruitment program for women and minorities. Certainly if he has done these things, we would applaud him for them as I assume this committee would also. I do not know the full facts with respect to these reports but they could be properly developed by this committee.

I come now to the UAW's recommendation to this committee.

We are pleased to note that the Senate has established a select committee to investigate the Watergate affair. That committee will be chaired by one of the distinguished members of this committee, Senator Sam Ervin.

Doubtless under the inspired leadership of Senator Ervin that committee will thoroughly and impartially investigate all of the circumstances and the handling of that matter by the concerned agencies. As a result of that committee's work, we submit, the Senate and this committee will be in a position better to evaluate the performance of the FBI and its Acting Director in the investigation of Watergate.

Our recommendation, then, to this committee is that these hearings on the nomination of Mr. Gray be kept open until Senator Ervin's committee has completed its work. At that time the Judiciary Committee will have before it the full record of Mr. Gray's conduct of the investigation of that sensitive matter. Such a procedural decision would, of course, permit Mr. Gray to continue to serve as Acting Director and, at the same time, assure this committee that it will know all the relevant facts when it reports to the Senate, so that the Senate can perform its important advise and consent duty.

Thank you, Mr. Chairman.

Senator HART. Thank you, Mr. Schlossberg.

Your recommendation, to hold the nomination until the Ervin committee reports, is one to which the usual response is that to do that would involve a time period of a year or more—the Ervin committee report is due by February 1974, I am told. Now, how do you react to the argument that that would leave the Bureau, and specifically the Acting Director, in one hell of a spot? He is responsible for its management and morale, and yet he does not really have his badge very securely on.

Mr. SCHLOSSBERG. Well, Mr. Chairman, if I may, I would suggest that the record of Mr. Gray's caretaker appointment pretty well answers that question.

You will recall that when President Nixon appointed Mr. Gray to be Acting Director of the Bureau there was no suggestion at that time that this might become a permanent appointment and that it might be sent to the Senate under your power to advise and consent. As a matter of fact, I specifically recall that it was considered an interim caretaker

appointment. Mr. Gray has remarked to the press, if my memory serves me correctly, that he received remarkable cooperation from the Bureau, from the professionals who worked in the Bureau before his appointment, that he had been well briefed, and that he had had cooperation in trying to operate the Bureau. The fact that the Bureau has operated, I assume, at some level of performance that is less than bad, even with all this political activity that it seems to have been involved in, indicates to me that he could continue to operate.

I would suggest, Mr. Chairman, that if the reports that I read in the press this morning are correct, Mr. Gray's position is a great deal more damaged by the leak from the administration that Chief Wilson is waiting in the wings than it would be by this committee's waiting to hear all the facts so that it will not be embarrassed by something that is later disclosed.

Senator HART. I have to confess that I, as one member, have had difficulty with the notion of attempting to hold this nomination until the Ervin committee report comes in, for the reason I indicated, that it leaves the Acting Director in an unsure position. Yet I do acknowledge that that might be better, undesirable as it may be, than to have us confirm and then be confronted with an Ervin committee report that makes even more difficult his and our situation, a report that finds perhaps a wretched performance on the part of the Bureau.

I think the Free Press editorial that you have offered for the record makes the point that all of us, whatever our position on Mr. Gray might be, acknowledge is critical.

Public confidence in the functioning of the Bureau must be strong, and if there is an appearance which leads to the conclusion that there may have been political influence in the functioning of the Agency, there is a resulting loss of confidence. What the Free Press suggests is to avoid it by not confirming Mr. Gray.

Mr. SCHLOSSBERG. That is correct. That is now our position, Senator. We believe you need more information. We are not urging you at this time to reject the nomination. We do think that it would be a serious tactical error for this committee to act without having the full benefit of that thorough investigation in its hands.

Let me suggest one thing. I notice that Mr. Gray has offered to make available to Senators, not to staff but to Senators, raw files of the FBI. I suggest that is really not a very material offer because most Senators are too busy to go through raw files of the FBI. It is almost like saying that the corporate shareholder who brings a stockholder's suit and tries to see the books may look at the books himself but may not bring in an accountant or a lawyer. That really makes the right an illusory right. I suggest that if the only way the Judiciary Committee has the benefit of looking at the files, and getting to the bottom of what went on in this investigation, is by Senators themselves going over and going through those files, without expert staff assistance, it behooves the Judiciary Committee to wait a little and decide whether the expert help that might come from Professor Dash and from Senator Ervin and from some of his colleagues may not be helpful to you in this most important nomination.

Senator HART. I am sure that all of us would agree that the report from Senator Ervin, prepared with the help of Professor Dash, would be of great help to us. You cannot avoid that conclusion. The problem

is whether it is responsible to wait for it or not. I think you have made a very strong appeal that waiting is the prudent course.

Mr. SCHLOSSBERG. Thank you.

Senator HART. Senator Cook.

Senator COOK. Thank you, Senator Hart.

Mr. Schlossberg, suppose this were a nominee who had not been Acting Director of the FBI. How could he answer your question 1 and how could he answer your question 2? Are these not matters to be considered in oversight hearings?

Mr. SCHLOSSBERG. If you will read my introduction there, Senator Cook, I believe I made it clear—

Senator COOK. I read your introduction but then I heard your addenda and I think your addenda to your remarks changed the thrust of your introduction.

Mr. SCHLOSSBERG. I am sorry.

Senator COOK. You should not be sorry, it is your testimony.

Mr. SCHLOSSBERG. I am not sorry about my testimony. I am sorry I misled you. The premise of these lines of inquiry is his acting status. I would agree with you that had he not been Acting Director of the FBI these would probably be the subject of oversight hearings.

Senator COOK. Are they not still a proper matter for oversight hearings?

Mr. SCHLOSSBERG. I would think that since he has been the Acting Director there would be a dual propriety here, that it would be proper for you to inquire into these things and that it would be proper also for oversight hearings to inquire into them—and perhaps budget hearings too.

Senator COOK. You see, I get from this that somehow or other you want everybody to live in more of a 1984 society. For instance, let us take your item 3: Was it proper to drop the matter because of the simple assertion of an attorney-client privilege? Would you, as a lawyer like the FBI to go behind your attorney-client privilege that you have under the law?

Mr. SCHLOSSBERG. No, Senator, not if I really have an attorney-client privilege.

Senator COOK. Do you not think sometimes you do have an attorney-client privilege?

Mr. SCHLOSSBERG. Oh, indeed, and I think that when an attorney-client privilege is asserted it is usually very narrow, in connection with a piece of correspondence or in connection with advice given to a client. But when a lawyer is alleged to have engaged in an illegal act, and I think it was illegal, to destroy campaign records at this time—

Senator COOK. You think?

Mr. SCHLOSSBERG. That is right, I think. Because the law is not absolutely clear on that, Senator. I do not think that it is automatic and per se that the attorney-client privilege would attach itself to that, and even if it would, that does not foreclose investigation. Sometimes you can ask questions around the attorney-client privilege without doing away with that privilege, recognizing the propriety of the privilege and protecting it, and at the same time exploring matters that are proper.

I just believe that this statement that was made, that there is a presumption of regularity in this investigation, has to do with all of this quick turnoff. Somebody said, "You try very hard but if there is the slightest hint from somebody for whom you have the greatest respect and so on, you try somewhere else." You would stop trying on that one.

Senator COOK. I must say, as a fellow lawyer, I think you would be very offended if you claimed the attorney-client relationship with one of your clients and then found that the FBI was trying through other sources to break down the privilege that you had under the law. I think you would be very disturbed about that, and I think you and I would be some of the first people who would scream very loud about it.

Mr. SCHLOSSBERG. There is no question that if the thing you are talking about happened I would be disturbed about it. I do not believe that is this case. I believe that here the attorney himself is alleged to have destroyed the records rather than the client.

Senator COOK. I might say one other thing in conclusion, in all fairness, and I am not representing anybody but this individual right here.

Mr. SCHLOSSBERG. Certainly.

Senator COOK. You were critical of Mr. Gray's speech when he made reference to the fact that an agreement had been reached on certain terms. You indicated that he was in effect trying that case in that speech. I must say, Mr. Schlossberg, you made it very clear that under the terms of a so-called contract that was not true and that it was really zero compensation and that they received nothing.

Mr. SCHLOSSBERG. That is right.

Senator COOK. And I might suggest to you, in all fairness, you might be trying that case here.

Mr. SCHLOSSBERG. Well, the only difference is that at the time of his speech there had not been a decision in the case.

Senator COOK. Has there been a decision now?

Mr. SCHLOSSBERG. There has been a decision in the district court.

Senator COOK. I thought you said it was before the emergency court of appeals?

Mr. SCHLOSSBERG. That is right, but in that court it has been argued and briefed and it is finished. At that time this case had not yet been argued and briefed to the district court. And I did not present only one side.

Senator COOK. But a final decision has not been made?

Mr. SCHLOSSBERG. A final decision has not been made.

Senator COOK. A final decision is pending and still has not been made?

Mr. SCHLOSSBERG. That is correct.

Senator COOK. Thank you, Mr. Schlossberg.

Senator HART. Next, and really for the second time, the committee welcomes Mr. Edward Scheidt.

Mr. Scheidt, for the record, although you did state it on late Friday afternoon, would you provide the committee your background?

TESTIMONY OF EDWARD SCHEIDT, RESTON, VA.—Resumed

Mr. SCHEIDT. Thank you, Senator.

Very briefly, I served in the FBI for over 21 years, and for 15 of those I was a special agent in charge. I served as special agent in charge for 6 years of the FBI's largest office and, for a brief time,

was in charge of the office in Senator Hart's home district, the FBI office in Detroit.

I left the FBI under voluntary retirement at the age of 50 and accepted a position as Commissioner of Motor Vehicles in the State of North Carolina, where I served in that capacity for 13 years under four different Governors.

I have had a lifelong interest in law enforcement not only because of my FBI career but also because one of the divisions of the Department of Motor Vehicles in North Carolina is the State highway patrol. That, of course, is also a law enforcement agency, and one which, as a matter of fact, had frequent and, indeed, daily dealings with the FBI during the time I was commissioner.

I prepared, in another context, a résumé summarizing my experience and background which I will not read but which I will be glad to submit.

Senator HART. It will be printed in the record at this point.
[The résumé referred to follows:]

EDWARD SCHEIDT,
11418 WATERVIEW CLUSTER,
Reston, Va.

Age 70. A.B. 1926, LL. B. 1931, both University of North Carolina. Admitted to North Carolina Bar 1931.

Over 15 years as an executive in the Federal Bureau of Investigation, preceded by 6 years of investigative experience in the same organization. For 9 years Special Agent in Charge of the Charlotte office of the FBI, for 6 months in charge of the Detroit office, and for 6 years in charge of the FBI's largest field office, that at New York City. Six years of service on small committee within FBI which dealt with employee suggestions, methods of stream-lining operations, and means of achieving greater efficiency and economy. Intermittent service as a member of the Inspection Staff of the FBI. In that capacity inspected 21 field offices throughout the United States to check on their operations. FBI service was 1931-1953.

Commissioner of Motor Vehicles for the State of North Carolina, under four Governors, 1953-1965. In this capacity was in charge of a department of more than 2,000 employees consisting of 11 divisions, among which were the State Highway Patrol, the Driver License Division, the Registration Division, and the Driver Education and Accident Records Division. Under my direction, the North Carolina Department of Motor Vehicles achieved national recognition for efficient and progressive operations. Both the Highway Patrol and the Driver License Division repeatedly won "Outstanding Achievement Awards" from national authorities for their consistently excellent programs.

Past President, American Association of Motor Vehicle Administrators. Past Chairman, National Committee on Uniform Traffic Laws and Ordinances. Past President, Association of State and Provincial Safety Coordinators. Recipient in 1961 of the Hoffman Award, given each year to the man selected as the nation's most distinguished professional in the field of highway safety. Life member, International Association of Chiefs of Police. Former Chairman, Committee on Enforcement and Safety, American Association of Motor Vehicle Administrators. Former member, Traffic Conference, National Safety Council.

Extensive experience in public speaking, and in conducting and presiding at meetings. Wide contacts in Federal, State and local government circles throughout the nation, and in the judiciary, as well as in the academic and business communities.

Author of numerous articles which appeared in *Traffic Safety*, *The FBI Law Enforcement Bulletin*, *The Traffic Quarterly*, and other publications. Also author of several training manuals published and used in schools for police. For 9 months 1936-37 was associated with the Institute of Government at Chapel Hill, conducting special studies in law enforcement and police training under a special leave of absence granted by the FBI. While a student worked part-time for the University of North Carolina at Chapel Hill handling correspondence and interviews with prospective students. During this period, also served briefly as Field Secretary of the University Alumni Association.

Retired from FBI service 1953 and from state service in North Carolina 1965. Since then, after travel abroad, employed as consultant in general areas of motor vehicle regulations, traffic safety, and law enforcement problems. Top-flight references.

Mr. SCHEIDT. Before I continue I think I ought to say something here for the information of Senator Cook. At the time I mentioned this Friday, Senator Hart was the only Senator here and I referred to the fact that I had read in press reports some statement that he had made about his limited experience as a prosecutor and I just wanted to say for the record that out there in Detroit we FBI people thought he was tops as a prosecutor. He was a fine U.S. Attorney and he is entirely too modest in his description of his service as a prosecutor.

Senator Cook. May I say my respect for Senator Hart would be parallel to yours.

Mr. SCHEIDT. Thank you, sir.

Senator HART. Thank you very much.

[Laughter.]

Mr. SCHEIDT. Gentlemen, I thought long and hard before deciding to come here and ask to be heard by this committee. It was not an easy decision to make. After all, this in no way involves me personally. I have no ax to grind. It is not an easy thing to do to come out and testify in opposition to a man whose confirmation is a foregone conclusion, according to indications in the press and even in statements of the distinguished chairman of the committee. But as I have studied this matter in my own mind and worried over it, I keep thinking about my 21 years in the FBI and his 10 months in the FBI. I think of those early days in the FBI. It is hard to realize it now—time passes so quickly—that when I became an agent in the FBI, J. Edgar Hoover was only 36 years old. We had only a little over 300 agents in the FBI. We had only a citizen's power of arrest, and agents did not even carry firearms. We were actually prohibited from making investigations of such organizations as the Communist Party.

Well, I saw and was a part of these developments in the growth of the FBI. I recall very vividly the Lindbergh kidnapping case, in which I performed some services, and the Urschel case, and these things which caused the Congress to extend the jurisdiction of the FBI by the passage of the so-called Federal crime bills, and then the Bureau was enlarged on account of that. Then came the 1939 war clouds and we know what happened as a result of the involvement in World War II. I was a part of that picture, and somewhat—and maybe this is a way people feel as they grow older—to me those days were the golden age of the FBI. I made in those days many lifelong friendships, and I must say some of the finest and most able men that I have ever known are the alumni of that illustrious group of FBI people, consisting of many distinguished Members of Congress, a number of Governors, judges, Federal and State, educators, highly successful businessmen. It truly was a great organization to have been connected with and its alumni association is certainly a very distinguished one.

The more I thought about this nomination, the more I read about the proceedings as they continued before this committee, the more I felt this impelling urge that it was my duty to be here.

I remember a slogan, going back to my boyhood days, which said, "I slept and dreamed that life was beauty. I woke and found that life

was duty." I am here today only because of my feeling that it is my duty to be here.

I am here, second, because it seems to me that I sense in our country a spirit of apathy about the way conditions go on and things progress. It seems to me there is a lack of the indignation, at least expressed indignation, which people should feel about injustice which they see and experience in their lifetime.

In any event, when the announcement was first made that Mr. Gray was being nominated as Acting Director of the FBI, I felt certain misgivings about it, and these misgivings really could be classified into two parts. They were partly because of the fact that I did not see in his background any special traits that made him outstanding as a man that everyone would agree, that there would be any consensus, that he would be an ideal choice to be the head of the FBI. Then, second, I reserved judgment because it did seem to me that maybe there was an element of politics in this appointment.

I will have to admit I was somewhat reassured by the statements of the President of the United States, as I recall them. The appointment, when it was first announced, was to keep it out of politics. It was stated, to the best of my recollection, that by appointing Mr. Gray as Acting Director this would prevent the issue of politics to come up in the confirmation hearings of the Senate. So that was reassuring in that sense that this appointment was made if not entirely but in part at least to keep this whole matter out of politics.

But then Mr. Gray had not been in there very long when allegations began to surface that he was involving the FBI in partisan politics. This really disturbed me, disturbed me greatly. Perhaps I may be naive. Someone described me one time, Senator, as being a combination of sophistication and naivete, and I guess that at times I am naive. I remember something that appeared in a book written by Don Whitehead, "The FBI Story." It tells about the time when Mr. Hoover was offered the appointment as Acting Director of the FBI by Mr. Stone, Harlan Fiske Stone, then the Attorney General, later the chief Justice of the United States. He invited Mr. Hoover into his office. "Sit down," he said. Mr. Hoover took a seat. I will skip a few lines here. "Young man," said Mr. Stone, "I want you to be the Acting Director of the FBI."

Mr. Hoover said, "I will take the job, Mr. Stone on certain conditions."

"What are they?"

"The Bureau must be divorced from politics and not be a catchall for political hacks. Appointments must be based on merit. Second, promotions will be made on proved ability and the Bureau will be responsible only to the Attorney General."

"The Bureau must be divorced from politics." That is what he is quoted to have said. It is 50 years since that memorable day. Does it mean we have come full circle and now after that glorious beginning when the Bureau was to be divorced from politics we are returning to this?

In the foreword to the same book Mr. Hoover himself writes:

Another strength of the FBI arises from the fact that our organization is a career service in which appointments and promotions are made on the basis of ability, merit, and competence. Each of the 11 Attorneys General under whom I have served as Director has been unswerving in the support of the Bureau as

a career service, and each has supported the Bureau against any move to inject the element of political favoritism in its operation.

Let me repeat this sentence "And each has supported the Bureau against any move to inject the element of political favoritism into its operation."

Then there was another thought that troubled me about this matter—as the evidence seemed to be mounting that under Mr. Gray's direction the FBI was being involved in political operations—and the second thought is something which, to the best of my knowledge, has not been brought out in these committee hearings. I have here the FBI's annual report, and listed among the matters which are handled by the FBI are election law matters. This means violation of the election laws, election frauds, every type of irregularity involving a Federal election, is in the primary investigative jurisdiction of the FBI.

Does that not suggest, gentlemen, that the Director or Acting Director of the FBI has to be most careful and circumspect in his conduct so as to avoid creating an aura of favoritism toward one political party or another? What is the position of an ordinary agent in the FBI if an allegation is made that there are election irregularities involving one of the parties which is the opposite party to the one in which his chief is known to be politically active? Can he really feel that he is supposed to go in there and pull no punches and do everything he can to investigate it? It seems to me that the position of the staff, the ordinary rank and file personnel, is compromised if the Acting Director is in a compromising position himself.

Well, in any event, I felt that there was nothing that I could do about this, perhaps nothing that I should do. But, I was on the alert. And next there came to my attention an article which appeared in the Raleigh News and Observer on September 8, 1972, which was headed "New FBI Chief Backing Nixon." It starts out:

L. Patrick Gray III, acting director of the Federal Bureau of Investigation, has departed from the nonpolitical practice of his predecessor, J. Edgar Hoover, by making a series of speeches that follow key points in the political line of the incumbent administration.

On at least one subject, by down-playing the significance of rising crime statistics, he has adopted a Nixon administration line that conflicts with the interpretation that Hoover put on the figures.

Now let me digress here for just a moment, and I am not so sure that it is a digression. I was astounded to hear the previous witness say this morning that waiting in the wings is Chief Wilson in case something happens to this nomination. It seems to me the committee would be better off with Mr. Gray than they would with Mr. Wilson.

The campaign line seemed to be that you had a law and order administration, that they were trying to cut down on crime, and they had done so, at least they had decreased the rate of increase in crime, and Mr. Gray, according to this press report, and I have seen others, too, was taking the line in speeches he was making that crime was decreasing or the rate of crime was going down, and according to the article that was contrary to the interpretation that Mr. Hoover put on the figures.

[The article from the Raleigh News and Observer referred to follows:]

[From the Raleigh News and Observer, Sept. 8, 1972]

NEW FBI CHIEF BACKING NIXON

WASHINGTON—L. Patrick Gray III, acting director of the Federal Bureau of Investigation, has departed from the nonpolitical tradition of his predecessor, J. Edgar Hoover, by making a series of speeches that follow key points in the political line of the incumbent administration.

On at least one subject, by downplaying the significance of rising crime statistics, he has adopted a Nixon administration line that conflicts with the interpretation that Hoover put on the figures.

In at least one other address—an assertion in a speech Thursday that the federal government is not spending too much on national defense as compared to domestic programs—he is backing the Nixon administration's position on an issue that has little to do with his role at the FBI.

Hoover made few speeches and almost never spoke publicly during political campaigns, apparently to avoid the implication that he intended to aid one side or the other.

He usually announced his views through FBI publications or published Congressional testimony, commenting usually upon subjects directed specifically to law enforcement personnel.

But Gray, an outspoken former naval officer who is a long-time supporter of President Nixon, has accepted speaking engagements at an increasing pace since Nixon made him acting director of the Bureau last May.

His tendency to speak in support of administration policies has become increasingly evident as the political campaign has heated up, and it became more pronounced Thursday when Gray spoke in Butte, Mont., and Seattle, Wash.

Speaking to the Washington State Bar Association, Gray said, according to speech texts released here, that "many court decisions often go to unreasonable lengths to protect the accused."

Mr. SCHEIDT. Let me tell you what I think, and what I believe most people think on that subject. They think that if crime is going down, if the rate of violent crime particularly is decreasing, it is due to two primary causes. The first of these is that people are terrified, people are afraid to go out on the streets at night. People buy all kinds of locks and tools, two or three different locks for their homes, to keep burglars from getting in. So, to some extent, there might be a reduction in certain kinds of violent crime just because they have reduced the opportunity for the committing of crimes.

But, secondly, and I think more significant, the reason crime is going down, if it is going down, is explained by the fact that they are just not reporting the statistics. It was admitted, in fact justified, by the Chief of Police here in the District of Columbia that some of the offenses reported to the police are not recorded in their crime statistics. To my astonishment the Chief of Police attempted to justify the exclusion of these things. Well, I happen to know that this is contrary to the principles of uniform crime reporting, that you cannot eliminate these things. When I was in charge of the New York office of the FBI, the FBI refused to publish the crime statistics of the New York City Police Department for the very thing that the District of Columbia is now doing.

I had several amusing experiences in that connection. I called upon one police commissioner and urged him to submit honest statistics on crime in New York City. The commissioner, after hearing my presentation and that of a colleague of mine—he sat up at a desk kind of like you fellows are sitting at and had his deputy commissioners with him—put his fist down on the table and said: "We will stand on our figures. We have got such a tough program here we have driven the criminals across the river." That was the end of that one.

Well, it so happened he was succeeded by another police commissioner who was a very nice fellow whom I got to know very well and occasionally we had lunch together. I thought I had gotten to know him well enough that I could perhaps persuade him they could submit honest figures to us and I presented the matter to him. And do you know what he said? He said: "Ed, do you want me to show a crime wave in my administration?"

Well, gentlemen, that is the situation which existed then, not reporting offenses known to the police, and putting it in the discretion of the police to throw crime reports in the waste basket—in New York they called it the can file—and therefore show a reduction in crime.

That was one of the things in the article with reference to Mr. Gray's speeches that bothered me in the light of that background. There was another thing there but I will just submit the article for the committee's consideration.

Senator HART. It will be printed.

Mr. SCHEIDT. Thank you, sir.

The article was followed by an editorial in the News and Observer on September 10, 1972, entitled "Gray Is Politicizing FBI Post," more or less commenting on the things in the article.

[The editorial referred to follows:]

[From the Raleigh News and Observer, Sept. 10, 1972]

GRAY IS POLITICIZING FBI POST

(By Josephus Daniels)

L. Patrick Gray, acting director of the FBI, seems as intent on making his office openly political as the late J. Edgar Hoover was intent on keeping it non-partisan.

It is unrealistic, perhaps not desirable, for Gray to pretend complete disassociation from the politics of the Nixon administration. He is a long-time Nixon supporter who brought a broad range of interests to the FBI post. He did not come up through law enforcement channels, and has never been committed to a nonpartisan career in the more narrow professional role of Hoover.

Gray's politicizing of his job, however, goes beyond continued personal loyalty to the President. He is taking to the stump almost like a Nixon campaign aide. He has been making a series of speeches that downplay the significance of rising crime statistics, a key point in the Nixon law-and-order position this year. And in one recent speech he went outside the law enforcement field entirely to argue that the Nixon administration is not slighting domestic needs with the size of the defense budget.

In another speech on law enforcement policy, he offered the opinionated view that "many court decisions often go to unreasonable lengths to protect the accused" and illustrated his feelings by taking sides in cases that are on appeal to the U.S. Supreme Court.

This goes far beyond personal loyalty to the administration and the Nixon line on permissiveness. It sends a signal down the ranks to FBI agents in the field that the boss isn't too keen about following some court decisions. Some agents, perhaps in hopes of advancement or better assignments, might well signal back by trying to imitate the boss' uneven respect for some court decisions.

It is doubtful whether the late Mr. Hoover always was as nonpartisan as he seemed. But he increased public confidence in the FBI by apparently strict adherence to the rule of law and insistence that others in the bureau accept similar self-discipline. Hoover rarely made speeches, and those were never during presidential elections. And he never challenged or tried publicly to influence decisions of the courts.

Gray's different view of the FBI director's role is more than a difference in style. He is so attached and so responsive to the political apparatus of the Nixon administration that it is doubtful that he could serve under any other president.

Mr. SCHEIDT. Upon reading the article and the editorial, I proceeded to write a letter to Mr. Gray. I will read it to you. It is very short :

Dear Mr. Gray :

I was distressed to read the enclosed news item entitled "New FBI Chief Backing Nixon" and an editorial "Gray is Politicizing FBI Post."

Does this mean that you feel it is permissible to involve the FBI in partisan politics? If not, how do you justify the actions described in the enclosures?

I spent 21 years in the FBI and I dread seeing its nonpolitical role go down the drain.

I received a most courteous reply from Mr. Gray on September 15, 1972, which I will submit for the record. I will read a part of it. It begins :

In reply to your letter of September 11, I share your concern regarding the statements made in the newspaper items you enclosed entitled "New FBI Chief Backing Nixon" and "Gray is Politicizing FBI Post." Upon my designation as Acting Director of the FBI, the President gave me only one instruction—that the FBI and its Director continue to be absolutely nonpolitical—and I definitely have tried to govern my activities accordingly.

My statement that the rate of increase in serious crime is lessening was made to point out the positive results that have been achieved by the combined efforts of the Nation's law enforcement officers, our courts, our prosecutors, our corrections officers and our fellow citizens who are just plain fed up with the rampages of the criminal. I made it clear that the crime rate is still high, that there is no room for complacency and that much work remains ahead. Further, last month, on the occasion of the release of the uniform crime reports, Attorney General Kleindienst pointed out that increasing crime must continue to be of foremost concern to law enforcement agencies at all levels of government and I heartily agree. This is not a political position.

He also commented on something else in the speech. I do not want to unduly take the committee's time, but he did add a handwritten post-script to his letter :

I view my appointment to the position of Acting Director as a return to the service of my country which will always come first—ahead of political party or any other party—or any person! I will continue to speak in behalf of our country.

I will admit that I still had an uneasy feeling about this being a political question since this seemed so closely to parallel the line that was being taken in the political campaign by one of the political parties. But I felt that Mr. Gray certainly should be entitled to the benefit of any doubt and that he had written very eloquently and about as well, I think, as anybody could have written in defense of the matters which had been commented upon in the news article and in the editorial.

I wrote this letter to him :

Dear Mr. Gray :

Thanks for your letter of September 15 and for answering the questions I asked in my letter of September 11. I was quite relieved by what you said and wish to extend my best wishes for your continued success in the post you now hold.

I threw aside the doubt, gave him the benefit of the doubt, and really I fancied that maybe he had been a little bit insensitive to these issues and that if someone who had had this long experience that I had in the Bureau wrote him directly it would have a salutary effect and make him extremely careful not to compromise himself in that respect.

Now, I do not think it is enough for a man to say something is non-political, period. It may be that his political party thinks it is non-political but the opposition party thinks it is very political. The best

thing that a man in that sensitive position, who has the responsibility for investigating violations of the election law, the best thing that he could do, would be to say nothing which could be construed as political, and in any public appearances his speeches ought to be confined to the work of the FBI and related subjects and not to these questions which are considered by members of the opposite party to be political questions.

In any event, several months went by, and then I read a thing which disturbed me more than anything I had seen before. That was an article in *Time* magazine which stated that Mr. Gray had sent a teletype to the 21 field offices in 14 States telling them to gather material to be used for campaign purposes by the man who was running for President on the political party to which Mr. Gray belongs. I do not recall in reading the reports of this committee's hearings whether the question of this teletype has been discussed. Perhaps it has been.

Senator HART. Yes, it has.

Mr. SCHEIDT. The teletype was described at some length in the *Time* magazine article. The magazine seemed to have gotten an exact copy of the teletype because they seemed to quote it verbatim. I must say things have gone down a bit since I was in the Bureau because I do not believe that in those days *Time* magazine would ever have gotten a copy of an internal memorandum or instruction to the field because—apparently being smaller and having tighter controls—things like that just did not get to the papers.

[The *Time* magazine article referred to follows:]

[From *Time* Magazine, Nov. 6, 1972]

THE FBI

POLITICAL ORDERS

While the White House has tried to ignore some unpleasant FBI findings in the Watergate case (*see following story*), it has used the agency in an unprecedented way to aid the Nixon campaign. In September, *Time* learned last week, Presidential Assistant John Ehrlichman asked the FBI for expert advice to aid Republican campaigners. L. Patrick Gray, acting director of the bureau, forwarded the request as an order to 21 FBI field offices in 14 states.

The aim was to get FBI agents' guidance on how the President and his surrogates might handle campaign issues related to criminal justice. The directive also asked for ideas on specific campaign activities that Ehrlichman could recommend to the President. Though coming under the heading of political intelligence, the service requested was far different from espionage activity like the Watergate affair. The FBI was not asked to eavesdrop, spy on candidates or disrupt campaigns. Nevertheless, the order was a violation of the FBI's non-partisan tradition.

KEEP IT BRIEF

Teletyped to the field offices under Gray's name on Sept. 8, the message began: "In order for John Ehrlichman to give the President maximum support during campaign trips over the next several weeks, the following information is required for each of the states listed: 1. The identification of the substantive issue problem areas in the criminal justice field for that particular state. Please limit yourself to problems of sufficient magnitude . . . Keep it brief. All that is necessary is to flag a sensitive problem so that it either can be avoided or more extensive preparation can be undertaken should we choose to speak about it.

"2. A list of events relating to the criminal justice area that would be good for John Ehrlichman to consider doing. For each suggested event, the following items should be indicated: A. The purpose of the event. B. The nature of the group or institution involved. C. The content of the event. D. The names of specific

people who can be contacted for the purpose of setting it up. E. All trade-off factors to be considered in scheduling the event."

As an example of the kind of issue Ehrlichman was interested in, the directive suggested that "there are certainly criminal justice problems such as the Fort Worth Five that we should flag for the President." This referred to the case in which five New York men were jailed in Fort Worth for refusing to answer federal grand jury questions about buying guns for the Irish Republican Army. Agents worked over the weekend of Sept. 9 and 10 to obtain the information required by Gray and to meet his Sept. 11 deadline. Concluded Gray's message: "The deadline must be met." FBI sources would not reveal just what the replies from the field contained.

While it has been normal for the White House to ask for FBI files on individuals—a request former FBI Chief J. Edgar Hoover routinely granted Lyndon Johnson, for instance—there is no public record of the bureau's having been asked to initiate political studies for a President. Ehrlichman later told *Time* that the request for information had gone from his office to the Justice Department and should not have gone to the FBI. If it did, he said, it would violate Administration policy and "would not be condoned by the White House."

The procedure astounded veteran FBI officials. Said one of them: "The White House wouldn't have dared to send over an order like that when Hoover was in charge. He would have kicked it right back to them and refused to do what they wanted."

Mr. SCHEIDT. Well, this was a little too much for me, so I wrote to Mr. Gray again. I wrote him on November 10:

Dear Mr. Gray:

You will recall our correspondence in September when I wrote you about certain newspaper items alleging that you were involving the FBI in partisan politics. In your reply you said that upon your designation as Acting Director the President gave you only one instruction—that the FBI and its Director continue to be absolutely nonpolitical—and that you definitely have tried to govern your activities accordingly. You also stated in your letter: "I assure you that the FBI will continue in its nonpolitical role as long as I am in charge."

Time magazine, in its issue of November 6, 1972, quotes a Teletype message allegedly sent by you to various field offices instructing them to furnish certain information "to give the President maximum support during campaign trips."

If the *Time* magazine article is correct, this Teletype message would be directly contrary to your statement that "the FBI will continue in its nonpolitical role as long as I am in charge." According to press reports you have declined comment regarding this, and you are quoted as saying "I don't have any comment on what *Time* magazine reported. Let *Time* magazine comment on what it reported."

In the light of my many years of service in the FBI I do hope you will explain to me how the Teletype referred to in *Time* magazine can be reconciled with the "nonpolitical role" of the FBI under your direction.

I received another very nice, gracious letter from Mr. Gray in response to that. His letter was dated November 17, which I shall submit for the committee's record:

Dear Mr. Scheidt:

I have received your letter of November 10th and appreciate your interest in and concern for the Bureau. I recognize that dedicated former employees such as yourself have given the FBI the legacy of respect and esteem it enjoys today.

As you correctly noted, I have declined to comment on the November 6th *Time* magazine article, and this is still my policy.

I want to reiterate to you, however, that the statements in my letter of September 15th to you concerning the FBI's nonpolitical role still stand. As long as I am the head of the FBI, I will do everything within my power to insure that the FBI remains divorced from politics.

With every good wish,
Sincerely yours.

Frankly, this sounds to me like Alice in Wonderland. You do something which could not be more political and you are asked what about

it and you say, No comment, but I am nonpolitical. Anyway, that is the end of that, what I wrote him and what he said.

A little later on, I saw an article in the Washington Post which discussed Mr. Gray's 6 months as Chief of the FBI. It quoted various speeches that he had made. One, and if it has come up during the committee hearings it has not been reported in the press in the items I have seen, was a speech he made before the VFW in Minneapolis on August 23, 1972, entitled "America Is Worth Fighting For." Here is an excerpt:

As the visible symbol of our Nation, our flag continues to wave briskly in the crisp breeze of democracy. And while some have pledged their allegiance to the red flag of Communist tyranny, the black flag of anarchy, or the white flag of surrender, I proudly share your obvious affection for the red, white, and blue of America's banner."

Gentlemen, so far as I know there was not then, has not been during the interval since then, and is not now anybody in this country advocating waving the white flag of surrender. The only time that I can remember ever having heard that phrase used was in the testimony of Secretary Laird before a congressional committee when he stated that the foreign policy advocated by Senator McGovern in his campaign for the Presidency was waving the white flag of surrender. And, gentlemen, I do not think you have to be too smart to be able to figure out that this is a code way of saying, "Do not vote for McGovern." Nobody else has used that phrase, there is not anybody advocating doing it, and it is a very unusual phrase and it was repeatedly used by Secretary Laird.

So I just cannot help but feel that this is a very overt and blatantly political way of saying, "I am campaigning for the reelection of the incumbent President."

That speech is quoted in the Washington Post article of November 6, 1972, which I will submit to the committee.

Senator HARR. It will be received.

[The article referred to follows:]

[From the Washington Post, Monday, Nov. 6, 1972]

AFTER 6 MONTHS AS CHIEF, FBI'S GRAY EYES PAST, PRESENT, FUTURE

(By Sanford J. Ungar)

"No one can replace The Giant," said Acting FBI Director L. Patrick Gray III at a Flag Day ceremony here last June.

It was only a few weeks after President Nixon had named him—temporarily—to take over for "The Giant," the late J. Edgar Hoover, and Gray was accepting the 1972 Distinguished Citizen's Award from the Washington Lions Club, presented to Hoover posthumously.

Gray has learned a great deal since then, but even now, after 26 weeks in the job, he is still struggling with the problem of how to replace Hoover, keep the FBI running, satisfy all the appropriate people inside and outside and win permanent appointment to one of the most powerful jobs in U.S. government service.

It hasn't been easy, because part of the task confronting Gray is to deal with the extraordinary administrative chaos left behind by Hoover without ever publicly admitting its existence.

He must elaborately praise his predecessor—"this enlightened pioneer of professional law enforcement, whose distinguished career spanned one quarter of our nation's history [and who] waged a lifelong battle against the forces of lawlessness, both criminal and subversive," as Gray put it in a speech to the national convention of the Veterans of Foreign Wars last August.

Yet he must virtually undo much of what Hoover in his last years and, at the same time, rebuild public confidence in the embattled FBI.

He has to convince the FBI's oldtimers and professional investigators, who are absolutely essential to the bureau's day-to-day operations, that nothing fundamental will change. But he has to change enough to attract new blood and young innovators.

Gray must also persuade the White House, where he has powerful enemies, that he can be trusted, politically and professionally, to run a super-sensitive agency for the next four years.

Ironically, however, if he gets the long-range nomination from President Nixon (if he is re-elected), as the first FBI director requiring Senate confirmation, he must convince Congress that he can be independent, politically and professionally, from the White House.

Most observers agree, after six months, that Gray has done relatively well so far, and he appears to have won unexpected allies within the bureau and among the public.

But others, including some long-time bureau officials, say they fear that the FBI might be dangerously politicized under his control, because of his close identification with a particular President and political party. The same concern would be raised, no doubt, about almost anyone likely to be named FBI director either by Mr. Nixon or Democratic presidential candidate George McGovern.

A few bureau-watchers go so far as to appeal for the appointment of a "new Hoover," whose credentials would be sufficiently bipartisan that he could outlast one or two changes in the presidency.

Physically fit, Gray works long days that begin shortly after dawn. But country lawyer that he is, he escapes almost every weekend to his home in Stonington, Conn.

Although he is unpopular with some of the President's closest political lieutenants, Gray is known as a dyed-in-wool Nixon loyalist. He considers himself a conservative on most issues, but compared to Hoover he is very moderate indeed. He does not hesitate to depart from administration orthodoxy by, for example, advocating strong Federal gun control laws.

Despite some reports that he was long under consideration as a potential successor to Hoover, Gray maintains to this day that he was completely surprised when Mr. Nixon tapped him as the acting FBI director the day after the 50-year veteran died of a heart attack last May.

One reason Gray is convincing on that point, says a bureau source, is that "when he took over, he didn't know a damn thing about the FBI."

Then assistant attorney general in charge of the Justice Department's Civil Division and the President's unconfirmed nominee for deputy attorney general (a position he never got to occupy because of the delay in Attorney General Richard G. Kleindienst's approval by the Senate), Gray's only real previous managerial experience had been in the Navy's submarine service.

Except in his position as chief court enforcer of the wage-and-price freeze, he had no law enforcement experience at all—a fact that was not lost on the FBI's senior hierarchy when he took over.

Gray has neutralized some of the concern on this point by merely acknowledging his status as a neophyte. In speeches, he has repeatedly called himself, at 56, "a newly minted law enforcement professional."

Speaking to the International Association of Chiefs of Police in Salt Lake City last month, he said, "I consider myself doubly privileged to embark on a law enforcement career at this time—privileged because the opportunities for service are so genuine, and because the future of our profession looms so bright."

In his earliest days in Hoover's plush suite on the fifth floor of the Justice Department building, Gray bedeviled some of the FBI's ranking officials with what one frankly called "stupid questions."

He would demand a full explanation, for example, of each step of the procedure followed by the bureau in investigating bank robbery cases, and some feared that he was planning to order impulsive and uninformed changes.

"But what we discovered was that he was just trying to learn, and usually he would tell us to continue what we had been doing for years," a source explained. "But it sure took up a lot of our time, answering his questions."

Gray asked his questions in part because he had no better idea than the average citizen of the quality of the FBI's performance.

The bureau's image as an effective crime-fighter is based only partially on public knowledge of its successes over the years in dramatic, headline-catching

cases. The bulk of its reputation has actually been established in fictional writings and television programs.

Gray had the benefit of no congressional reports or other government agency reviews of the FBI because none exist.

Only the House Appropriations Subcommittee headed by Rep. John J. Rooney (D-N.Y.) has had any mandate to supervise the bureau's affairs, and its deliberations have long been characterized by a willingness to endorse anything Hoover said or did.

When he took over, Gray found that Hoover had ruptured the FBI's liaison with most other federal agencies, had virtually lost interest in fighting organized crime and was running things largely on the basis of whim and personal predilection.

The acting director is as aware as anyone that there may be a push to increase the public accountability of the FBI, and as a prerequisite he is trying to make it accountable to him.

One means of doing that has been to establish central discipline both at FBI headquarters here and in the 59 field offices around the country, many of which had been run by "empire-builders" who flourished under Hoover.

Gray forced out Wesley G. Grapp, special agent in charge of the Los Angeles office, who resisted a liberalized dress code, personally monitored office phone calls and built up huge financial commitments to Southern California banks.

He also transferred Robert Kunkel, head of the Washington field office, for falsifying a report on how an agent was disabled during an antiwar demonstration.

Another field office chief, in Honolulu, was sent to a smaller office when the wives of the men working for him wrote a letter of complaining about him to Gray.

The next to go is expected to be the special agent in charge of the Cleveland office, who apparently tried to cover up an agent's inquiries about a congressional candidate by explaining that the agent was "a new voter."

Many veteran FBI officials welcome these personnel changes, but they are concerned about the effect of the widespread publicity they receive.

Unlike most other government agencies, the FBI has traditionally been able to keep disciplinary actions in the family. Almost all transfers were immediate, unexplained and announced only to the individual involved and only in writing.

Gray originally felt that the publicity was a good thing, not only because it would increase public awareness of the bureau but also because it might have a deterrent effect on power brokers in the field offices.

He is now apparently chagrined, however, and fears that the price of increased public awareness may be a decline in morale within the bureau's ranks. Having "opened a window" on the FBI, as he likes to put it, he would now like to close it a little bit.

That may be difficult, given Gray's ambitious tours of field offices, speeches and press conferences around the country, which have encouraged more public discussion and more questions about the FBI.

He has given so many speeches in the past six months that he may be better known among the people now than his titular boss, Kleindienst, or any other member of the President's Cabinet.

Some bureau old-timers are astonished by the speeches, which are churned out by the FBI's Crime Records Division, minutely pored over and revised by Gray, and only recently began to repeat themselves.

They are speeches that would do any ambitious politician credit, geared to the particular audience or occasion, often quoting from John Adams, Alexander Hamilton or the Federalist Papers (his favorite leisure time reading).

Addressing the City Club of Cleveland last August on "Freedom Under Law," Gray told his listeners that "the great American adventure born two centuries ago has grown stronger generation after generation." But he also warned that white collar criminals and those who violate the antitrust laws were weakening society along with drug dealers and bombers.

In a talk before the Washington State Bar Association, he took up a familiar Nixon administration theme by questioning the "exclusionary rule," which keeps illegally obtained evidence from being used in criminal court proceedings and is now being weakened by the Supreme Court.

He poked some fun at himself as a "novice" before the Executives' Club of Chicago last month.

Gray probably reached his patriotic zenith in his VFW speech in Minneapolis on Aug. 23, entitled "America Is Worth Fighting For." A typical excerpt:

"As the visible symbol of our nation, our flag continues to wave briskly in the crisp breeze of democracy. And while some have pledged their allegiance to the red flag of Communist tyranny, the black flag of anarchy, or the white flag of surrender, I proudly share your obvious affection for the red, white and blue of America's banner."

Gray's speaking tours, which critics say make him look as if he were running for the directorship, have provoked disdain in some White House quarters and annoyance among others in the Justice Department, including its public information office.

He steadfastly insists, however, that they are not political, either in a personal or an administration context, but merely part of his efforts to bring the FBI to the people.

Politics will be Gray's undoing, if anything is.

Despite his assertion that the FBI investigations into the Watergate bugging incident and the Soviet grain deal have been as thorough and objective as any the bureau has ever done, he has been unable to shake the image of being the administration's protector in those matters.

(In fact, the FBI's role is often limited by the mandate passed along to it by the Justice Department. When it turns up new leads, it must sometimes have that mandate extended before following them up.)

So that when Gray's name is sent to the Senate for confirmation, he is expected to have trouble with two recent incidents.

One was the revelation that the FBI, since 1950, has collected information, supposedly only from public sources, on all members of Congress and congressional candidates.

In theory, the information was used as part of the bureau's "congressional relations program" and in investigations of threats against congressmen. But Gray, suspending the program recently, said he could see how such files might be misinterpreted by Congress and the public.

What is still a puzzle is how Gray missed finding out about the program from Thomas E. Bishop, the assistant FBI Director for the Crime Records Division, which was in charge of compiling the information.

(Gray, on taking office, said he had made a thorough search for secret files and political dossiers, but turned up virtually nothing.)

Bishop is also in disfavor in connection with the other incident: the discovery that he forwarded to FBI field offices a White House request for election-year political advice on criminal justice issues.

Even if Gray manages to convince the Senate Judiciary Committee that he was unaware of either matter, he may be held responsible as the man in charge at the time. And the inevitable question is bound to be: were there other such instances and programs that have not yet been publicly exposed?

Notwithstanding some concern over the question of politics in bureau affairs and some resistance to his new policies—things like the dress code and weight-control program really do matter within the FBI—Gray is credited with substantial improvements in the morale of the rank and file.

He also reestablished the FBI's rapport with other agencies and other divisions of the Justice Department. Hoover, in his last years, had become more stubborn than ever in refusing to go along with the department's wishes in sensitive criminal matters.

Gray's personal staff—young and therefore sometimes a cause of resentment—is already preparing for the prospect of confirmation hearings early next year. Even a check of potentially disgruntled former clients of his Connecticut law firm has not produced obvious opposition.

Ironically, the administration's anticipated trouble from Sen. Edward M. Kennedy's subcommittee investigation of the Watergate affair is expected to deflect some of the political ammunition that might have been aimed at Gray.

Although there may be a fight, the chances are considered very good that Gray will eventually be confirmed, if nominated.

Then, but only then, with Hoover's constituency placated and his own authority and longevity established, Gray is expected to embark on fundamental efforts to make the FBI a more efficient and constructive organization.

Mr. SCHEIDT. Down in North Carolina they have a wonderful State motto. It reads "esse quam videri." I do not know, Senator Hart, what

your State's motto is, but I will put that North Carolina motto up against any. It means "To be rather than to seem." This is the problem that I think you are confronted with in the confirmation of Mr. Gray. The problem is what a thing is, not just what does it seem to be.

I am nearing the conclusion of my remarks, but it seems to me from what I have read so far, and I have followed the hearings, that there are some questions regarding the confirmation of this nominee that have not been fully clarified. Possibly some of these may have already been covered. However, these are questions which seem to me pertinent to this inquiry. First, why was Mr. Gray appointed in the first place? Why was he appointed? What was the motivation for that appointment? Was it because he was such an outstanding, prestigious figure that his appointment would be recognized as being one which all right-thinking men would agree was the marvelous one for this important post?

I think I know why he was appointed, and I think you know, too.

Secondly, I would like to know more about his qualifications for the job. As I see it, he spent the greater part of his adult life in the Navy. I believe he was a submarine commander. Now, it does happen that one of the offenses in the jurisdiction of the FBI is crimes on the high seas and I guess that includes crimes under the high seas. So he did perhaps have some qualifications in that area, but I think his practice was mainly in civil law, and certainly no unbiased person with an open mind would consider him an outstanding nominee whose name instantly recommended itself for this highly important post.

Then I would like to know was he really the best man they could find for the job? Would just anybody do? Is this not so very important that there ought not to be any doubt about the qualifications and status and ability and prestige of the man who is holding the post? Actually, we were somewhat lulled into quietude by the suggestion that this was a caretaker appointment, this was to keep it out of politics, this man would hold the fort.

Mr. Gray used a term, a basketball term, about a full-court press here in his testimony. Well, I would use a basketball term to say that I thought the President was freezing the ball, that was what he was doing in the Gray appointment, at least that is the way it was supposed to have started out.

But more important than that, I think the question is what has Mr. Gray done since his appointment? He has had 10 months there. Ten months we can look at. In this respect the Judiciary Committee has a tremendous advantage because if there were a new appointment, somebody whose name had never come up before, all you could look at would be what his past record was. But in the case of Mr. Gray, you not only have his background and qualifications, such as they may be, but also you have his actual record of performance in the 10 months that he has occupied the post of Acting Director.

Now some of the things that, it seems to me, it would be pertinent to examine, and perhaps this has been done, but if it has it has escaped my attention: How much time has he spent in the office? I read a piece somewhere that said he was referred to in the Bureau as "2-day Gray." That may be slanderous. I do not know about that, but I have had some experience in management surveys and I think you can tell something about what a man does, how he is carrying out his responsibilities, and

you cannot do much in the office if you are not there. How much time has he spent in the office?

What about the people he brought with him into the FBI? I understand they are very fine people, and they came over with him from the Justice Department, and I certainly would not say anything against them, but this is a departure from the long tradition, and certainly a great departure from what was advocated by Mr. Hoover in a statement which I read to you earlier. Who are these people? What is their background? What are their duties? What is their authority? How much are they paid?

I would say, having been in the FBI for this period of time, I served for a time under Mr. Hoover in the Washington headquarters, and I did have their largest office for 6 years, and I think if, in those days, somebody had come in from the outside and had a position of great authority without any prior FBI experience, it would have had a very, very bad effect on the morale of the people who were career people who had been in all this time. Now, conceivably I could be mistaken about that but I do think it would be an appropriate subject to look into.

Then I would be interested to know, if I were a member of the Judiciary Committee, how much time has he spent away from the office and what was he doing when he was away? How many speeches has he made? Where did he make them? To whom, and what did he say?

Gentlemen, I think the full text of every speech he made should be studied, how much of it had to do with the FBI, and how much of it paralleled campaign lines of one of the political parties?

I would want to know, more importantly, how much of the performance, such as it was of Mr. Gray, is actual fact and how much of it is a creation of an image? I go back to the North Carolina motto that I am so fond of, "to be rather than to seem," and I cannot help but feel much of what we have heard that is pro-Gray is creating the image rather than actual performance.

Now, I read somewhere that he abolished the Crime Records Division of the FBI. It so happened that I was one of the early people who ran the Crime Records Division, and there were certain duties, I will grant you it was not as important as it later became, but there are certain things the Crime Records Division had to do then and it has to do now and I am just wondering who is doing the work? You just could not abolish the work, there are necessary duties to perform.

I almost forgot to mention, in connection with this teletype that went out to these field offices to get political information for the candidate for President, that I saw what appeared to be an inspired piece blaming Tom Bishop for this, as being head of the Crime Records Division. I know Tom Bishop and I do not believe Tom Bishop did that, frankly, and I know how the FBI was operated then and something about the way it is operated now. I do not think a subordinate would send out a teletype of that nature without approval or acquiescence of the head of the organization. If a subordinate could do that, if it is so structured that it could be done on an important matter like that, there is something radically wrong. That had to be approved by the head man or somebody was deficient in having a system where a thing like that could go out without being approved by the head man.

I am wondering also about to what extent was it possible for the Judiciary Committee to talk to knowledgeable people about the operation of the FBI, not just those people who asked to be heard. You know, if you just have people coming who ask to be heard, ask to testify, they may be just the tip of the iceberg, and you might say to some extent some of them at least have some ax to grind or some particular thing they are particularly interested in. But there must be people with great experience and background who could throw considerable light on the realities of this situation, who would not come forward and volunteer themselves as witnesses.

In other words, it seems to me that it would be highly desirable if the Judiciary Committee could make a real investigation of its own on this. Perhaps it has, and I am just unaware of it, but I think that that would certainly be indicated.

But on the record, on the basis of what I have seen, my correspondence, what I have read, and so on, I would not go along with the recommendation of the previous speaker. I really think what the Judiciary Committee should do is to say, "Send us another name, you can do better than that."

Thank you very much.

Senator HART. Mr. Scheidt, I think all of us are very grateful for your coming in to express your very serious reservations about the nominee and your reasons for them.

I made a number of notes. Perhaps the only point that, in fairness to Mr. Gray, assuming I remember the testimony, needs to be clarified while you are here is on the business of the teletype to the field asking for political information. That, according to Mr. Gray's testimony, was sent while he was not at the office, but that when he did return and learned of it he stopped it before it started. I do not know what that would suggest as to the organizational structure of the Bureau. I agree that there has been press comment that Tom Bishop was responsible. I do not know Tom Bishop. You do, and you say you do not believe Bishop did it.

In the materials that have thus far been received by the committee from Mr. Gray and the Bureau, in response to questions that we put, one of them, in response to a question by Senator Ervin, is a memorandum reviewing this incident. It shows that Mr. Bishop discussed the matter before it went out with Acting Associate Director Mark Felt. With Mr. Gray in the field, Mr. Felt was the acting bossman.

Mr. SCHEIDT. Might I comment very briefly on that, Senator?

Senator HART. Yes, surely.

Mr. SCHEIDT. I am perfectly willing to accept and believe that explanation. After all, I was not there. But I do feel that Mr. Gray made a very serious error in "no commenting" this. Here this very, very serious allegation was made and it seemed to me so obvious he could have answered and should have answered. I know if I had been in his place I would have answered and said, "I am terribly sorry this happened, it was a mistake that it happened and will not happen again," or something of that sort, but "no comment" on this thing creates an air of mystery about it and doubt and that, I believe, also raises questions even if this did go out without his knowledge.

Senator HART. Mr. Gray testified that he really hit the ceiling when he heard about this, which again would cause one to wonder why he did not respond to the Time inquiry.

I am not sure that we have received and reviewed or analyzed all of the speeches that he made, but the committee has, I know, undertaken to analyze them all and I am sure we will.

Senator COOK. He has given us all of them.

Senator HART. I believe that Mr. Gray believes himself not to be political. I believe he thinks that he is just not political, and that VFW speech in Minneapolis did not sound political.

Mr. SCHEIDT. I believe that. The man does not think that is political.

If it is something for the Republican administration it is nonpolitical. That seems to be his idea.

Senator HART. As you say, that which is nonpolitical to one man's party can be very political to the other man's party. But I do think that he believes that even in that time frame what he said should not give rise to the feeling that some of us have that it sounded political.

Mr. SCHEIDT. I would like to say that I am not questioning his sincerity or his graciousness. He could not have been more gracious than in his response to my inquiries.

Senator HART. Have you talked to Mr. Bishop, may I ask?

Mr. SCHEIDT. No, I have not. I have not talked to anyone connected with the FBI on this, or former people of the FBI, so I do not know. But I just believe I know a little bit of how things like that run, unless things have changed an awful lot. I will tell you this, nothing like that would ever have gone out in the first place if J. Edgar Hoover had been running the FBI. If anybody had proposed sending out a teletype like that one, it would have gone to his desk and that is where it would have been killed. It is inconceivable that under J. Edgar Hoover such a teletype would have gone out, or could have gone out without his knowledge.

Senator HART. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Mr. SCHEIDT. I have only some comments.

You said why was he appointed in the first place? It would be, I think, rather unusual if the committee were to subpoena the President of the United States to come up there and answer that question.

It seems to me that the comments made in the VFW speech in Minneapolis are almost identical to comments I have heard from J. Edgar Hoover. Let us talk about some of the speeches Mr. Hoover made about young radical groups in the United States. Would you not consider those speeches political in nature? I would, very much so.

And what about those acts that we read about to which Mr. Hoover said "no comment" and which got an agent transferred to Butte, Mont.

The point I make to you is that somehow or other we are trying to equate one man with another man. I might suggest to you that it has been amazing to me to sit here and hear some of the witnesses who have praised J. Edgar Hoover to the skies. I might suggest that the only reason they praised him is because they are confident that Mr. Hoover is in the cemetery. I would not hear those comments from those gentlemen if Mr. Hoover were still down at the FBI. I think you would have to agree with that.

Mr. SCHEIDT. Could I comment on what you just said?

Senator Cook. Yes, in a minute. There is one other thing I would like to comment on. You said that when you were in the FBI if, in fact, such a teletype had been sent out the media would never have known of it, because the FBI was then, at least in your opinion, such an organization that if such a teletype had gone out it would never have gotten to Time magazine. Do you know of your own knowledge whether that may have occurred in the past, whether in fact it may have gone out?

Mr. SCHEIDT. I am positive it did not. I was the senior agent in charge when I left the Bureau, and had been running an office for 15 years, through various Presidential campaigns and, as a matter of fact, Mr. Hoover was obsessed with the idea that the Bureau could be innocently involved in something, a conflict between Democratic and Republican. I would sit across the desk from him, "Ed," he would say, "be careful, do not let the agents do anything that could be." Not only what he set out in writing but I got it from him right face to face, that the man was very, very careful not to be staked out. He could not have served every administration, Democrat, Republican, back and forth, if he did not have friends in both parties and on both sides of the aisle in Congress. This is one thing that he was very sensitive about. There is no question in my mind, it could not possibly have gone out under J. Edgar Hoover.

Senator Cook. I just want you to know that this Senator feels that some of the speeches and some of the comments which Mr. Hoover made could have been considered very political at the time he made them.

Mr. SCHEIDT. I understand your position and I am not so sure but what I do not at least partially agree with what you are saying. But I am talking about political in the context of a Presidential campaign, Democrat against Republican.

Senator Cook. If one is political is he to be condemned only because he is political at a specific time, or is the significance of his political feelings and his political attitudes obvious at all times?

Mr. SCHEIDT. Well, that is sort of a theoretical question, a question of what is political?

In my mind, at least, there is no question about this being a very partisanly political thing.

Senator Cook. I understand your sincerity about it. Do you think the morale in the FBI has gone down as a result of Mr. Gray's being there?

Mr. SCHEIDT. I could not honestly say because I am not in touch with the internal organization. I do not know. I would not be surprised.

Senator Cook. In regard to that I would like to put in the record a letter from the Special Agent in Charge of the Michigan office in regard to that. It was not sent to me, it was sent to Senator Roman Hruska, who asked that it be put in the record.

[The letter referred to follows:]

DETROIT, MICHIGAN,
February 23, 1973.

HON. ROMAN L. HRUSKA,
U.S. Senator,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: I know that you and the other members of the Senate Judiciary Committee will soon be considering the President's nomination of L. Patrick Gray, III, as Director of the FBI. There have been a number of news stories which have appeared in recent months alleging that the morale of the Agents in the FBI has slipped under Mr. Gray and many FBI veterans are unhappy as a result of the changes he has made since becoming Acting FBI Director.

In this context I feel compelled to write to you as the Senator from my own home State and give you my own personal views for whatever they are worth.

These news stories, which seem to come from a certain segment of the media, have caused much concern and discomfort to me and the many other Agents in my office, because of the basic untruth and deception involved.

As a 22 year veteran FBI Agent and in command of one of the Bureau's largest "front-line" field offices, I believe I am in a position to have some insight as regards the morale of the troops in the trenches of this outfit.

In my judgment, morale in the FBI has never been better or more healthy as it has been in the past few months. Mr. Gray, who has visited all of our offices, has greatly impressed all of us with his great enthusiasm and interest in seeing that the FBI continues to fulfill its responsibilities in the best of the Hoover tradition.

Again, in my opinion, Mr. Gray has clearly demonstrated the leadership qualities that are necessary for an FBI Director and he has earned the genuine respect and admiration of the Agents and other employees of this Bureau. Mr. Gray has initiated many needed and most welcome changes in the Bureau which have greatly strengthened the FBI and improved our performance. He has shown us the examples of intelligence, dedication, hard work and, in short, the Fidelity, Bravery and Integrity that are the cornerstones of our Bureau. I can assure you that Mr. Gray is no "patsy" and while he has been patient, understanding, willing to listen and completely fair in each situation, he has, nevertheless, been firm and tough when and where necessary; I have the imprints on my tail to offer as proof of that.

Senator, Pat Gray would make one hell of a fine FBI Director. It would be a privilege and high honor to continue to serve under him.

Sincerely,

NEIL J. WELCH,
Special Agent in Charge,
Michigan FBI Office.

Senator HART. I think this record will reflect the man I knew in Detroit, a person devoted to the application of a just discipline in the community. Your service in the Detroit office, as head of that office, was the sort that gave the Bureau the extraordinarily good reputation that it has had.

Mr. SCHEIDT. Thank you, Senator.

Senator HART. I think the Judiciary Committee is fortunate to have had this full expression from a man who has headed the Bureau offices in New York and in Detroit and who knows more about the Bureau than anybody on this committee ever will.

Thank you very much.

Mr. SCHEIDT. Thank you, sir.

Senator HART. At the direction of the Chairman, the committee will recess subject to the call of the Chair.

[Whereupon, at 12:25 p.m., the committee recessed subject to the call of the Chair.]

NOMINATION OF LOUIS PATRICK GRAY III

TUESDAY, MARCH 20, 1973

U.S. SENATE.
COMMITTEE ON THE JUDICIARY.
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Hart, Kennedy, Bayh, Burdick, Byrd of West Virginia, Tunney, Hruska, Cook, and Mathias.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

The CHAIRMAN. The committee will come to order.

Mr. Gray, do you have today any knowledge about Mrs. Judy Hoback?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. Yes, sir, I have.

The CHAIRMAN. Could you comment on it?

Mr. GRAY. Well, Mr. Chairman, I can comment procedurally, certainly, under the new instructions that I have.

The CHAIRMAN. You mean from the President?

Mr. GRAY. From the Attorney General yesterday, Attorney General Kleindienst.

Mrs. Hoback was interviewed by us on June 23. Then we contacted her on June 26. Then we contacted her on July 11. Then there was an interview on July 18. Then she was interviewed by the Assistant U.S. Attorneys on July 25 and following that interview she contacted us on August 1, August 2, and on August 31.

The CHAIRMAN. When did she testify before the grand jury?

Mr. GRAY. She testified before the grand jury on July 6.

The CHAIRMAN. How many times did she state that she hid the truth from the grand jury?

Mr. GRAY. Mr. Chairman, that is a matter of substance. It would be contained within the report of interview, and I think that I have got to —

The CHAIRMAN. Was it not three times?

Mr. GRAY. Mr. Chairman, I will have to respectfully decline and request that that answer be obtained by you, sir, or by the ranking minority member, or the chief counsel to the committee, or the minority counsel, because that is a matter of substance and I am not permitted to discuss that. Furthermore, there is a source of information involved, an FBI source of information, in connection with that.

Senator BAYH. Would the Chairman yield?

Would it be appropriate at this time to ask that Mrs. Hoback be subpoenaed and provide that information herself? I think that is critical.

The CHAIRMAN. It is critical and we do not have a quorum.

Senator BAYH. May I reserve the right to make that request when the quorum returns?

The CHAIRMAN. Certainly.

Those raw files are available to me, and the ranking minority member, is that correct?

Mr. GRAY. That is correct, Mr. Chairman.

The CHAIRMAN. Under the new instructions it is up to us to do with it what we want to, is it not, as long as we can give it to the committee in executive session?

Mr. GRAY. Yes, sir; that is my understanding of my instructions.

The CHAIRMAN. Now you have it.

Senator BAYH. Well, Mr. Chairman, I do not want to interrupt your questioning.

I would like to lay the basis for this request, if I might.

The CHAIRMAN. Sure.

Senator BAYH. If the Senator will permit me to proceed, and then I will not ask questions and yield to him and wait my turn.

While I was in Indiana last week, early in the week as I recall, it may have been the preceding weekend, my staff was approached by people with the information that Mrs. Hoback wanted to make an affidavit relative to her concern that information which she had given the FBI had got to the Committee to Re-elect the President. Without going into all the details, this ended up in the newspapers, prior to my return, without any comment at all, certainly with no comment directed at the nominee.

It seems to me the thrust of the thing is, there is a leak someplace down at Justice.

Now, if indeed the woman did lie to the grand jury, and I do not in any way state it that way, repeating the Chairman's assessment of what it says in those files, but if she admits she lied at one time, the question is, how do you determine when she is honest the other times? But if this woman is leading me, or anybody else, down a primrose path, I would like to have her up here.

I would like to ask that the Hoback signed affidavit, notarized affidavit, of March 10, be put in the record at this time, if I might.

[The affidavit referred to follows:]

MARCH 10, 1973.

My name is Judith Hoback and I reside in West Palm Beach, Florida.

In June of 1972 I was an assistant to the Treasurer of the Finance Committee to Re-Elect the President. As a record custodian I was called before the grand jury in the early part of July 1972.

Approximately ten days to two weeks later I voluntarily met with the F.B.I. at my home in Bethesda, Maryland for a confidential interview. About one week later I was contacted by the same agents and I met with one of the agents and Earl Silbert and an assistant to Mr. Silbert, at the F.B.I. field headquarters.

Within forty eight hours of the second interview I was called into the office of Bob Mardian. Ken Parkinson, attorney for the Committee to re-elect the President was present. Mr. Fred LaRue, special assistant to the president was also present. Paul O'Brien, another attorney for the committee was also present. Ken Parkinson said words to the effect of "Hear you have been talking to the F.B.I."

To my knowledge, I had not informed any one of my interviews with the F.B.I. and the interviews were in confidence and no one else knew.

Mr. Parkinson apparently was not aware of the first interview from the type of question he asked, but was aware that I had been interviewed and stated that he wanted to be kept abreast of what the F.B.I. wanted.

JUDITH HOBACK.

The statement above was subscribed and sworn to before me this 10th day of March 1973.

C. H. _____,

Notary Public, State of Florida, at large.

Senator BAYH. I ask that she be subpoenaed to come up here and tell us exactly what she did do and did not do, although, very frankly, I think we have spent a whole lot of time pursuing this, which is pretty far afield from the qualifications of the nominee. I think Mrs. Hoback's presence is so closely related with Mr. Dean that, without his presence, there is some question of relativity.

But inasmuch as this statement had been made, the affidavit has been sworn to, and there is reason to believe it is less than accurate, I would like to clear the air and ask that we subpoena her.

The CHAIRMAN. The motion was made. Without objection, so moved.

Senator BAYH. Would the Senator from Michigan permit me just to proceed on this one confined area?

The CHAIRMAN. Well, let me ask another question.

When did Mr. Dean receive any information in regard to interviews with this lady?

Mr. GRAY. As far as any information from the Federal Bureau of Investigation, he would not have received that until October 12, concerning this particular interview to which she has reference, the July 18 interview. On the interview with the assistant U.S. attorneys, no 302 report of interview was prepared. The report of interview that we prepared is the one of July 18, 1972.

Senator Cook. Would the Senator yield just one moment?

I wonder if the stenographer might show, because of the request of the subpoena, the fact that there was a quorum and the fact that there was no objection.

The CHAIRMAN. I think we ought to invite two more to testify. I think they ought to be subpoenaed.

Senator BAYH. Who are they, Mr. Chairman?

The CHAIRMAN. Thomas Lumbard, Tom Bishop.

Senator BAYH. Mr. Chairman, I second your request.

The CHAIRMAN. I did not make a motion.

Senator BAYH. I will be glad to make the motion.

The CHAIRMAN. Without objection, so ordered.

Now, we have a letter from Mr. Lumbard. We will not read it but put it in the record.

[The letter referred to follows:]

GOLDFARB & SINGER,
Washington, D.C., March 14, 1973.

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
New Senate Office Building, Washington, D.C.*

MY DEAR SENATOR EASTLAND: Your Committee has invited me to testify at its hearings on the nomination of L. Patrick Gray, III to be Director of the Federal Bureau of Investigation. I orally accepted that invitation yesterday. Having reconsidered, I have orally informed counsel for the Committee, and I now wish formally to notify you, that I respectfully decline your invitation. If,

however, on consideration, the Committee still desires my testimony, I shall be available to subpoena and shall appear before the Committee if subpoenaed.

I hope that by declining this invitation I may avoid embarrassment both to the Committee and to myself. Any factual knowledge I could contribute to your inquiry would be both extremely peripheral to it, and not particularly probative even of a material collateral issue.

I have never met L. Patrick Gray, III and am acquainted with his reputation and qualifications for the position in question only by hearsay.

My knowledge of the investigation of the Watergate affair, which appears to have motivated the invitation from your Committee, is only slightly more substantial. I trust you will agree that it does not justify the Committee's attention.

In March, 1972, G. Gordon Liddy recruited me, among others, to do legal volunteer work for the Nixon campaign. As a member of that group of lawyers, I was contacted on about April 14 by John W. Dean, III, who needed about one day a week of volunteer legal work to make sure that all primary campaign financial report requirements of the primary states were complied with as to such personal reports and affidavits as might be required of the President. This primarily entailed the reading of state statutes and then contacting the offices of the appropriate authority in each state, both to check on what reports were required and to obtain the appropriate forms to be filled in by Mr. Dean's staff and routed to the President for signature. As this work paralleled similar work being done by Mr. Liddy and his staff at the Committee for the Re-election of the President, it from time to time involved coordination with them, just as such matters require coordination between the local campaign staff of a Senator or Congressman running for re-election, and his Washington office. This work was done in vacant offices at the Executive Office Building from about April 17 until June 16, when previous professional commitments in New York and Colorado required that I drop these duties until my return in September. At that time I undertook to do some library research work for Mr. Dean's office, but the press of business necessitated that the project, essentially a similar effort as to state reports for the November general election, be done by someone else.

In the course of my work for Mr. Dean I had occasion to see him only twice that I can recall, once when I began work and once when Mr. Liddy had dropped in at his office and I put my head in the door to say hello. I worked with, and out of the office of, his assistant, David Wilson. At no time in this period did I have occasion to enter the offices of the Committee for the Re-election of the President. During the entire pre-indictment period of the Watergate investigation I was in Aspen, Colorado, and had no contact with any of the people involved with respect to it or any of the matters I have mentioned. I have no knowledge, direct or indirect, of any coordination between Mr. Dean and his staff, and Mr. Liddy and his staff, except as it related to the matter of insuring compliance with state financial reports, as to which my function was to ascertain the requirements of the state laws as interpreted by the state authorities.

Accordingly, Mr. Chairman, it appears to me that it would be a questionable use of the time of your Committee for me to appear before you. In the light of my extremely tenuous connection with any events relevant to your hearings, such an appearance would tend to create the impression that the Committee was engaged in a fishing expedition and that I, a rather small fish, was hungry for the personal publicity such an appearance would entail. Since the facts lead me to believe that such an impression would be both embarrassing to myself and unfortunate in its effect on the success of your hearings, I have concluded that I should decline your invitation, but that I should lay the facts before you by letter so as to allow the Committee an opportunity to decide whether it still desires my testimony.

I am, sir,

Respectfully yours,

THOMAS LUMBARD.

The CHAIRMAN. Proceed.

Senator BAYH. Mr. Gray, in the conversation that I had with the chairman, he expressed concern that perhaps Mrs. Hoback had been less than honest in her affidavit. That caused me to believe that I had relied on her sworn testimony and released a statement that might be considered by some as damaging to your case, although, to me, as I

look on the event now in hindsight, it would seem, to me, more directed toward what use was made of this information after you had given it to Mr. Dean, and you have no way of controlling that, sir.

With that in mind, I wanted to have a chance just to see to what extent she had been honest with the committee. I wanted to have that background. Therefore the request I made yesterday. I ask you if you were aware of it. Yesterday I called your office and spoke with your executive assistant, Mr. David Kinley, and requested the FBI 302 file on Mrs. Hoback, under the terms of the agreement earlier, the offer made by you. Were you familiar with the fact that I did call Mr. Kinley and ask for that 302 file?

Mr. GRAY. Yes, sir. I was advised. Senator Bayh, that you had called.

Senator BAYH. Were you the one who advised Mr. Kinley that the Attorney General had changed the ground rules?

Mr. GRAY. Yes, and Mr. Kinley was checking with me to make absolutely certain that this was the case. In fact, he was sitting in my office at the time I received the call from the Attorney General. When I wrote down the instructions, he was aware of them, but he wanted to check with me anyhow because this was a U.S. Senator calling for the files under the previous offer that I had made.

Senator BAYH. I appreciate that. You had offered earlier to let us look at all those files. I for one would have liked nothing better than to explore some of them. But realizing the volume involved, and realizing that none of our staff people, even those with cleared security, had access to them, I did not avail myself of this invitation.

This seemed to me to be an area where there was a specific problem involved, a specific area, and if I may say so, I thought your interest was involved, a narrowly defined area, and that is why I made the request. Mr. Kleindienst was the one who issued this order?

Mr. GRAY. Yes, sir; he called me. If I might comment, with regard to some of these allegations, a host of allegations have been fired at me. I think that is a part of the political process and I just have no further comment on that. I received those orders. Those are my orders and those are the orders that I have to carry out, Senator.

Senator BAYH. I understand that, sir.

I will say that I do not think those orders are helpful to you at all. I think you have been direct and open with this committee. Others have not been.

Were those orders given to you orally, or written by the Attorney General?

Mr. GRAY. No, sir; they were called to me on the telephone. You know, Senator Bayh, I occupy a position in which I serve as a Bureau Chief in an executive department of Government. I serve at the pleasure of the President. I have to take my instructions and orders from the Attorney General and the President. The various Presidents—I think my earliest recollection is Franklin Roosevelt—have stated that they have relied heavily upon the FBI to give them the facts. This goes through Mr. Roosevelt's Presidency and all the succeeding Presidencies. It is a pretty important position. I do serve at the pleasure of the President and I do have to accept these orders and carry them out, sir.

Senator BAYH. I understand that. I am not being critical of you. This is an instance in which you are not being requested to give facts to the executive, but to deny facts to the legislative branch. Is there a distinction there?

Mr. GRAY. I do not know how we would make that distinction in view of my position as a Bureau Chief, and particularly the Chief of the Federal Bureau of Investigation, and in view of the long tradition that it has had with regard to the President's reliance upon it. So I do not know how we would make that distinction.

Senator BAYH. Would you tell us the specific contents of the instructions?

Mr. GRAY. The orders that I received?

Senator BAYH. Yes.

Mr. GRAY. Yes. I was to make the files available to the chairman of the Committee on the Judiciary of the U.S. Senate, to the ranking minority member, to the chief counsel, Mr. Holloman, and to the minority counsel.

Senator BAYH. Did you get the impression that this was Mr. Kleindienst acting on his own or are these orders received from the President?

Mr. GRAY. I had no impression one way or another, sir. I said I will carry out those orders.

Senator BAYH. In looking at the responsibility of the Federal Bureau of Investigation, is your responsibility to the Attorney General or to the President? This is not the average mine-run situation. You have a rather significant confrontation between the executive and legislative. Perhaps we ought to look at the kind of precedent we have here.

Mr. GRAY. Well, I think I am sitting in the middle of just that kind of a confrontation. And as powerful as the FBI is, the forces that are at work here might calculate to be far more powerful than the FBI.

In connection with this order, I do note that there are two committee staff members who are now permitted to have access to this file, which was not, of course, permissible under the offer that I made to any senator.

Senator BAYH. I am just trying to see the ground rules that you might operate under when the time comes when you are the full Director.

We have these examples here, given this situation. The Attorney General makes a request, not the President. Mr. Dean made the request, not the President, for some of this very sensitive information.

The CHAIRMAN. He made that request on behalf of the President, did he not?

Senator BAYH. That is why I am trying to see whether the Attorney General made this request on behalf of the President, or on his own.

The CHAIRMAN. Yes, but the statute makes him subject to the Attorney General.

Senator BAYH. I do not think it is an irrelevant question to ask in regard to Mr. Kleindienst, with all due respect.

Did Mr. Kleindienst suggest that this was an order from the President?

Mr. GRAY. No, sir; he did not say that to me.

Senator BAYH. Did he give any reason for the fact that the files would be available to two members of the staff?

Mr. GRAY. No, sir; and I did not question him at all. I took the order and that was it.

Senator BAYH. Were you at all concerned about the fact, with all due respect to the very distinguished members of the committee who are given access to this information, that it is conceivable that they might view certain questions differently from some other members, and those looking at these questions differently would have no opportunity to view the files themselves?

Mr. GRAY. Senator, I do not think that this is a question for me to respond to because you are discussing U.S. Senators, and I do not know U.S. Senators well enough to be able to make that kind of response.

I would respectfully decline to answer that question, sir.

Senator BAYH. You have sat here for more hours than I had hoped you would sit here.

Mr. GRAY. Yes, sir; more hours than I had hoped.

Senator BAYH. You have more than reasonable perception. I think you have observed that there are Senators with very different opinions from the two honorable and distinguished Senators who have been given access to the information. Would that be a correct observation?

Mr. GRAY. Senator Bayh, I will have to say those are your words. I do not have that kind of feel for all of the nuances that go on within the U.S. Senate or within the Committee on the Judiciary. I really cannot respond to that kind of question.

Senator BAYH. Mr. Gray, your candor is showing.

Mr. GRAY. I think, Senator, every Senator here is trying to discharge his constitutional responsibilities, and I am trying awfully hard to discharge mine.

Senator BAYH. I would be the last to suggest that the two very distinguished Members who might differ with me on an issue are not trying to discharge their constitutional responsibilities. I am trying to figure out how you make it possible for everyone to get access to the information.

These two men in no way of their own volition have denied access. The chairman has been very kind. Any time I have made a request for information to help in any of a number of different investigations he sits there himself or the chief counsel sits there and goes through a voluminous file. That is why it seems to me to be a rather strict order. I will not ask you to discuss this further.

The CHAIRMAN. You told me, given proof within those files. There is no opinion in them. They are just statements of what people say.

Senator BAYH. I am particularly concerned about this one case, Mr. Chairman.

The Attorney General can give an order to you that the Director of the Federal Bureau of Investigation is to deny to Senate committee members access to information, and yet no such order covers White House staff members. Where do you draw the line?

Why should the various White House people, Magruder, Dean, Liddy, people like that, why should they be treated differently from U.S. Senators as far as your judging when you get a legitimate order from the Attorney General?

Mr. GRAY. Once again, that is a very difficult constitutional question. It is based on the separation of powers and the manner in which

the President desires to operate the executive branch of the Government.

In this particular case, Senator Bayh, I made the offer to the U.S. Senators and now I have received some different instructions.

Senator BAYH. As I have said, I do not think these instructions are helpful to you.

I wonder why anyone who is advocating the nomination of someone would put him in a position like that. That is an unanswered question and certainly one that you should not try to answer.

This is not the first time that a Congress and a President have been on different sides of an issue under investigation. I wonder where Pat Gray would be if we run into another kind of confrontation and you are Director of the FBI. Suppose the Senate is conducting an investigation and we need information to make an intelligent judgment on the issues that we are interested in and the FBI has this information and the Senate requests it and the President says you cannot get it. Where do you draw the line? The President? The Senate?

Mr. GRAY. I think, probably, I can only speculate on it. But I have thought that as the result of these particular hearings, there may be some legislative action. I do not know what is going to occur with regard to the position of the Federal Bureau of Investigation. I have thought about it. This has all arisen really because the situation was changed and now requires confirmation of the Director of the FBI. Heretofore, FBI files were held as tightly as they could be held. I made an unprecedented offer and stated at the time that it could not be used by legislative committees in the future to obtain access to the FBI's working files.

I really do not know what is going to come out of this. I am going to have to, as I said earlier, try to work my way through this minefield, working with the executive branch and the legislative branch of our Government. I do not know the answers to those questions at this moment.

Senator BAYH. Did you talk to the Attorney General or to anyone else about the offer before you made it?

Mr. GRAY. I think from the very beginning of my conduct, and I should say the FBI's conduct of the investigation under my direction, I realized as the information came along that this would be a very, very important case. I think I testified earlier I would have to be a naive jackass not to realize that. I mentioned to the Attorney General, from time to time, that it was my opinion and my belief and my feeling that this action should be taken.

But if you ask me did I ever put the question to him, "Mr. Attorney General, I am going to make this offer and I want your approval." the answer to that question, Senator Bayh, is "No."

Senator BAYH. But he was aware of your feeling that this offer should be made?

Mr. GRAY. Yes, sir; and I think he would testify to that, sir.

Senator BAYH. And he did not object?

Mr. GRAY. No, sir; I received no orders to the contrary from him.

Senator BAYH. Do you care to speculate as to what happened between then and now?

Mr. GRAY. No, sir; I have no way to account for that, because of the furor that has been generated as a result of this offer, with the ACLU

getting after me, Professor Elliff getting after me, and the rights of privacy being involved, have precipitated these apprehensions on the part of people.

Senator BAYH. I think such apprehensions are well-founded under normal circumstances.

But I would have been a lot more comfortable, and they a lot more consistent, if these apprehensions had been applied across the board to White House assistants as well as to Senators.

I realize that in the position you are in you are responsible to the President.

Mr. GRAY, Senator. I am not really ashamed of that responsibility—because, you know, as a Bureau Chief, and the FBI is in the executive branch, I have that responsibility. I serve at the pleasure of the President, who is the Chief Executive Officer of this Nation. I am carrying on a long tradition in the Federal Bureau of Investigation when I serve the President, when I cooperate with the President. When I see the research that has been done to show that successive Presidents have relied very heavily on the FBI to give them the facts, I think it was right and it was proper to do that.

Senator BAYH. I am struggling with this in my own mind. I think that if I were sitting in your seat, and the President of the United States had said, Mr. Director, I need to have this information. I would have been over there in 15 minutes and I would have had it there. But if Mr. Dean or Mr. X or Mr. Y made that request, I do not know whether I would have given it to him. Certainly not without it being in writing, and if I had known that the White House assistant that requested the information was also involved in all these other contacts involving the Watergate, then I might have done something a little differently.

Is there a way in the future to protect yourself and the FBI's credibility from some White House assistant taking information and perhaps trying to keep justice from being done?

Mr. GRAY. You know, what we did here in the beginning, as I testified earlier, we held it close for a long period of time, until we were sure of where we were going and what the implications were. We were very careful about putting out any kind of information. This is one step that you can take, and certainly we took that step in this case, Senator Bayh.

Senator BAYH. Mr. Gray, when you say you held it close, does that mean you held it away from Mr. Dean?

Mr. GRAY. Yes, sir. I did not talk about any substance with Mr. Dean at all. He did not ask me for any substance. The first request I had for substance was in that conversation with regard to the preparation of the memorandum summarizing the status of the case.

Now, this information—and I explained this before—this information at working agent level was being exchanged back and forth all the time with the assistant U.S. attorneys. They were working with the assistant U.S. attorneys in the grand jury and these investigative reports were being delivered to the Assistant Attorney General of the Criminal Division. This is true. This is our normal standard operating procedure.

Senator BAYH. As I recall, there were some 80 reports given to Mr. Dean. Is there any way you can differentiate between giving

reports to a White House aide who may be wearing a number of different hats and giving specific reports to the President?

Mr. GRAY. I think you can.

I think there is certainly a practical way to do that. If in any of those I had seen positive, affirmative information that any White House individual then on the staff was involved at any time, I think I probably would have gone right to the President.

You know, this is the kind of thing that you must make a judgment on. It is a thing that depends on a case-by-case analysis.

Senator BAYH. Were you aware of Mr. Dean's relationship with Mr. Magruder and Mr. Liddy?

Mr. GRAY. Not in those early days, no, sir.

Senator BAYH. When did you become aware of that relationship?

Mr. GRAY. I am trying to remember.

I think the first indication I had was undoubtedly a note on the teletype on 7-24; however, it did not spell out any relationship at all. The first affirmative knowledge of that was when the FD-302 was in my possession.

Senator BAYH. What is the FD-302 again?

Mr. GRAY. That is the report of interview, sir.

The CHAIRMAN. When was that?

Mr. GRAY. That interview was conducted, as I remember, on the 20th day of July.

Senator BAYH. How many reports were forthcoming to Mr. Dean after you had seen that 302?

Mr. GRAY. I am sorry, sir?

Senator BAYH. How many of the 80-some reports went to Mr. Dean after you had seen the FD-302 that gave you reason to know of the relationship between Mr. Magruder and Mr. Liddy?

Mr. GRAY. I think that those went—yes; I remember that. Ten investigative reports went over on October 12, 1972.

Senator BAYH. And yet you were aware of the relationship some time in July?

Mr. GRAY. I was not aware of any relationship. I was aware of what was stated in Magruder's 302 to the effect that he had received a recommendation from Mr. Dean and Mr. Krogh, I think it was, regarding the employment of counsel there.

But once again, I am getting into substance and I will have to stop. I have gone beyond the point I should have gone under my instructions, but that is my recollection.

Senator BAYH. Mr. Chairman, I yield back. I did not intend to get involved in this long discussion at this time.

Thank you, Mr. Director.

Senator HRUSKA. Mr. Gray, you were asked whether you worked for the President, for the Attorney General, or for the Senate or for the United States. Is it not true that a full reading of the statute places the responsibility for your office and its functioning under the immediate jurisdiction of the Attorney General?

Mr. GRAY. Yes, sir, Senator Hruska; this is correct. That is the statutory placement and my other testimony is to the effect that throughout the successive Presidencies that I researched and have analyzed, I found that Presidents have stated that they rely heavily on the FBI.

Senator HRUSKA. And your duties are to undertake to discharge and comply with the orders of the Attorney General, and they are mainly

in the investigative field and have no relation to any formation of conclusions or any prosecutorial conduct; is that not true?

Mr. GRAY. That is correct, sir.

Our responsibility is to investigate.

Senator HRUSKA. When you were asked about your concern why an order would go forward to allow certain members of the Senate to have access to the files and other members would not have access, that really is not within your realm inasmuch as you are called upon to get any order along that line in conformance with the Attorney General's order; is that not correct?

Mr. GRAY. That is correct, sir, but there do come occasions where you have an opportunity to discuss a situation with the Attorney General. But I had no opportunity to discuss this situation with him at all.

Senator HRUSKA. In general, you have told us about your desire to protect the sources that the FBI resorts to, and that is always paramount in your guarding of the working files, the raw files. That is what we have been led to believe.

Mr. GRAY. That is correct, sir. Probably one of the strongest criticisms that I have received to date is that I have made it difficult in the future for the Federal Bureau of Investigation to receive information from sources. I think that the unique nature of this case takes it out of that type of area.

Now, we may have some fence building to do with some of our sources throughout our 59 field divisions. I do not know. That remains to be seen, but I have been criticized on that basis.

Senator HRUSKA. The first interview was held by FBI agents with Mrs. Hoback on June 23?

Mr. GRAY. Yes, sir; that is correct.

Senator HRUSKA. And that was the occasion when the agents were present and a representative of the Committee To Re-Elect the President?

Mr. GRAY. That is correct, I believe a representative may have been present. That was very early in the game. That was on the 23d and that was for identification of pictures, but I think, Senator, you would have to check the 302. You would have to look at that 302.

Senator HRUSKA. I think I recall testimony in the record to the effect that there was unhappiness that there were representatives either of the White House present at FBI interviews when it was a member of the staff of the White House that was interviewed and unhappiness by some of the witnesses who were on the staff of the Committee To Re-Elect the President, and it was because of that unhappiness that contact was had with the FBI and a separate interview was held for such witnesses, and that transpired here—I believe you testified there was an interview with Mrs. Hoback in her home, and when did that occur, which FBI agents?

Mr. GRAY. I do not know that I testified that there was an interview with Mrs. Hoback in her home, Senator.

Senator HRUSKA. Maybe it was she who said it in her affidavit. She says about 1 week later, approximately 10 days to 2 weeks after the grand jury, I voluntarily met with the FBI at my home in Bethesda, Md., for a confidential interview.

I am not going to ask you to divulge your sources, Mr. Gray, but who was present at that interview? Who conducted the interview and who was present there?

Mr. GRAY. FBI agents were present there, Senator Hruska.

Senator HRUSKA. And Mrs. Hoback was present?

Mr. GRAY. Yes.

Senator HRUSKA. Were others present besides the FBI agent and Mrs. Hoback?

Mr. GRAY. Senator, if I could, I respectfully decline to answer that question, because I feel it is substance and I am under a prohibition.

Senator BAYH. Would the Senator yield for a question?

Does that mean that if a member of the Re-Elect the President Committee was sitting there at the time, that we are denied the opportunity to know that because it is substantive? Is that what we are hearing here?

Senator HRUSKA. I did not say anything about Committee on Re-Election of the President. I asked if any other person besides the FBI agents and Mrs. Hoback were present in Mrs. Hoback's home at the time the so-called confidential interview by FBI agents was conducted. I said nothing about any committee on Presidential re-election or anybody.

Senator BAYH. I do not ask the question to be argumentative. I just want to make sure we know what we have here.

This lady has said there was a leak. If she did not tell anybody, and the FBI were the only other people present, then her affidavit would lead one to believe that the leak came from the FBI. If there was someone there from the Committee to Re-Elect the President or someone else, that is something quite different.

Senator HRUSKA. The imagination of the Senator from Indiana gets away from him.

There is this statement:

"To my knowledge, I had not informed anybody of the interviews with the FBI and the interviews were in confidence and no one else knew."

It is a simple question to find out if there was somebody else present in the room when that happened. Then it would bear upon the recollection of Mrs. Hoback.

Senator BAYH. I am on your side. But we cannot get the answer from Mr. Gray because it is declared substantive. That is why I raise the question. I am not saying your question is out of order. I want to get the answer, too.

Senator HRUSKA. All I am asking of the witness is if he knows. If he does not know, or if he feels he is not competent to testify, I am not going to try to bludgeon it out of him.

Senator BAYH. That is a lightweight bludgeon.

Mr. GRAY. I think I would respectfully decline, if I may, Senator Hruska, and invite the chairman and ranking minority member and chief counsel and minority counsel to consult the FBI files.

Senator HRUSKA. Well, I do not think that is any great loss. She is on her way up here to testify and she can be asked those questions and can answer them if she wishes.

There is one other thing that is rather impressive. Mrs. Hoback is said to have reported to the press, which had the initial story on her affidavit, and she had, of course, recited that "Within 48 hours of the second interview, I was called into the office by Mardian." She did not say he was present, but others were present. She said in a telephone

interview, "You do something in confidence and it shatters you a little bit to learn that is being broken."

That happened in July. You have indicated and testified that she later contacted the FBI on August 1, August 2, and August 31.

Would that lead a reasonable person to believe that she was not very shattered if she contacted the FBI and gave them, or said she would give them, further information?

MR. GRAY. No, Senator. We did not think so.

Senator HRUSKA. Mr. Gray, I asked you who was present at the confidential interview in Mrs. Hoback's home. Could you tell us who was not present? Could you tell us that members or representatives of the Committee To Re-Elect the President were not present? Could you tell us what the fact is on that point?

MR. GRAY. Senator Hruska, I must respectfully decline to answer that question because it does go to substance and names of people and that information is in the file which is available to you.

Senator MATHIAS. Would the Senator yield at that point to let me take another try?

Senator HRUSKA. I am glad to.

Senator MATHIAS. Would it be possible for you to tell the committee how many people were present when Mrs. Hoback was interviewed in Bethesda, Md., and how many of those present were agents?

MR. GRAY. Senator Mathias, I can say that there were two agents present. Beyond that I would respectfully decline, because the file does reveal it and it is substance. It does involve people and I would like the committee to have the information through the chairman and the ranking minority member, because those are my instructions.

Senator MATHIAS. I think that is an important contribution because at least we know two of the people present were agents, and if she testifies there were more than two present, we can look elsewhere.

Senator HRUSKA. One other point I think would be of interest. It has been assumed, I think, that Mrs. Hoback contacted the FBI to indicate and register her displeasure that a member of the staff or representative of the Committee To Re-Elect the President was present at that initial interview on June 23. What is the fact in that regard? Was it she or someone else who contacted the FBI to arrange for this confidential interview?

MR. GRAY. Of Mrs. Hoback?

Senator HRUSKA. Yes.

MR. GRAY. Was it someone else who contacted the FBI to arrange for that interview?

Senator HRUSKA. That is the question.

MR. GRAY. Senator, once again it is substance, and I must respectfully decline. That information will be contained in the file.

Senator HRUSKA. Again, I say she will be coming here soon and we can get that information from her. I thought it would be helpful if we could get that.

In asking the question I do not want to impose on your patience and the necessity of your declining to testify. After all, that does not, in my judgment, go to the substance of the file. I did not ask for names. I simply asked for the presence of people in that room, whether there were more than just those involved, also whether it was she who contacted the FBI or someone else.

Again, I did not ask for names. I would not intend to, because whoever it was, if it was somebody else, would be entitled to protection as to sources that might be available at a later time for the FBI.

Mr. GRAY. That is correct, Senator.

Senator HRUSKA. I have no further questions at this time, Mr. Chairman.

Senator HART. Mr. Gray, you have explained the obligation which is yours at the Bureau to respond to requests from the White House and from the Attorney General. Let me turn back to a request you thought was improper and to which you would not respond. That is the request made to you for law-and-order campaign information data.

I will not ask you to distinguish why in this case you thought you did not have to respond, and in some of these other cases you felt you should.

You have indicated and supplied for the record the request that was relayed to the Bureau field office.

First, there were newspaper stories at the time that blamed Mr. Erickson's Deputy. Now, Erickson was the Deputy Attorney General, and his associate, Mr. Santarelli, was named as the person who had improperly. I think you would have characterized it, asked the Bureau to provide this information.

Now, the material that you sent us indicates that it was Mr. Erickson himself who sent the memo to you asking for the Bureau's aid. Is that correct?

I refer to the initials on the memorandum.

Mr. GRAY. That is the memorandum of September 8, 1972, from Ralph E. Erickson, Deputy Attorney General, to me, and his initials do appear there to the left of that memorandum—his name.

Senator HART. Would that not lead to the conclusion that it was he who asked, not Mr. Santarelli?

Mr. GRAY. I do not know the actual person who sent that material down to the Federal Bureau of Investigation. But certainly when we would see that, I would say that those are the Deputy Attorney General's initials and that that piece of paper was coming from the Office of the Deputy Attorney General. I am sure that my people interpreted it that way, Senator.

Senator HART. All right.

Now, once you found out about this business, did you ever tell Mr. Erickson that he was wrong or that you felt he was wrong?

Mr. GRAY. I do not remember that I ever did tell Mr. Erickson that he was wrong. I know that there were—and I am trying to remember now—discussions regarding who should have gathered this information. We had that kind of discussion, I know, certainly in the Department, but as to time and place and with whom, no. I just have that kind of fleeting recollection and I remember the remark being made that this should have been performed by the U.S. attorneys.

Senator HART. The reason I ask the question is that in your first appearance you made very clear that when you learned about this you hit the ceiling.

Mr. GRAY. That is correct, sir.

Senator HART. And the implication was that you would have made clear to anybody that was involved in the operation that you thought it was improper.

Mr. GRAY. I did not go around outside the Federal Bureau of Investigation, Senator Hart, putting people on report, because I think that everybody knew that from the statements that had been made, as I recall. I think there was a report that the White House had made the statement that this was an improper utilization of the FBI.

Senator HART. But that was a month or more later, about the time Time magazine broke the story?

Mr. GRAY. That is correct.

Senator HART. What did you do before Time magazine broke the story to make it clear that in your judgment it was wrong?

Mr. GRAY. Well, I said to someone in my office, within a staff meeting that we had at that time, and in discussing it with the Associate Director, I inquired also at that time as to the authority to release teletypes. I know I asked specifically, as I recall it, who has authority to release teletypes within the Federal Bureau of Investigation and whether that authority includes Assistant Directors? I did not launch any full-scale inquiry about this matter until the information was made public knowledge, because by the time I received this information the exercise had already been conducted, the material had been put together by the field offices, sent in, and the material had been delivered to the Deputy Attorney General's office.

Senator HART. Well, if you issued any directive to an individual or to Bureau personnel generally, in respect to this, would you let us have it for the record, if you did?

Mr. GRAY. I do not recall that I did, Senator Hart.

Senator HART. In your earlier appearance I asked you whether there was opposition within the Bureau to performing this task, this job of getting data which would be useful in political plans, and you indicated in general that it had been considered routine by those who had responded to the teletype.

Now, in this connection, the Bureau's own summary, dated January 12 of this year, on this incident, which you supplied us, and which had earlier been supplied to Senator Ervin and his subcommittee, says on its first page that when your aide, Mr. Kinley, approved the memorandum, the data collection, and sent it on to Mr. Thomas Bishop, head of the Crime Records Division, for implementation, that Mr. Bishop went up to your deputy who was acting in your absence and—I am quoting the memorandum—"discussed the matter with Mr. Felt." Your memorandum reports that only afterward, after he checked with him, did Bishop have the teletype request sent to the field office.

Now, I think this is important because there were news stories last fall, including one in the Post, on November 4, which I will supply for the record, that said that you were furious because Mr. Bishop had failed to clear the request with either you or Mr. Felt before sending it out. Now, we have this Bureau review summary which suggests very strongly that Mr. Bishop did—I will not say question this or get clearance—but in any event, did go to Mr. Felt. So, specifically, let me ask you whether Mr. Bishop raised any question with Mr. Felt or anyone else about the propriety of using the Bureau in this manner? If he did what was he told?

Mr. GRAY. I asked that question specifically, Senator Hart, and I was advised that the discussion that you refer to in the memorandum

there pertains to the Division within the Federal Bureau of Investigation which should have handled this request. Whether it should have been the Training Division or the Crime Research Division. And Mr. Felt made the decision and told Mr. Bishop that it was his Division that should do it. I specifically asked if there were any protests made at that time and I was told there were none.

Senator HART. Whom did you ask?

Mr. GRAY. Mr. Felt.

Senator HART. Did you ask Mr. Bishop?

Mr. GRAY. I asked Mr. Bishop and I think this was during the—I should not say I asked Mr. Bishop, I should say when the inquiry was conducted into this, the inspectors who were conducting the inquiry must have asked this question because the statements that they made indicated clearly that there was no objection voiced, that this was considered to be a bona fide request and one that should be responded to.

Senator HART. Well, you made very clear in your first appearance that this incident outraged you and you went right up the wall. But you never talked to Bishop about it?

Mr. GRAY. I cannot recall specifically talking with Mr. Bishop at that time, because I did not feel it was incumbent upon me to go jump on him. I wanted to talk with my own personal staff. I talked with Mr. Felt, and I just cannot remember with certainty whether or not I spoke with Mr. Bishop at that time.

Senator HART. Can Mr. Kinley provide us any information?

Mr. GRAY. Senator Hart, I think I ought to be the witness. I am testifying here. It is my nomination which is at stake and I do not know that David is going to be able to supply anything other than what I have.

Senator HART. Well, David approved this.

Mr. GRAY. That is correct, he got the—he got the materials all together but at no time did Mr. Kinley or Mr. Felt see the teletype that went out. This is going to show up as a matter of the results of the inquiry that I directed.

Senator HART. Did not Mr. Kinley always initial on the teletype—

Mr. GRAY. No, sir; because he did not see the teletype. That is one of the things I am inquiring into, how that got out. Does an Assistant Director of the Federal Bureau of Investigation have authority to release a teletype without clearing it with anyone and the answer I got was affirmative.

Senator HART. Could I ask Mr. Kinley if he was conscious of this rhubarb and whether he furnished or is aware of any memorandum that accompanied the transmittal of the field reports back to the Justice Department?

Mr. GRAY. This first came to our attention when one of my young special—as I recollect—

Senator HART. I wonder if you would permit Mr. Kinley to answer my question?

Mr. GRAY. It is a little awkward for me to refuse, Senator Hart, but I think I am the one that has to carry the water up here. It is me that you are judging, but I do not have any objection.

Senator HART. We are trying to find out as much as we can about a point—

Mr. GRAY. I would like the record to clearly show that I think I am the fellow that is carrying the hod up here. These men are my staff assistants. It is my credibility, my ability to discharge this responsibility. I have no objection to his answering the question, no, sir; but I just want the Committee on the Judiciary and the U. S. Senate to know I am the man that is carrying the hod.

Senator HART. I think it contributes to your good judgment that you allow Mr. Kinley to answer the question.

Mr. GRAY. Go ahead and answer.

TESTIMONY OF DAVID D. KINLEY—Resumed

Mr. KINLEY. Would the Senator repeat the question? I have lost the question in the discussion.

Senator HART. Did Bishop ever come to you about this?

Mr. KINLEY. No, sir.

Senator HART. Did anybody raise a question?

The CHAIRMAN. Wait a minute. Stand up, please.

[Mr. Kinley was sworn.]

Senator HART. Did anyone ever mention to you that Mr. Bishop had protested or raised a question?

Mr. KINLEY. No, sir. In fact, Mr. Felt mentioned exactly the opposite.

Senator HART. Mr. Felt said that Mr. Bishop had what?

Mr. KINLEY. Mr. Felt reported to me that the subject and discussion he had with Mr. Bishop was whether Mr. Bishop's Division should handle the request or whether the Training Division of the Bureau should handle the request.

Senator HART. Now, am I correct that your initial is on the recommendation that the materials that had been accumulated from the field to be sent back to the Justice Department?

Mr. KINLEY. That is correct.

Senator HART. And is the "F" on that same memorandum the initial of Mr. Felt?

Mr. KINLEY. That is correct.

Senator HART. Now, did Mr. Gray make clear to you that this action was unacceptable.

Mr. KINLEY. Yes, sir; he did.

Senator HART. On this memorandum from Mr. Jones to Mr. Bishop, forwarding material from the field, paragraph 1—it is just a single sentence—says that "The attached material be approved for transmittal to the White House through the Department."

Then there is a second recommendation, No. 2, that "After approval that memorandum and attachments be returned to your office," that is Bishop's office, "for transmittal to the office of Ralph Erickson, Deputy Attorney General." Does that not indicate that even if Mr. Bishop did not double check and get Mr. Felt's approval prior to sending out the wire to the field that the project was approved by the acting head, your Mr. Felt, before the material sent to headquarters was turned over to Justice?

Mr. KINLEY. I do not follow the question, Senator.

Senator HART. Given these recommendations with the initials, and assuming that Bishop did not double check and get Felt's approval prior to sending out the wire to the field, does it not suggest that the

project was approved by Felt before the material sent to headquarters was turned over to Justice? Does not this at the bottom indicate that by both Mr. Felt and Mr. Kinley?

Mr. KINLEY. That is standard Bureau procedure.

Senator HART. What is standard procedure if you disapprove?

Mr. KINLEY. Just indicate at the bottom.

Senator HART. So this is approval?

Mr. KINLEY. That is correct.

Senator HRUSKA. Approval of what?

Mr. KINLEY. That the attached material be forwarded to the Office of the Deputy Attorney General.

The attached material was a summary.

Senator HART. Who should Mr. Gray get mad at, Mr. Felt or Mr. Bishop?

Mr. KINLEY. He got mad at both Mr. Felt and me.

Mr. GRAY. You are asking me? I got mad at my executive assistant and Acting Associate Director, who are the two people whom I deal with most directly. I did not discuss this with Mr. Bishop at all. I do not do it that way. That is not the way I operate. Later on, of course, when the inquiry came up, the inspectors met and we went into this rather thoroughly, very thoroughly.

Senator HART. The first time you talked to Mr. Bishop about this was at or about the time the magazine Time was publishing a story about it? Is that correct?

Mr. GRAY. I am not even sure I talked with him then, Senator Hart. My recollection of talking with Mr. Bishop about this matter is when he came in regarding the preparation of the letter to Senator Ervin, and I asked him questions about that, let him see that letter. Actually, I think I read it to him. I read the statement to him and asked him: "Now is this a correct statement? I do not want to send this information up if it is not." And I think, really, that is the first time I talked with Mr. Bishop, because you could say that the fault was his, but I did not view it that way. I viewed that the people I had to read off were my executive assistant and my Acting Associate Director.

Senator HART. Do you recall an occasion when you telephoned Mr. Bishop at his home about this incident in October at or about the time the Time article appeared?

Mr. GRAY. I do not recall that, I really do not.

Senator HART. Do you recall receiving a telephone call from Mr. Ziegler at the White House informing you about the publication of this incident in Time magazine?

Mr. GRAY. I think Ziegler called. I am not sure of that at all, Senator, but I think he called.

Senator HART. Does that refresh your recollection as to whether or not—

Mr. GRAY. If this were true I could very well have called Mr. Bishop at his home and asked what this was all about or I could have called Mr. Felt at that time, but I think this was—if you are referring to a magazine article, I think that was much after the fact when I first learned of this. I do not know which magazine article you are referring to.

Senator HART. You first learned of this, namely, the transmittal to the White House of information that had been obtained by Bureau

field offices, that is the event, and following that immediately on your return when you learned of that event you hit the ceiling?

Mr. GRAY. Yes, and I recall——

Senator HART. We have been discussing that. Now, some weeks later I understand you recall receiving a telephone call from Mr. Ziegler informing you that Time was about to break the story?

Mr. GRAY. I think I did. I think I did. I am not sure whether it was from Mr. Ziegler, whether it was from somebody within his office, whether it was from somebody within the Public Information Office of the Department of Justice.

Senator HART. And you say that that reminds you or suggests that you may have called Mr. Bishop?

Mr. GRAY. Possibly.

Senator HART. At that time.

Mr. GRAY. Senator Hart. I have to admit the possibility, but I do not remember the call.

Senator HART. So you do not remember what you would have said to Mr. Bishop?

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

Senator HART. Now, when the Time magazine article reached the newsstand you had a "no comment" for the press. Why did you not say yes, it was wrong, I made clear it was wrong and we will not let it happen again?

Mr. GRAY. I have to think about why I did that. I do not remember why I did that, Senator Hart.

Senator HART. The press officer at the Department of Justice, John Hushen, had confirmed the FBI had been engaged in this, Ehrlichman at this time had said that such Bureau participation was a mistake, was wrong, and you, a few weeks before, had been extremely disturbed by it. But you said "no comment" when asked about it.

Mr. GRAY. I was disturbed enough by it to try to find out exactly how this had occurred. That was the essence of it, but I do not see—I cannot recall why I said "no comment." I say "no comment" to an awful lot of things, Senator Hart.

Senator HART. One last item on this topic. Would you provide us with whatever written material the Bureau has that will identify the date on which you asked your investigator general or whatever the investigative division is to investigate, to review, the event that we have been talking about.

Mr. GRAY. Senator. I am going to respectfully decline to provide any materials from the files of the Federal Bureau of Investigation with regard to inquiries or investigations. I have got some pretty clear instructions on that. I made an exception in the case of the Watergate. But the rules and regulations of the Department of Justice still apply in other areas.

Senator HART. Well, maybe I use the wrong label. What about a memorandum or letter that you wrote, if any, asking your deputy or inspector to review the circumstances attendant on the clearance of political material through the Bureau?

Mr. GRAY. No, I think probably my direction was, let us ascertain what all the facts are in this case, and it would probably have been a purposeful order to the Assistant Director in charge of the Inspection Division. I do not know that I actually wrote an order but this could

have been one which I did even dictate and sign. But if so, that is a part of the investigative file that was conducted by the Inspection Division and I would respectfully decline, Senator Hart, to provide that.

Senator HART. I am not asking now for documentation that developed as a result of the investigation, but simply a memorandum, if any, that you wrote asking that such an investigation be undertaken. That also, you believe, would not be permitted to be released to the committee?

Mr. GRAY. Yes, indeed, Senator Hart.

Senator HART. Well, would you at least on this one narrow request inquire of the Attorney General whether you would be permitted, notwithstanding your broad order, to release to us that one document?

Mr. GRAY. Senator Hart, once again, there has to be a line of finality drawn and I would respectfully decline, sir.

Senator HART. I will be shot if I can figure out how that jeopardizes FBI informative sources or degrades an individual or weakens a criminal case.

Mr. GRAY. Senator. I think that every word that I am saying up here in this distinguished forum is being listened to with great interest by the representatives of every intelligence service in the world who happen to be quartered in this Nation. And any activities of an organization such as ours, techniques, tactics, and all the rest of it, are always of interest to others. This is a real problem. It is of interest to us with regard to their operation, and I have to keep this constantly in mind. I just think that I have reached the point where I must respectfully decline, Senator Hart. I do not even know if I wrote a memorandum. I may have dictated—I really do not know. I think what probably happened is I turned around in my chair and pushed the button on my console to the man in charge of my inspection division and told him to get cracking. I may have dictated a memorandum. I do not know.

Senator HART. Again, I will be hung if I can imagine how Moscow or Peking, or whoever our enemies are now, are going to be helped by your letting us see your memorandum asking for your investigation.

That is that.

Just a few loose ends regarding the speech at the City Club in Cleveland.

Mr. GRAY. Yes, sir.

Senator HART. And any other speeches during that period.

You have corrected the record. As it now stands, the only invitation you had when you accepted the Cleveland City Club's was the one that was relayed through Patrick O'Donnell in the White House.

I do not think we asked you whether your arrangements for any of the other speeches you made around the country last summer and fall came as a result of invitations relayed through the White House. Did any others?

Mr. GRAY. To the best of my recollection, and belief, no.

Senator HART. How about invitations relayed through the Committee to Re-elect the President, or any other Republican campaign committee?

Mr. GRAY. No, sir. I received no invitations from the people at the Committee to Re-elect the President.

Senator HART. Now, what about those situations where you did receive these independent invitations, did you also receive some communications, either written or oral, either to you or members of your staff, if you know, commenting on the possibility of your accepting a particular invitation? Do you know? The invitation specifically or discussing the possible timing of such engagements?

Mr. GRAY. I remember only one such instance that occurred later on in September, I believe, or—I am testifying now from memory—but I think it was a call to the Crime Research Division. It may have been a call to Mr. Bishop saying here is the theme that Mr. Gray should emphasize this week in his speeches, and that was very, very quickly shot down. I recollect a memorandum on which I wrote, there on the bottom, “Apparently Mr. O’Donnell is not aware of the President’s instructions to me” and my executive assistant wrote on that thing before it even came to me “nuts.” And we just did not do it. Somebody is—

Senator HART. Now, could those memorandums be provided for the committee?

Mr. GRAY. Senator, I testified to you, I am under oath, I think I am correct, and I would respectfully decline, because I am going to be up here from now until about January providing memorandums. There comes a point in time.

Senator HART. If not many suggestions were made, it would hardly take from now to January.

Mr. GRAY. There were an awful lot of suggestions made and that is my testimony and that is the one that I can recollect. I can say to you that we just did not do it.

Senator HART. Well, just as was true after your first appearance, if on checking the files you find that there is any additional information that would be responsive to those questions I hope you will answer.

Mr. GRAY. Out of a sense of honor and decency, but I do not want to get this pattern going where I am submitting and submitting and submitting. Senator Hart, I have to be honest with you. I think I can sit here pretty long and chat quite a bit with you, but we do have to reach a point of finality, do we not, where you have to vote up or down on me? I am entitled to some kind of a judgment.

Senator HART. Nobody on this committee asked you to go to Cleveland.

Mr. GRAY. I know that.

Senator HART. Having gone there, we have to resolve some things ourselves.

Mr. GRAY. I know that. I realize that.

Senator HART. So, if after you have checked the record, and this has happened several times, in your earlier testimony, and could happen to anybody, you find that you can be more precise in this area, or need to correct your testimony, please provide it. This is not to extend the hearings to January. It is just to enable us all to understand what influences were in operation, or were sought to be applied, on these speeches.

Mr. GRAY. You know, basically I would have no objection to doing that, but I am trying to work on some kind of principle here with regard to additional inserts in this record. Because it stands to reason we can keep going for quite a long time and I think we ought to reach a point of finality. I will make that check for you, Senator.

[Mr. Gray subsequently submitted the following document:]

Mr. GRAY. I have checked our records and they reflect no other examples of the White House making any suggestions to me or my associates that I utilize certain ideas in my speeches.

Senator HART. Do you think it is out of order for me to ask whether you, or anyone in the Bureau who was working on your speeches, received any speech material from the White House?

Mr. GRAY. No, I do not think it is out of order to answer that—to ask that question, and I think probably if we checked that we may have gotten all kinds of stuff that comes flying in. I do not know that we did or did not, but we may have.

Senator HART. Can you check the files and furnish us such materials, if any, as did come in?

Mr. GRAY. I would, but I have a reluctance again, because I can distinctly remember putting together some of those speeches myself. In fact, on every one of those speeches I was the last and final arbiter of what was said, since I had to give it. I can say to you without fear of contradiction that I used no White House material, Senator Hart.

[Mr. Gray subsequently submitted the following document:]

Mr. GRAY. I have made inquiries concerning this matter of whether the White House furnished any material to our speechwriters to be incorporated in my speeches. No such material was furnished to us.

Senator HART. Well, I do not write very good speeches for myself and most speeches that I am anxious to have make sense begin with somebody else. They wind up with my fiddling around with a pencil but the chances are strong that what they began with is retained in some fashion in my end product. That is what I am trying to find out. One may believe that it is not retained but the chances are 50-50 at least that it is.

Mr. GRAY. This is true, but a lot of those speeches I wrote myself from ground zero up on yellow tablet paper while riding around in airplanes making visits to the field offices.

Senator HART. In conclusion on the Cleveland political speech business, Mr. Hoover was invited to speak before the Cleveland City Club in the fall of 1968? I believe you told us that?

Mr. GRAY. I think that is my recollection. In any event, I have furnished that documentation for the record and I will rely on the documentation.

Senator HART. The invitation and any internal memo or buck slip, is that what we got back?

Mr. GRAY. You have received the documentation that we got from the Cleveland City Club file.

Senator HART. That is on your 1972 invitation.

I am talking now about what the files have on the invitation coming in to Mr. Hoover and what memoranda, if any, are attached to that. That would be the 1968 invitation.

Mr. GRAY. David reminds me that you may be referring to an internal notation that is on the yellow or our file copy. I do not know whether that is what you are referring to or not, but we did provide a copy—I think what I am going to have to do is review what documentation we provided and go over it sheet by sheet and find out, to be precise.

Senator HART. It is my understanding that what we have been provided with, with respect to the Cleveland Club's invitation to you in 1972, is a memorandum summary.

Mr. GRAY. You may be referring to the Jones-to-Bishop memorandum of June 16, 1972. Is that correct? Then, you may be referring to the Bishop-to-Felt memorandum of June 27, 1972, Senator.

Senator HART. Those have been provided the committee?

Mr. GRAY. Yes, sir; and those are the ones with my handwriting, where I said "Conceptually let's try a speech responding factually to criticisms of Princeton Conference without identifying. Let's be positive."

Senator HART. All right. What I am asking for is such material, if any, that is in Bureau files involving the invitation in 1968, during the political campaign of 1968, to Mr. Hoover.

Mr. GRAY. No, I will respectfully decline because I fail to see the relevance.

Senator HART. I will tell you why it seems to me to be relevant. It is possible there was a clear recognition on the part of Mr. Hoover why it would be wrong for him to go in 1968.

Mr. GRAY. It is also possible, Senator Hart, that Mr. Hoover did not like to make speeches at his advanced age and did not go anywhere. That is a possibility, too.

Senator HART. All we are trying to do is to find out and that is why I make the request.

Mr. GRAY. I have denied under oath, time and time again, I did not go out and make political speeches. It was not in my heart and not in my mind. That is my testimony.

Senator BAYH. Would the Senator yield?

Senator HART. Yes.

Senator BAYH. I think that you also said if you had that to do over again you probably would not make that speech.

Mr. GRAY. One gets the feeling, Senator Bayh, being here with the U.S. Senators, maybe the Acting Director should not make any speeches. I think, really, the speeches have been misconstrued. I said to you, I think your point is well taken, I have to look carefully at the places where I made these speeches and at what time.

Senator BAYH. I do not want to interrupt further, but I suggest that we are not talking about the FBI Director not making any speeches. We are talking about making speeches in the context of the McGovern-Shriver appearance, and all the things you and I talked about, in the heat of an election. This was not just any speech.

Mr. GRAY. Let me just say, Senator Bayh, if I may, after thinking the discussion through, I have resolved myself that should I ever be confirmed for this position I am never going to make a speech of any kind during a political campaign as it may be misconstrued. I have to take that position.

Senator HRUSKA. Would the Senator yield?

Senator HART. Yes.

Senator HRUSKA. If you are not going to make speeches during a campaign, Mr. Gray, in my judgment you are foreswearing the opportunity to make any speeches at all.

Mr. GRAY. I was thinking of the campaign going through August, September, October, and until election day. And I would think prob-

ably not during August, September, October, and the first week of November.

Senator HRUSKA. There are some who believe the campaign started for some people on November 10, 1972.

Senator BAYL. Will the Senator yield?

I think the opportunity for the Federal Bureau of Investigation to be heard is important. I would not want my remarks to be interpreted as even close to the interpretation which my good friend from Nebraska has suggested. One guy may be running for the Presidency as soon as the polls close, looking 4 years ahead. But that is not an assessment for the Director of the Federal Bureau of Investigation to make.

Senator HART. You went to Cleveland and made that speech after having received from the White House a memorandum that includes this passage:

With Ohio being critically vital to our hopes in November we hope you will assign this forum priority in planning your schedule.

You do not have to be a Ph. D. in political science to figure out there is some politics in going to Cleveland.

Mr. GRAY. Senator Hart, you are absolutely correct and I reached the same conclusion when I read that request. I asked the Crime Research Division to prepare that memorandum for me. I did not willy nilly grab it and go off to Cleveland.

Senator HART. But the memorandum told you the club is not a political club. It does not mean a political speech will not be a political speech.

Mr. GRAY. That is my judgment as to the type of speech I wrote and I submit to you, Senator Hart, that that was not a political speech. Now, you and I certainly may differ and I will respect that difference. It is an honorable difference and it is one made in good faith by both parties. I did not do it that way, sir.

Senator HART. I came into politics when you came into the Navy. That may explain why that was not a political speech to you and why it was a clearly political speech to me.

Mr. GRAY. Senator Hart, to be a politician requires a great deal of expertise and I do not know of any naval officers who have been very good politicians.

Senator MATHIAS. Would the Senator yield to me on that?

[Laughter.]

Mr. GRAY. I am talking about regular naval officers.

Senator MATHIAS. Well, I will not even accept that, Mr. Gray. I have seen some pretty good politicking in the Navy.

Senator HART. On the 28th of August agents of the Bureau interviewed Mr. Chapin. As I get it, he was the appointments secretary of the President and the fellow who came upon Mr. Segretti. Possibly as a result of that interview you were requested by the U.S. attorney, Mr. Silbert, to interview Mr. Kalmbach. In your memorandum summary for the committee, you say Mr. Silbert wanted us to find from Mr. Kalmbach details concerning payments of money to Segretti, such as how much was paid, where the moneys came from, and whether reports were made by Segretti. This is not a matter of raw files. This is a summary of what a responsible attorney, the President's

personal attorney and finance official of his campaign, was saying about his own activities.

You have indicated that your legal counsel decided there was no reason to investigate Mr. Segretti's activities. Was that opinion provided you by a written legal memorandum opinion or was it oral?

Mr. GRAY. I think that opinion was a written opinion and as I recollect the Department attorneys were also consulted.

Senator HART. Have we been provided a copy of that legal opinion?

Mr. GRAY. No, sir; you have not been provided that.

Senator HART. Can we get it?

Mr. GRAY. No, sir. I must respectfully decline because that is a part of the Watergate file.

Senator HART. Remember, that is just a legal opinion.

Mr. GRAY. That is right, but it is a part of that file, Senator Hart. It is in connection with that case.

Senator HART. Well, at least on the 4th of September the U.S. attorney thought it important to find out the details concerning payments of money made to Segretti and what reports were made by Segretti and where the money was coming from.

Your agents were told by Mr. Kalmbach that he paid out to Mr. Segretti sizable sums in cash and he had no idea why this unusual arrangement was used, no idea what services Segretti was performing, or to whom Segretti was reporting, or from whom he received instructions. No questions were asked.

Now, on the basis of what I suggest is a rather extraordinary interview with a man of the stature and sophistication of Mr. Kalmbach, what kind of full-court press did you use to find out for the U.S. attorney what the heck was going on with all that money? Did you go back to Chapin and ask?

Mr. GRAY. I believe you may be reading from that insert I put in the record. Is that the one you are referring to?

Senator HART. Referring to it. I was not reading from it.

Mr. GRAY. That is the insert I put in?

Senator HART. Yes.

Mr. GRAY. That is information that came from an FBI report of interview, as I recall it, and that information was furnished to the assistant U.S. attorney. We would take whatever other instructions the U.S. attorney might have given to us.

But I submit once again, this is substance and I am not permitted to discuss substance.

Senator HART. Just procedurally then, if you had an investigation underway that you think is a full-blown investigation, would you not go back to Chapin and ask him?

Mr. GRAY. No, I think quite to the contrary, that the full FD-302 revealed that quite a bit of information was obtained from Mr. Kalmbach. But I am not going to spread that kind of information again on the record. I believe that I provided an insert for the record on that.

Senator HART. As I get it, the U.S. attorney wanted to know this information about Mr. Segretti, and Mr. Kalmbach was not able to answer. Now, would not an investigator then go to other sources to seek the information and the answers?

Mr. GRAY. I think I can say to you that whatever the assistant U.S. attorney would ask us to do in the way of gathering information, if

he specifically said go do this, we would do it. I think that must be the obvious conclusion here, Senator Hart.

Senator HART. Then that aspect of the full-court press was controlled by the U.S. attorney, not by you?

Mr. GRAY. I was not operating that close to the leads that were being sent out at all on this. This is one of the points that I have tried to make. From the position in which I sit, I do not write leads or develop leads, but it is true that these do come to me in teletypes, maybe 2, 2½, or 3 days later, and I could block these. But I did not do that. Once these leads are sent out and the FBI tactics are set in motion, those leads are pursued.

Senator HART. Did any of your agents seek to go back to Chapin when they ran into "I do not know" with Kalmbach?

Mr. GRAY. No such request was made to me. But, you know, we interviewed other people. It was not a case that we went to Mr. X and Mr. Y and Mrs. Z and then stopped. We kept going all over the place. These leads were going out to all the field divisions that were involved in this, Senator Hart.

Senator HART. Why would you and the Bureau not want to know exactly what Mr. Silbert and the U.S. attorney wanted to know: namely, where the money came from and where it was going?

Mr. GRAY. I think we have to conclude we gave Mr. Silbert the information he wanted to have, otherwise we would have come back again.

Senator HART. It is manifestly clear you were not able to give Mr. Silbert the information he wanted because Mr. Kalmbach was not—

Mr. GRAY. We gave Mr. Silbert the information he asked for, and when Mr. Kalmbach says I do not know, that is the answer we get. We have to take that answer back to the U.S. attorney.

Senator HART. Sure, but having gotten "I do not know" as your answer, would not just a recently licensed private investigator say, "Well, maybe Chapin can give me the answer"?

Mr. GRAY. If he were investigating political work of some kind, perhaps, but we were investigating Senator Hart—and I think you have to keep that in mind—we were investigating an interception of communications offense. There was enough interest on our part later on to ask, as more information came in, whether or not Segretti has committed any offenses and should we investigate. We did that.

Senator HART. Did you obtain the bank records or telephone records of Mr. Kalmbach?

Mr. GRAY. That I do not know, whether we did or not.

Senator HART. Would you provide for the record, in that connection—

Mr. GRAY. No, sir. I will have to respectfully decline to obtain that, because if we obtained them it is included in the record and the chairman and the ranking minority member and the chief counsel and minority counsel have access to the record.

Senator HART. I apologize to my colleagues. I know the lunch hour is here. I have about 5 more minutes.

Now, Mr. Gray, your supplemental answers included lists of your appointments with Mr. Ehrlichman in regard to the Watergate investigation. I notice you have several phone calls with Mr. Dean regarding security leaks of Bureau information but only one appoint-

ment with him on that subject. That appointment was 9:30 in the morning of October 18, last year, just 25 minutes after you had talked to him on the phone about the news article based on Mr. Young's affidavit that Segretti had been shown his FBI interview reports in order to prepare him for a grand jury appearance here in the Watergate prosecution.

Now, when we were talking about this, the first day you were testifying, you indicated to me that you simply called Mr. Dean and asked him if he had shown the reports to Mr. Segretti, and Mr. Dean said no, he did not even have the reports with him in Miami. You said that your tone was such that you thought it made clear to Mr. Dean that he should tell you anything he knew about who might have shown the reports to Mr. Segretti. You said that ended it.

Is it fair to infer that this subject also came up when you saw Mr. Dean 25 minutes later at your office regarding leaks of information?

Mr. GRAY. Yes, sir. I think it is fair to infer that because when I went back and checked the record I saw that this indeed had occurred. I also checked with the field office, where I had been on that occasion, to see if I had had any telephone calls there, and I find that I did have phone calls with Mr. Felt, Mr. Petersen, and with my own office, as I recollect it. I tried to ascertain whether or not on the 17th I had a telephone call with Mr. Dean. I cannot determine if this is a fact, whether I did or not. But I definitely called him on that morning and I—

Senator HART. On the 18th?

Mr. GRAY. Yes, sir: and when I went back and worked over my calendars and saw my appointments, I think it is fair to infer, because what he was discussing with me in that particular meeting was that particular article.

Senator HART. Well, what was the substance of your conversation that morning when Mr. Dean came to your office?

Mr. GRAY. As I can best recall, it was a general discussion of the leaks that had to come from within the Bureau, within the grand jury, within the assistant U.S. attorney's offices. It was that type of a discussion. Although I cannot remember specifically discussing that one particular allegation again with him, I remember the one with regard—particularly with regard to the grand jury. Were we getting this grand jury information, and was this in the FBI file.

Senator HART. Was there any discussion about leaks from the White House?

Mr. GRAY. Certainly, I would raise that, Senator Hart. I did every time, but, as I testified earlier, I do not want to testify as to the techniques and tactics that we use trying to uncover leaks. We do do that, but we do not run every one of them down. I did not run every one down that appeared in every newspaper article.

Senator HART. I had the impression from your testimony the first day that the only running down you did in this case was to phone Dean and make clear, first, did he do it, and he said he did not, and by your tone you made clear you thought it would have been wrong if he had. But it went beyond that?

Mr. GRAY. I cannot remember that I specifically brought that up with him again, when he was there discussing this particular article and several others that were around during that period of time.

Senator HART. Well, within 25 minutes of that phone call you told us about, when you were here the first day, you had a meeting with him. Your phone call was entirely and precisely on the story that Segretti had been shown Bureau files. Then 25 minutes later you meet him. Certainly, there must have been a very sharp discussion about it?

Mr. GRAY. Certainly, there was a very sharp discussion on the phone, and I was able to recollect from the telephone conversations at the Salt Lake City field office that this was one of the things that had been reported to me, along with many other things reported to me.

Senator HART. Well, according to, as reflected in, the record you furnished the committee, you saw Mr. Ehrlichman the next day, the following day, that would be October 19, and from the records you furnished us you saw him about safeguarding investigative procedures against leaks.

Now, did the newsstory about Mr. Young's affidavit, and his claim that Segretti had been shown his interview report, come up for discussion when you saw Mr. Ehrlichman?

Mr. GRAY. No; because Mr. Ehrlichman did not mention specifics but he mentioned the general run of leaks of information that were appearing in the newspaper.

Senator HART. Well, did you mention it to Mr. Ehrlichman?

Mr. GRAY. No; I did not discuss it with him.

Senator HART. Maybe this is Monday morning quarterbacking, but why did you not?

Mr. GRAY. I was over there, being called on the carpet for leaks of information. That is the way I felt, at least, and was told to safeguard and—

Senator HART. What did you discuss with Ehrlichman that morning?

Mr. GRAY. The general subject of leaks and those that were occurring, particularly in that month of October, and those that had been occurring all along. We discussed the charges that had been made in the papers, the reference was to FBI sources, and they got pretty strong in some of these articles attributing them right to FBI agents who said that political sabotage was involved here. FBI agents just were not saying that kind of thing.

Senator HART. Well, I would assume that the story about the Segretti leak that appeared the morning before would have been pretty hot stuff around the White House and that it would have been the subject of your conversation.

Mr. GRAY. We did not discuss Segretti or anybody in particular. We discussed the whole gamut of leaks. You know, it seemed to me that we were constantly being called upon because of leaks within the FBI and I resented it, because I do not think that there were leaks within the FBI.

Senator HART. Now, you indicated to the committee that subsequent to the start of these hearings an agent or agents did interview Mr. Chapin to determine whether he had shown any Bureau reports to Mr. Segretti in Miami; is that correct?

Mr. GRAY. Yes, sir; that information is now in the public record, but I would respectfully decline as I did this morning to testify more with regard to that.

Senator HART. I believe you did testify the check to Chapin was not at your request?

Mr. GRAY. I believe I indicated that, and I have no recollection that I did this. I think this came about as a request from the Department of Justice to make the contact.

Senator HART. Can you advise for the record, why that check was made?

Mr. GRAY. No, sir; I respectfully decline, as I did with the other members of the committee who asked this kind of substantive questions or to deal in these names.

Senator HART. You cannot help us to understand why that subsequent inquiry was limited just to Chapin and did not extend to Young or Segretti or Dean?

Mr. GRAY. No, I cannot help you, Senator Hart.

Senator HART. I think Senator Bayh asked on the subject of Dean's presence during the interviews with White House personnel by Bureau agents, was Dean the lawyer for the White House personnel or was he the investigator for the President?

Mr. GRAY. I think I testified, Senator Hart, quite a few times that my understanding of it was that he was there in his official capacity as counsel for the President, conducting the inquiry that he had been ordered to conduct by the President. I believe that is my testimony.

Senator HART. Well, that was my understanding, and yet Mr. Ehrlichman says he asked Dean to be present when he was being interviewed to serve as his lawyer. And if I read it right, Mr. Ziegler says in every instance the White House agent being interviewed asked that Dean be present. And at his very last press conference President Nixon said Dean had an attorney-client privilege, that we could not get him up here because he had an attorney-client privilege that ran to the White House personnel that were interviewed by the Bureau. Why do you have the impression that Dean was functioning for the President when these other people say he was functioning as a lawyer for the personnel?

Mr. GRAY. I cannot answer for that part of it. I can account for what my understanding is because that was the understanding conveyed to me initially. I think the attorney-client relationship is involved in this whole matter of the separation of powers and the relationship of an assistant to the President and the counsel to the President.

Senator HART. Well, given the rather impressive array of people who think that Dean was functioning as a lawyer for the people at the White House being interviewed, would not that change your view as to the propriety of giving Dean Bureau investigative reports? Would that not be a clear case?

Mr. GRAY. I would have to think that one through, because I feel that when counsel to the President, acting in his official capacity, makes a request to the Federal Bureau of Investigation, he is entitled to have that request honored, particularly in a situation like this where he is performing an investigation for the President of the United States. I think any President of the United States would have insisted upon it.

Senator HART. Well, in your mind, he had one hat on, and in the mind of Ehrlichman and some others, he had another hat on, and I guess we can say he was wearing at least two hats.

I wind up by asking your reaction to this. In the litigation brought by the Democratic national chairman involving Watergate, the judge in that case, Judge Richey, barred a Civil Division Justice Depart-

ment lawyer from representing Mr. Colson in that civil suit over Watergate because others in the Justice Department were involved in the prosecution and would have access to investigative files. Does it not seem a far more serious problem of conflict if the person serving as legal adviser to the White House staffers and the person having access to FBI investigative material because he was conducting an inquiry for the President were one and the same person, Mr. Dean?

Mr. GRAY. This happens quite a few times in the Department of Justice, where between the various divisions we find ourselves in this particular position. However, it is not to me anywhere near the same situation where the counsel to the President is charged with the responsibility to conduct an inquiry for the President and report to the President. I think that it is proper to make that information available and I think that any President would require it.

Senator HART. And he was also the person sitting there as lawyer for the subjects being interviewed. It seems to me a clear conflict.

Mr. GRAY. Senator Hart, I testified many times on this record as to what my understanding is, and that has got to be my testimony of record, because it just is.

Senator HART. I would ask that the order which I read, issued by U.S. District Judge Charles Richey, and related news stories, be made a part of the record.

The CHAIRMAN. So ordered.

[The documents referred to follows:]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1233-72

THE DEMOCRATIC NATIONAL COMMITTEE, ET AL., PLAINTIFFS

v.

JAMES W. McCORD, ET AL., DEFENDANTS

ORDER

Upon consideration of plaintiffs' Motion to Disqualify the Department of Justice from Acting as Counsel for the Witness Charles W. Colson and the Opposition to said Motion filed by Irwin Goldbloom, Special Litigation Counsel, Civil Division, United States Department of Justice, attorney for Charles W. Colson, the Court finds:

1. That the plaintiffs have sought to take the oral deposition of Charles W. Colson, a possible witness in this action;

2. That the Department of Justice is supervising an investigation into alleged criminal conduct of the named defendants herein and possibly others unknown to this Court. Moreover, the subject matter of such criminal investigation is related to the subject matter of this action;

3. While there is some authority for the Department of Justice to furnish Mr. Colson or other government officials with one of its attorneys to act as his or their private counsel in this matter, such special representation will not be condoned by this Court because the Justice Department is otherwise engaged, through other employees, in a criminal investigation of the subject matter which is akin to the gravamen of this civil action.

Wherefore, by virtue of the foregoing, it is this 4th day of August, 1972.

Ordered, that the motion to strike and disqualify Irwin Goldbloom as attorney for Charles W. Colson be and hereby is granted; and it is

Further ordered, that any noticed depositions of Mr. Colson be and are hereby postponed until such time as Mr. Colson has obtained the representation of other counsel, and until such time as such new counsel has had an opportunity to acquaint himself with this action; and it is

Further ordered, that Mr. Colson shall obtain counsel to represent him within 10 days of service of this order upon him; and it is

Further ordered, that the United States Marshal, or his designated deputy, shall serve this order upon Charles W. Colson forthwith.

CHARLES R. RICHEY,
U.S. District Judge.

[From the Washington Post, Aug. 15, 1972]

APPEAL IS SET IN WATERGATE CASE DECISION

(By Carl Bernstein and Bob Woodward)

The Justice Department announced yesterday that it intends to appeal a federal judge's ruling that it cannot represent White House aide Charles W. Colson in the Democrats' \$1-million civil suit in the Watergate break-in.

U.S. District Court Judge Charles R. Richey had disqualified a Justice attorney from representing Colson on grounds that the department is handling the separate criminal investigation of the Watergate incident.

In a court motion filed yesterday, the Justice Department contended that the disqualification of its attorney could prevent it from protecting the functioning of the President's staff.

"Mr. Colson, as special counsel to the President is, of course, involved in many important and sensitive executive functions," the motion said. "As such, any wide-ranging inquiry on a deposition could well intrude into matters relating to his official duties."

The Democrats have subpoenaed Colson to take a formal statement from him. They have done this on the grounds that he may have knowledge of the case.

At the same time, Justice also yesterday filed notice that it will appeal Judge Richey's similar ruling that Alfred Wong, the chief of Secret Service technical security at the White House, cannot be represented by the department in the case.

Five men were arrested inside the Democratic national headquarters at the Watergate here on June 17. They were carrying electronic eavesdropping and photographic equipment.

The Democrats filed the \$1-million civil suit against the five suspects, one of whom is the former security chief of President Nixon's campaign committee, on the grounds that the incident was a potential infringement of the constitutional rights of all Democrats.

In yesterday's court motion, the Justice Department asked that Judge Richey delay his disqualification orders pending formal appeal.

Meanwhile, a White House spokesman said yesterday that President Nixon will not appoint a two-member, bipartisan commission to investigate the Watergate incident, as requested Friday by Sen. William Proxmire (D-Wis.).

In addition to asking the President to name an investigating commission, Proxmire introduced a Senate resolution Friday that would establish such a commission if Mr. Nixon failed to do so.

Since the disclosure that a \$25,000 campaign check passed through the Committee to Reelect the President to the bank account of one of the suspects, the incident has been growing as a political issue in the campaign.

On Sunday, Democratic presidential nominee George McGovern told a television panel that, "I am going to talk about it on every stage and to every audience I reach across this country, until we bring this matter out into the open."

[From the Los Angeles Times, Aug. 31, 1972]

NO LEGAL HELP FOR NIXON AIDE

WASHINGTON.—The Justice Department gave up its efforts Wednesday to represent a top White House aide in a \$1 million civil suit filed against five men accused of bugging Democratic National Committee headquarters.

Reversing an earlier decision, the department decided, in effect, that White House counsel Charles W. Colson must obtain his own lawyer.

A Justice Department spokesman refused comment on why appeal was dropped to a federal judge's ruling that the department may not assign a lawyer for Colson.

U.S. Dist. Judge Charles Richey had ruled that a parallel criminal investigation conducted by the Justice Department would create a conflict of interest if a government lawyer were to defend Colson when he delivers a deposition to attorneys for the Democrats.

It was Colson who hired former CIA agent E. Howard Hunt, who has been connected with the five men arrested in the case, including James W. McCord, who until recently was security chief for the Committee To Reelect President Nixon.

Senator HART. Thank you.

The CHAIRMAN. We will recess now until 10:30 tomorrow morning.
[Whereupon, at 12:50 p.m., the hearing was recessed, to reconvene at 10:30 a.m., Wednesday, March 21, 1973.]

NOMINATION OF LOUIS PATRICK GRAY III

WEDNESDAY, MARCH 21, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:43 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Byrd of West Virginia, Tunney, Hruska, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, professional staff members.

Senator EASTLAND. The committee will come to order.

Senator Kennedy.

Senator KENNEDY. Thank you.

Good morning, Mr. Gray.

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. Good morning, Senator Kennedy.

Senator KENNEDY. If I could, I would like to ask you what information you could give us about the progress that has taken place in the ITT investigation. I think some time ago I asked you about that investigation, which started in December of last year, and I am just wondering now if you are able to give us any information as to its progress?

Mr. GRAY. Well, Senator, I would like to be able to give you some information on that and comment on it. It is an ongoing investigation. My latest information is that it is almost complete and I do not know this morning whether or not the four interviews that we had to do have been completed.

Senator KENNEDY. The four interviews?

Mr. GRAY. Yes, sir; I believe that the last time you and I discussed it, I stated that I had learned, coming up in the automobile, that we had four more interviews to do.

Senator KENNEDY. Did you at any time consider disqualifying yourself from the ITT investigation?

Mr. GRAY. No, Senator Kennedy, I would not. I thought about that. I thought about it just—I think it was last week in connection with another case that came up, and I think—

Senator KENNEDY. What case was that?

Mr. GRAY. Well, it is a completely different one, totally unrelated and doesn't involve anything that we have been discussing here,

Senator. But I thought about it in connection with that case, too, and I feel that I have got to stay in these cases as the Acting Director of the FBI. I feel that I must try to do what is expected of me in that position. I didn't disqualify myself.

Senator KENNEDY. Could you review with us what your role was at the time this committee was considering the ITT case, your counseling and advising of Mr. Kleindienst?

Mr. GRAY. Yes, sir.

Senator KENNEDY. Were you in touch with the people from ITT during that period of time? Did you have communications with some of those that were being referred to in the course of the investigation?

Mr. GRAY. Senator, I believe not. I believe the only time I saw those people was up here. I am testifying now from memory because I haven't gone back and studied the ITT case. But I believe that my only contact with those people would have been up here. As you know, I was the Deputy Attorney General designate at that time. I had been nominated for that position, and as I testified earlier, there did come a time during the ITT hearing when I remember a colloquy here between a Senator and the then Acting Attorney General regarding his continuing to act on requests for material from the Department. I don't know that we can find that in the record, yet I seem to remember it.

Senator KENNEDY. One was the request we made for the file that had been turned over to the SEC, which had a great deal of information relating to ITT, as we have seen in the last few days. That was one of the requests that were made?

Mr. GRAY. Yes, sir, and I can state under oath here that I had no connection with that SEC file at all. I didn't even see it.

Senator KENNEDY. How would you describe your function up here? You said you were up here during that period?

Mr. GRAY. I was the Deputy Attorney General designate then serving as the Attorney General in charge of the Civil Division, and I was in charge of the attorneys in the Department who were doing a review. What we were trying to do was put together issues-and-answers papers, and also there came that time during the hearing where I began to actually act on the document requests. My recollection is that the first letter that I signed up here—I know I had some conversations with Mr. Comegys and I know he and I had an exchange. I think I am correct in saying the first letter I signed up here was on or about March 17 of that year.

Senator KENNEDY. You were very much involved in that, were you not, in counseling or guiding and working closely with Mr. Kleindienst during the period in which he was up here being considered for the nomination?

Mr. GRAY. Senator, I think it would be quite accurate to say I was supporting him because indeed I was, but I was not in the position of counseling or guiding him because what I was learning about ITT I was finding out on an almost daily study basis. Therefore, I was not in a position where I occupied, where I could give him any counsel or guidance—

Senator KENNEDY. How else would you describe that relationship, other than being a counselor, if you were supporting him, working with him, trying to help him respond to committee requests?

Mr. GRAY. I was digging up answers and working with the attorneys in the Department and preparing issues-and-answers papers for utilization in trying to prepare the Senators on the floor.

Senator KENNEDY. Those were answers to questions which were being asked by Senators, were they not?

Mr. GRAY. I don't know—well, first there were questions that were being asked where we were being required to put the material in the record, that is correct. Then there was another phase where we were doing issues-and-answers papers.

Senator KENNEDY. But you were preparing answers to questions that might be asked by Senators in the course of the investigation. How much further could you be involved in the course of working with him?

Mr. GRAY. I would say I was pretty much involved with working with the attorneys. I wasn't actually doing it myself. I was the leader, the coordinator, that sort of thing.

Senator KENNEDY. You were the leader and coordinator for the Kleindienst forces in maintaining, I imagine, the Attorney General's position that had been laid out here before the committee and which was being tested in various questions by members of the committee; were you not?

Mr. GRAY. I would say that is a fair statement, doing the same thing we are now—when a Senator asks for an insert, to get that material and put it together.

Senator KENNEDY. During the course of the time that you were preparing these responses to questions did you have occasion to talk with Mr. Mitchell?

Mr. GRAY. I don't recall that I did. I have really to search back to that, Senator, and try to think all that through, and I just don't think that I can answer that question. I am trying to think whether I would have had any reason to talk with him, whether there would have been anything for me to say to him or to receive from him. It really wasn't that type of thing I was doing. My recollection is no, but—

Senator KENNEDY. Do you know a Mr. Flanagan whose name was prominently associated?

Mr. GRAY. That is right, I remember that.

Senator KENNEDY. Did you have occasion to talk with him?

Mr. GRAY. No, I was not in that kind of circuitry in that operation. This is my best recollection.

Senator KENNEDY. How about Mr. Dean?

Mr. GRAY. I don't know that he was even involved in that at the time. He may very well have been. The only time that I came in contact with him, of course, was with the matter of that memorandum and not in connection with the development of inserts for the record or issues-and-answers.

Senator KENNEDY. Was that the only conversation that you had with him?

Mr. GRAY. I believe that it is. It is foggy and I have tried with the assistance of others to recollect and try to piece that together. But it is my best recollection that that is the only conversation that I had with him in connection with the ITT.

Senator KENNEDY. Certainly this was a case which was enormously sensitive to the Justice Department. As a matter of fact, Mr. Kleindienst himself allegedly sent a note disqualifying himself from re-

sponsibility and indicating McLaren had responsibility for it. Why couldn't you do the same thing with regard to the ITT investigation in the FBI?

Mr. GRAY. You mean write off responsibility?

Senator KENNEDY. Well just indicate that anything that comes in goes to my Deputy Director in this case?

Mr. GRAY. I don't like that idea, Senator.

Senator KENNEDY. When would you do that? Do you see any circumstances in which you might?

Mr. GRAY. I think there are.

Senator KENNEDY. Can you describe what they are?

Mr. GRAY. I have to look at it case by case.

Senator KENNEDY. I have given you an ITT case.

Mr. GRAY. No, I don't, because I am not going to tell the men and women of the Federal Bureau of Investigation to do anything in that ITT case that wouldn't be in accordance with the standard FBI operating procedures. I am going to tell them as they work with the Assistant U.S. Attorneys to carry out their instructions.

Senator KENNEDY. Excuse me. It was Mr. Mitchell who disqualified himself and let Mr. Kleindienst do the ITT case, even though Mr. Mitchell had the general responsibility for the Department. He placed himself out of any kind of potential appearance of conflict did he not?

Mr. GRAY. But he has the ultimate decision to make.

Senator KENNEDY. Who has it in the FBI with regard to this investigation? Don't you have it?

Mr. GRAY. We don't decide things like that in the FBI. We push a button and start to investigate and go. It isn't a situation where they come up to me and ask me at each step of the way for guidance in this. It isn't that type of thing where you have to make the final decision to prosecute or not prosecute. We develop the investigation and deliver that investigation to the Assistant United States Attorneys and work with them on it. But it isn't a thing where the Acting Director of the Federal Bureau of Investigation is injecting himself, you know, on a daily basis or an hourly basis.

Senator KENNEDY. But you decide whether they investigate Martha Mitchell or Mr. Mitchell?

Mr. GRAY. No, not really.

Senator KENNEDY. No, not really?

Mr. GRAY. Not really, Senator Kennedy. I don't decide that. Recommendations are made and come up to me, and in these particular cases you are referring to now, Martha Mitchell, for example, I approved that recommendation that she be interviewed and I think the testimony of record shows that.

Senator KENNEDY. Well, with John Mitchell's approval?

Mr. GRAY. Sir?

Senator KENNEDY. With or without Mr. Mitchell's approval?

Mr. GRAY. With the recommendation, as I recall reading it into the record right off the memorandum, that we consult with the Department.

Senator KENNEDY. Are any of the progress reports on the ITT affair going to the White House?

Mr. GRAY. I believe not, sir.

Senator KENNEDY. Do you know that they are not?

Mr. GRAY. I will have to check, sir. That is an ongoing investigation and I will check, sir.

Senator KENNEDY. So is the Watergate.

Mr. GRAY. I know. I will check to satisfy myself, but this is an ongoing investigation and it is an investigative file. Senator, and I have to respectively decline to answer some of the substantive questions here.

Senator KENNEDY. Not substantive. I am not asking what is in the material but whether the material is being made available; or did you give an order that none of those materials were to be turned over to the White House without your approval?

Mr. GRAY. No, I gave no such order.

Senator KENNEDY. How about the Justice Department? Do you know whether, as a matter of course, some of the results of the investigation might be turned over to the Attorney General?

Mr. GRAY. I am sure that the assistant U.S. attorney level, and I would say that the Assistant Attorney General level in the Criminal Division, would certainly be receiving these reports, but I don't know of any other transmission.

Senator KENNEDY. Wouldn't you want to know whether this, or any other matter as sensitive as this, is being turned over to the Attorney General or to the White House?

Mr. GRAY. I think I probably would, and I would have no reason to believe that it is.

Senator KENNEDY. Would you feel that they should be issued or not, given what you know about the Watergate affair, and about the leak of the Beard memorandum? What would be your judgment if you had a choice?

Mr. GRAY. I think that would be a fairly tough choice.

Senator KENNEDY. It might easily be a choice—we are interested in seeing how you would decide.

Mr. GRAY. I think probably this would be in the Attorney General's realm, that after the discussions that we have had concerning this matter, I think that probably I would do this. But I would have to meet it head on if a request was made by the White House to provide that.

Senator KENNEDY. But, Mr. Gray, he has been one of the witnesses in the investigation, and you still think that you could turn that material over to the Attorney General? He is one of the principal figures.

Mr. GRAY. I was testifying here on these confirmation hearings, that is correct.

Senator KENNEDY. And doesn't that disqualify him?

Mr. GRAY. Disqualify me?

Senator KENNEDY. No, if he was one of the figures who has been involved in the whole consideration of the investigation, wouldn't that cause you at least some concern about turning that material over to his office? He has an interest, does he not, in what the results are?

Mr. GRAY. I think he does. I would say that this is probably a decision that he has got to make himself as to whether or not—

Senator KENNEDY. What decision are you going to make?

Mr. GRAY. I am giving the material certainly to the assistant U.S. attorneys with whom we have to work and to the Criminal Division of the Department of Justice.

Senator KENNEDY. Are there U.S. attorneys involved in this case?

Mr. GRAY. I am not certain whether they are at this time or not. They are probably not at this time. We are probably taking direction and guidance from the Criminal Division of the Department with regard to the conduct of the investigation.

Senator KENNEDY. So you wouldn't have to turn any materials over to them at this time, would you?

Mr. GRAY. Probably not, Senator. But there will come a time when we will be working with them, and I was talking in terms of our normal process.

Senator KENNEDY. But do I understand that in the meantime you would still be willing to turn that material over, even material in which the Attorney General would have a personal interest?

Mr. GRAY. I am turning it over certainly to the Criminal Division, and I think this is a decision that has to be made at the Attorney General level whether or not he feels himself disqualified in this case.

Senator KENNEDY. What about the White House? Your response is you are not at this point prepared to indicate whether files regarding the investigation of the ITT have actually been made available to the White House?

Mr. GRAY. Well, the White House hasn't initiated a request for them yet. I don't know that they will initiate a request, and I will have to meet that head on when it comes to me, Senator.

Senator KENNEDY. You couldn't tell us now?

Mr. GRAY. I don't know. It is a tough question. It is one that may very well go—

Senator KENNEDY. Well, say Mr. Dean calls you up and says the President wants to see those files. Given the track record of these last few weeks, what would you give him?

Mr. GRAY. I think I would have to give it some very serious consideration, Senator Kennedy.

Senator KENNEDY. What more would you have to consider? Mr. Dean's point of view?

Mr. GRAY. Well, you have the fact that I am sitting here as a Bureau Chief, heading up a Bureau in an executive department, the Department of Justice. You have a man who is counsel to the President of the United States. That man calls you in his official capacity and says he has been directed to conduct an inquiry into this matter by the President of the United States. I think that is the way it could come. That is the only way I know it could come. I will have to make that decision again.

Senator KENNEDY. This investigation was really the result of the request by the Judiciary Committee. Could you tell us, is this a full field investigation, or is it a particular interview investigation?

Mr. GRAY. We are conducting it in accordance with the terms set forth to us by the Department of Justice.

Senator KENNEDY. Is that full field or a particular investigation?

Mr. GRAY. I don't know what you mean by "full field." If you mean—

Senator KENNEDY. I guess the words are "full court press."

Mr. GRAY. Yes, that is the phrase that I used and the phrase that is used in the Federal Bureau of Investigation.

Senator KENNEDY. Is it that kind of—

Mr. GRAY. It arises from handball games or basketball games.

No. I would say in this investigation that we are being directed by memorandums from the Criminal Division.

Senator KENNEDY. From the Justice Department?

Mr. GRAY. From the Justice Department. But they have requested it, though, from the Judiciary Committee.

Senator KENNEDY. That is what I am trying to find out, so we can have some idea of what we are going to receive, whether this is just casual interviews with particular people that have been interviewed or whether we are going to receive the kind of full court press investigation which I think the Judiciary Committee felt was necessary?

Mr. GRAY. Certainly I can say that within the scope of the investigation, within the dictates of the memorandums and the instructions from the Department of Justice, you are going to get the full court press treatment, Senator Kennedy.

Senator KENNEDY. Would the materials resulting from that investigation be available to the Judiciary Committee?

Mr. GRAY. That is an investigation, Senator Kennedy, conducted by the Federal Bureau of Investigation, and traditionally those have not been made available and they are not available now.

Senator KENNEDY. Even when it is conducted at the request of the Judiciary Committee and not initiated either by the executive itself or the FBI, but by the Judiciary Committee?

Mr. GRAY. Still an investigation conducted by the Federal Bureau of Investigation, and the traditional policies with regard to its investigative files would apply.

Senator KENNEDY. From what I gather from your response, we would not be able to receive the material, but the Attorney General would be?

Mr. GRAY. I don't know what the final decision will be in that matter, Senator Kennedy. I don't predict it.

Senator KENNEDY. I would like to go into an area which has been touched on briefly during the course of these hearings, but I would like, if I could, to review this material with you again. This is to better understand the order and the thinking in your own mind about the considerations which went into your decision in responding to different requests. I am speaking now about the July 17 request by John Dean, asking you for a memorandum on the political espionage and sabotage, as a result of which, on July 21, you sent such a memorandum to the Attorney General assuming that it would go to Dean. We have been over that particular subject.

Now, I would like, if I could, to really get straight what happened. In relationship to the request from Mr. Dean, do you remember whether you said "Yes" or whether you said "No," whether you said "Maybe," or what exactly your answer was? Do you remember at this time?

Mr. GRAY. No. I don't remember whether I said "Yes" or whether I said "No." I said this is one I want to think about, and I can remember discussing it within my own office. I think that I resolved personally that I was going to ask for an opinion from our own Office of Legal Counsel with regard to this, because—

Senator KENNEDY. With regard to what?

Mr. GRAY. With regard to providing a letterhead memorandum summarizing the status of the investigation.

Senator KENNEDY. Let me see if I understand this. You were going to ask your counsel about your legal responsibility, as to whether you ought to respond to a direct request, or what, from——

Mr. GRAY. No, in a criminal case whether we are under a duty to provide this.

Senator KENNEDY. Provide——

Mr. GRAY. Provide a letterhead memorandum. In other words, should we initiate it? I had this same problem on June 19 when I stopped it, when we were holding things very closely.

Senator KENNEDY. Well, as I understand, it is not a question of whether you initiate it but whether you are responding to a request.

Mr. GRAY. This was a request; that is correct.

Senator KENNEDY. So it is not a question of your initiation. He had requested you to——

Mr. GRAY. That is correct.

Senator KENNEDY. And at any time during your conversations did you indicate to him that the Attorney General ought to decide?

Mr. GRAY. I don't think I said it that way. I said—trying really to remember—and it was, I think, the second telephone call when I told him—yes, it was the second call—that I was in the process of obtaining a legal opinion in this matter.

Senator KENNEDY. Do you remember whether you told the members of your immediate staff about this request?

Mr. GRAY. They must have known about it, because I asked for that legal opinion, but I can't recall.

Senator KENNEDY. Do you remember what you asked of your Office of Legal Counsel?

Mr. GRAY. I would have to refer to the opinion.

Senator KENNEDY. Well, we have the opinion, and it is included; but do you remember if you asked them whether it was appropriate for the FBI Director to make this material available or to respond to such a request, or what you really asked him? Here you had a request, as I understand it, from Mr. Dean, and I am just interested in what you actually requested from the Legal Counsel?

Mr. GRAY. I am pretty sure my recollection, without having that in front of me, was that I asked did we have an obligation under our rules and regulations and our procedures to provide such a memorandum to the Counsel to the President. I would have to look at that memorandum to be sure.

Senator KENNEDY. On your own initiative or on request?

Mr. GRAY. Well, both were covered in that memorandum.

Senator KENNEDY. Because the memorandum provides—do you have a copy in front of you, Mr. Gray?

Mr. GRAY. I know we submitted it for the record.

Senator KENNEDY. In paragraph 2 of the memorandum, it says—this is now from your counsel to Mr. Felt——

We did not consider the matter of disseminating such information to the White House on specific White House request. In this latter situation, we assumed the President is the top——

Mr. GRAY. That is right.

Senator KENNEDY. Really, wasn't that the——

Mr. GRAY. Well, it must have been, but my recollection was to the contrary, because I can recall discussing this with Mr. Felt and——

Senator KENNEDY. Did you tell counsel that this was as a result of Mr. Dean's request, that you wanted—

Mr. GRAY. No, I did not.

Senator KENNEDY. Any reason why not?

Mr. GRAY. I can think of no reason at the present time other than perhaps it may have produced a different type of opinion if he had known it was coming in that manner.

Senator KENNEDY. Isn't that what you were trying to find out?

Mr. GRAY. I wanted to find out the real opinion because of the efforts I had been making to try to set a standard policy within the FBI. I have been trying to do that.

Senator KENNEDY. Wouldn't you want your own counsel to know what these requests were?

Mr. GRAY. Yes, I probably would. I can't remember whether I said this or not and apparently I did not say it. I just can't recall.

Senator KENNEDY. And you don't know whether Mr. Felt knew about the direct request?

Mr. GRAY. I can't recall. I think yes, he did. He and I discussed it and I said regardless—I can remember talking with him—regardless of who is President, I think they would be entitled to it, but I want to check it.

Senator KENNEDY. That really isn't what the legal memorandum says. It says, "We do not consider the matter of disseminating such information to the White House on specific White House request."

Mr. GRAY. The only reason I can account for this is that I might want him to look at this cold and cover the procedure.

Senator KENNEDY. Look at which question?

Mr. GRAY. The question of dissemination.

Senator KENNEDY. But as I understand it, the question was whether you had the responsibility of supplying it at the request of Mr. Dean. That was the question that you were looking at cold, was it not?

Mr. GRAY. It was a question of supplying it to the White House.

Senator KENNEDY. After a request?

Mr. GRAY. That is right, sir.

Senator KENNEDY. You do not have any memory whether you told Mr. Felt either to tell your counsel or not to tell your counsel whether that was a—

Mr. GRAY. I do not, sir.

Senator KENNEDY. Could you have told Mr. Felt not to tell—

Mr. GRAY. It is possible, because I vaguely remember saying to him in discussing it with him with regard to prior FBI procedure, that regardless of who is President I would feel that the President would be entitled to this. But I can't recall specifically. This isn't one on which we apparently made any kind of a written notation or note.

Senator KENNEDY. So you had made up your own mind that you had a responsibility of making that information available to the White House?

Mr. GRAY. No, I had not. Senator Kennedy. I had not.

Senator KENNEDY. Well, you didn't indicate that you wanted any legal guidance on that particular issue, did you?

Mr. GRAY. Yes, I did. I said I wanted to take a very, very careful look at it. I discussed it with Mark Felt.

Senator KENNEDY. You could not read this memorandums and think that this was the subject matter. I think you stated directly it was a

general kind of legal memorandum about the dissemination of material by the FBI on their own initiative; and it says quite explicitly "we did not consider the matter of disseminating such information to the White House on specific White House request." That is why it is difficult for me to understand, if this request was made of you and if you indicated you wanted an opinion on it, why that is not clear in the—

Mr. GRAY. I can't explain that either, except I can recall discussing this with Mr. Felt on the phone. I think it was from Salt Lake City. I know that we discussed the President's—and I was rationalizing to myself, would I do this regardless of who was elected President and I came down on the side of "yes," but I wanted to check it.

Senator KENNEDY. Now, in the latter part of that, the last lines say: "The authority and obligation of the FBI are to keep the Attorney General fully informed and leave the rest to him." Those lines are underlined. Then your statement: "Do so in this particular case and all future cases." Is that correct?

Mr. GRAY. That is a correct statement and that is my red underlining on the original.

Senator KENNEDY. And so you sent the information over to the Attorney General?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. And why did you send it over to the Attorney General?

Mr. GRAY. Because of the policy and the practice and the procedure within the Department, and because I was trying, once again, to get these channelized and to try to get this kind of material—when we are preparing a written response to a request—to come through the Cabinet officer and go through the Cabinet officer.

Senator KENNEDY. I think we have been over that. Even though the request went, it didn't have any charge, remark, or note, even to Mr. Dean. We have been over that.

Mr. GRAY. Yes, sir, and I think I testified that I either called the Attorney General or—I just can't be positive which. I think it was the Deputy Attorney General—and told him that I had this discussion with Mr. Dean and that this letterhead memorandum would be coming up.

Senator KENNEDY. Now, yesterday you said that on July 20, Magruder told your agents about Dean's relationship with Liddy: is that correct?

Mr. GRAY. Are you referring, Senator—the report of interview of Mr. Magruder?

Senator KENNEDY. That is right. On July 21, you sent the memo over to the Attorney General, assuming it would go to Dean, based upon what we have just reviewed. Now, on July 20, your agents, as I understand, learned of Dean's relationship with Liddy: is that correct? I think that is what you testified yesterday.

Mr. GRAY. Yes, as I recollect that 302—once again I am testifying in substance, but I said it yesterday and I want to try respectfully to stay away from this kind of material, because of my instructions—that a recommendation had been made by Mr. Dean and Mr. Krogh to Mr. Magruder regarding Mr. Liddy as a counsel. That is what I recall is in that 302.

Senator KENNEDY. Now, on the 24th you saw the 302?

Mr. GRAY. No, Senator Kennedy. On the 24th, I believe my testimony is that I read the note attached to a teletype summarizing the interview and the note itself had absolutely nothing in it along those lines.

Senator KENNEDY. On what lines, you mean about—

Mr. GRAY. The recommendation for counsel.

Senator KENNEDY. But that Dean was involved at all?

Mr. GRAY. No. No, it did not say that. That is the best of my recollection. I don't have that in front of me, but that is available to the chairman and to the ranking minority member. The best of my recollection is that there was nothing in there that alerted me to Dean's being involved in a recommendation at all.

Senator KENNEDY. And no mention of Mr. Liddy, either?

Mr. GRAY. Not as I recall in connection with Mr. Dean. This is going to have to be looked at by the people who have access to this file. But I do not recall.

Senator KENNEDY. None of us—or, at least very few of us—can look at it, and that is part of the problem at this particular time.

But your testimony is that you did not look at the 302?

Mr. GRAY. No, sir. I did not have it.

Senator KENNEDY. You looked at what?

Mr. GRAY. I looked at the white note that is put on the upper left-hand side of a pink teletype. That is my best recollection.

Senator KENNEDY. So you were not put on notice at this time of any—

Mr. GRAY. No, sir, and I don't think I have been put on notice at any time here with Mr. Dean being involved, nothing in the evidentiary pattern that indicated—

Senator KENNEDY. Do you think the chances of your being put on notice would have been greater if people in the Department had known of the Dean request initially?

Mr. GRAY. The people in the Department of Justice?

Senator KENNEDY. Yes, in your own Department, if they had known Dean had made this request, if Mr. Felt knew about it, if your investigators knew about it; if the people within the FBI knew that requests from Mr. Dean were coming forward and then if your agents who interviewed Magruder on July 20 flagged or at least saw the name of Dean and Liddy together, would they have been more alert as to notifying you?

Mr. GRAY. No. I don't think so, Senator Kennedy, because this was discussed with Mr. Felt. But even from that point to this point, we have not seen anything in the development of the leads, in the evidentiary pattern, to indicate this kind of an involvement.

Senator KENNEDY. But it was just at the level of Mr. Felt? It was none of the investigators that were working on the case?

Mr. GRAY. No, sir; it was not.

Senator KENNEDY. None of them knew about this request of Mr. Dean for—

Mr. GRAY. I don't believe they did, unless they knew about the request of the Office of Legal Counsel through the normal grapevine in the FBI, but I certainly didn't tell them.

Senator KENNEDY. Then on the 26th, Mr. Dean asked for the raw files; is that correct?

Mr. GRAY. The 26th of July, yes.

Senator KENNEDY. He asked for the raw files?

Mr. GRAY. Well, no, he didn't ask for the raw files. He asked that he be provided with investigative reports or teletypes that were available to me that would assist him in the conduct of his investigation and inquiry for the President.

Senator KENNEDY. Well, the Kleindienst thing, those are raw files under his interpretation?

Mr. GRAY. Mr. Dean didn't talk to him—I am trying to respond to your question—he didn't talk to me in terms of raw files.

Senator KENNEDY. He asked for the investigative report?

Mr. GRAY. That is correct.

Senator KENNEDY. Do you consider those raw files?

Mr. GRAY. They are a part of the raw files; yes, sir.

Senator KENNEDY. Well, are they themselves raw files? Do you consider them to be investigative reports?

Mr. GRAY. Yes, sir; they are an integral part of the total Watergate file.

Senator KENNEDY. Well, now, what did you say to Dean?

Mr. GRAY. I can't remember the exact substance of the conversation.

Senator KENNEDY. Try. Yes or no.

Mr. GRAY. My recollection is that if you require these in order to conduct your inquiry, I will provide you with those that I have here.

Senator KENNEDY. Well, what changed your mind from a week earlier?

Mr. GRAY. I don't think there was any change in mind at all, Senator Kennedy. At least it didn't come to me as a change of mind. It wasn't something he was asking me to generate or write or prepare. It was something I had in my custody and something he was entitled to as counsel to the President, acting in his official capacity to conduct that investigation.

Senator KENNEDY. Did you send them through the White House liaison?

Mr. GRAY. No, sir; those were picked up direct.

Senator KENNEDY. Who picked them up?

Mr. GRAY. Mr. Dean picked them up.

Senator KENNEDY. He carried them out?

Mr. GRAY. He carried them out.

Senator KENNEDY. Is that the ordinary way?

Mr. GRAY. No, because of the safeguarding that was necessary and I wanted to have on those, that they were in his hands, and nowhere else, that they weren't getting anywhere else. We did discuss the safeguarding.

Senator KENNEDY. What about the FBI couriers and the White House liaison that transmit secret stuff, aren't they secure?

Mr. GRAY. I don't know where that goes.

Senator KENNEDY. Do you know whom your men deliver to?

Mr. GRAY. They may deliver to an office in the White House for delivery.

Senator KENNEDY. Well, now, Mr. Gray, they do not just drop off top secret stuff.

Mr. GRAY. No, I know they don't do that. There is a specific place for them to drop it off. What I am saying is I want it to go to the man.

Senator KENNEDY. Don't they do that routinely, deliver material just to the men in the White House? Isn't that standard procedure?

Mr. GRAY. That is correct, that is normal procedure, but in this case I wanted to be absolutely certain that I was delivering them to the counsel for the President, who had requested it and who was going to conduct this investigation for the President.

Senator KENNEDY. Did anybody on your staff know that this request had been made and that this material was being made available?

Mr. GRAY. I don't believe they did, Senator.

Senator KENNEDY. Why not?

Mr. GRAY. I didn't think it was a matter that I should discuss with them.

Senator KENNEDY. Why not, if it is perfectly legitimate, if you are going to do this for any President at any given time, Democrat or Republican, why wouldn't you let the people on your staff understand that?

Mr. GRAY. I had no point in not doing it or any point in informing them. There are a lot of things I don't inform people about over there. You have to operate an investigative agency in that manner. You don't publicize.

Senator KENNEDY. Were there any transmittal memos?

Mr. GRAY. No, sir.

Senator KENNEDY. Did you have any note in any file about what materials—

Mr. GRAY. Yes, sir, because there were yellow sheet inventories at the top of each packet of material.

Senator KENNEDY. Have those been made available to the committee, the records of the things that were turned over?

Mr. GRAY. No, sir, that has not been placed in the public record.

Senator KENNEDY. Is there any reason why we could not have the list of materials that were made available during this period of time to Mr. Dean or to others?

Mr. GRAY. I don't know that it was made available to any others, Senator Kennedy.

Senator KENNEDY. But the transmittal memo, could you make that available to our chairman?

Mr. GRAY. No, sir, there was no transmittal memo. There was a yellow inventory sheet right on the top of the packet of the first group of 302's that I received on June 30 and on the second group of 302's that I received on July 17.

Senator KENNEDY. But did you put anything in the FBI files to show that this material had gone out?

Mr. GRAY. No, sir.

Senator KENNEDY. Have you had occasion to do that any other time?

Mr. GRAY. No, sir.

Senator KENNEDY. Why did you do it this time?

Mr. GRAY. Because I thought this was a question of sufficient importance to the President of the United States to know whether or not any of his staff were involved in the Watergate.

Senator KENNEDY. Well, when you had the earlier request from Mr. Dean, you got the legal viewpoint about dissemination of material generally, and the last line says, "We ought to keep the Attorney General fully informed and leave the rest to him." You sent that

memorandum over to the Attorney General and at the bottom of that you say, "In this particular case and all future cases."

A week later you are providing secretly a considerable amount of material to Mr. Dean who is going out of your office and bringing it back to the White House. Now, what happened during this period of time, a week, that made you change your mind from what you wrote at the bottom of your memorandums right here?

MR. GRAY. Absolutely nothing happened during that week that made me change my mind. That memorandum was directed to papers and documents that we would prepare in writing in summary form or LHM form or that type of thing. It was not directed to this type of material.

Senator KENNEDY. You mean, Mr. Gray, that if you write it up you send it through the AG, but if it is raw you give it directly? Is that my understanding?

MR. GRAY. That is my understanding.

Senator KENNEDY. How can you possibly rationalize that? If you draft it, you are going to keep the Attorney General fully informed. But then you provide to the White House the raw material which you say is indispensable to the investigation and you do not even let the Attorney General know.

MR. GRAY. I can say there is nothing that happened, except that I made the decision in response to the call from the Counsel to the President.

Senator KENNEDY. And did you let the Attorney General know?

MR. GRAY. No, sir, I did not tell the Attorney General.

Senator KENNEDY. What were the files that were actually made available? Were they just your own files or files which were a part of the investigation?

MR. GRAY. No, they were not files. They were FD 302's, investigative reports, and then there were two volumes of teletypes made available **later on**.

Senator KENNEDY. There were what?

MR. GRAY. Two volumes of teletypes about, I would estimate, 3 to 4 inches thick, the two volumes came to that.

Senator KENNEDY. When were those—

MR. GRAY. Those were later on. I received those, as I recollect, early August, and those were delivered in October.

Senator KENNEDY. You had, as I remember, 82 out of 186?

MR. GRAY. Yes, sir, these are FD 302's now, investigative reports.

Senator KENNEDY. Could you review why you let him have just some of these, why the 82 out of 186?

MR. GRAY. Yes, because I received a group of them on the 30th day of June. I received another group on the 17th day of July, and those two groups are the two packets that I delivered to Mr. Dean on the 28th day of July.

Senator KENNEDY. Did these, the 82 documents that you provided, relate only to the White House staff?

MR. GRAY. No, sir, I didn't make any selection on those at all.

Senator KENNEDY. Why not?

MR. GRAY. Those were the ones that were available, the 302's that I had there in my safe and had been sent up to me in two packets on June 30 and July 17.

Senator KENNEDY. If Mr. Dean was doing an investigation of the White House staff, why wouldn't you turn over just those records that related to that?

Mr. GRAY. My reasoning on it was his trails were going to go in many areas. I didn't know what he was doing. I wanted him to know what we had.

Senator KENNEDY. You did not know what he was doing?

Mr. GRAY. No, I didn't know what he was looking for.

Senator KENNEDY. What did he tell you?

Mr. GRAY. He told me he was conducting an inquiry but he and I did not discuss the substance of his inquiry or the substance of the FBI inquiry. We were doing ours in our own way and he was doing his in his own way. I have testified earlier that I didn't want to have any information from his inquiry at all.

Senator KENNEDY. I thought you indicated in earlier testimony that his inquiry was in relationship to the White House staff?

Mr. GRAY. That is right, to the involvement of White House personnel.

Senator KENNEDY. Why would you supply—

Mr. GRAY. They could turn up in other investigative reports.

Senator KENNEDY. Why wouldn't you make sure he got all of them?

Mr. GRAY. I gave him all that I had at the time.

Senator KENNEDY. Why didn't you get the rest of them?

Mr. GRAY. Because there weren't any more available at that time, sir.

Senator KENNEDY. Till when? Did you try to get the rest of them for him?

Mr. GRAY. Those were all that were available. These were delivered to me—early on the 30th of June, I received a group, and on the 17th of July I received a group and I gave to him what I had available at that time.

Senator KENNEDY. There were a lot of people interviewed after the 17th of July?

Mr. GRAY. That is right.

Senator KENNEDY. Did you send those to him, as you recall?

Mr. GRAY. No, as I recollect there was another call, and I think that it came later on, much later on—yes, it was in the middle of October—where he called me and asked if he could look at some additional investigative reports and teletypes, and I sent to him at that time the last group of investigative reports that I had in my safe and the two volumes of the teletypes.

Senator KENNEDY. And did you, or did you not, ever feel any kind of responsibility to call him later and let him know that you could get other reports?

Mr. GRAY. No, I did not, as I was responding to his request.

Senator KENNEDY. And you thought that you did respond when you made those files available?

Mr. GRAY. If he wanted more, I would have expected he would have called again and made another request.

Senator KENNEDY. In any of your conversations did you ever talk to him about Mr. Liddy?

Mr. GRAY. I think not, because it is my best recollection and memory that we did not discuss individuals.

Senator KENNEDY. Well, let's try again. You must have been talking about some individuals, were you not?

Mr. GRAY. In connection with some of the leaks, but what I am talking about now is a matter of investigation.

Senator KENNEDY. Did he say he was interested in these particular files, too?

Mr. GRAY. No, he did not specify any particular file to me at all.

Senator KENNEDY. And your testimony is, to the best of your recollection, that you never remember a conversation you had with Dean with regard to Mr. Liddy?

Mr. GRAY. That is the best of my recollection, unless it could have come up in connection with—I am trying to think, because I know that Mr. Liddy was the subject of the stories on the second Nixon aide, and it could have come up in that context.

Senator KENNEDY. How is that?

Mr. GRAY. In one of these telephone calls with regard to the leaking of material.

Senator KENNEDY. Could you account for us to the best—

Mr. GRAY. No, I am saying it could have come up, because I can't recollect at all that this was—

Senator KENNEDY. Would you check your file?

Mr. GRAY. I am taking a look at my sheet here, and I have no notes on that particular individual.

Senator KENNEDY. Could you review it during the lunch hour, if you have any you can find?

Mr. GRAY. Sure, I will be glad to do that, Senator Kennedy.

Senator KENNEDY. Finally, could you just tell us to the best of your own memory how you distinguish the Dean request for this information that you were prepared to provide for him on July 26 as compared to the earlier request on July 21? Can you not understand, Mr. Gray, the perplexity that some might have about the way you handled one request on July 21, by getting a legal response and indicating at the bottom of it that a certain procedure should be followed, and then 5 days later an apparent complete turnaround in the procedures which you yourself had established. It is in an effort to try to fill in the pieces with something other than, "Well, I made the decision on the 21st to do it this way and on the 26th to do it this way," when they involve some very basic issues and questions that have been raised in the meantime, such as the apparent revelation to FBI agents that Mr. Liddy and Mr. Dean were closely connected.

Mr. GRAY. Yes, and I think you have to know the operations of the FBI as I think I know them and how the practices were established for dissemination, and the objectives that I was trying to achieve step by step. But other than that kind of rationale, I didn't go through a long exercise. This was the counsel to the President of the United States calling me in his official capacity and asking if I could assist him in the conduct of his inquiry by making available to him investigative reports.

Senator KENNEDY. It just seems to me that the standard procedures which you have just mentioned now would require that at least you would follow the procedures which have been outlined here, that you keep slips of paper indicating what files went out, what went in, that there be some kind of communication between the various members

who were involved in these investigations, and that the Attorney General would be kept notified where these files were going. It appears that you established a set of standards for procedures and then 5 days later you do it entirely differently, and what we are trying to find out is the reason for that.

Mr. GRAY. Yes, and I reasoned, as I have previously testified, that these were two different types of materials that I was addressing myself to.

Senator KENNEDY. Well, this seemed to outline procedures to be used in this particular case and all future cases. That seems to be the proper procedure which is outlined to your own people and then you follow a rather dramatic—

Mr. GRAY. To the preparation of LHM's, memorandums to the White House that we have to generate in response to a request, that we have to sit down and write something out.

Senator KENNEDY. Is the raw material more sensitive or less sensitive than the investigative reports which you say should be handled along the lines of this memorandum?

Mr. GRAY. No, because that LHM is summary type material.

Senator KENNEDY. Is the raw material more or less sensitive? I don't see how you could say it is less sensitive, for following this procedure, and yet you are apparently turning the undigested materials directly over to the counsel, Mr. Dean, without any kind of notification to the Attorney General, without any kind of inclusion of a buck slip or any record of material, and using your own files, rather than—

Mr. GRAY. There were inventory slips there. I know exactly what was transferred—transmitted—and I know exactly what was received and everything that was transmitted was returned.

Senator KENNEDY. Was that kept in the FBI file or—

Mr. GRAY. It is right with the file itself.

Senator KENNEDY. What was taken out and when was it taken out?

Mr. GRAY. It is right with the file.

Senator KENNEDY. Has that been made available to the chairman?

Mr. GRAY. The chairman can see it, and the ranking minority member.

Senator KENNEDY. Will that be made available, so we can ask our chairman?

Mr. GRAY. Yes, that will be made available when the chairman wishes it.

Senator KENNEDY. Do you know when the President announced that Dean's investigation was complete and that no White House staff were involved?

Mr. GRAY. I think that was probably either the end of August or the first part of September, somewhere in that area.

Senator KENNEDY. Well, then why were you providing files as late as October?

Mr. GRAY. Because I think probably Mr. Dean was still continuing his inquiry. That is what I have got to believe.

Senator KENNEDY. Even after the President made his statement, you felt that you still ought to be providing files to Mr. Dean?

Mr. GRAY. Certainly, because I didn't attribute that to be a complete statement to the effect that Mr. Dean's inquiry had been concluded, otherwise he wouldn't have called me at the end for the material Senator.

Senator KENNEDY. Well, if he had been acting in any other capacity, he might. Have you ever thought of that?

Mr. GRAY. Of course, but at no time did I view Mr. Dean as acting in any capacity other than as counsel to the President.

Senator KENNEDY. So even after the President made his statement that the White House was not involved, and you understood that to be the purpose and the reason and justification for the Dean investigation, you still felt that you ought to continue to provide the material?

Mr. GRAY. Indeed, I did, Senator Kennedy.

Senator KENNEDY. At any time did you stop providing it?

Mr. GRAY. Yes, because he hasn't called me since then.

Senator KENNEDY. Do you do it only when he calls?

Mr. GRAY. Yes, that is correct.

Senator KENNEDY. If he called you now, would you provide it?

Mr. GRAY. I think probably in view of the discussion we have had that I would have to think about it, but I think I would because he is the counsel to the President of the United States, and the President of the United States is entitled to that.

Senator KENNEDY. Given, Mr. Gray, all the things that have come up in the course of these hearings, all the tie-ins with Mr. Dean and Mr. Liddy, are you prepared now to suggest that if Mr. Dean asked you for additional materials now with regard to this investigation, given what you know that has been laid out here in terms of this record in relation to Dean and Liddy, that you would go ahead and supply him with that information?

Mr. GRAY. Yes, I would, because, as I have testified, no evidentiary pattern has developed that he has any kind of relationship with this particular matter. He is acting in his capacity as counsel to the President of the United States.

Senator KENNEDY. You do not think it is important that he introduced Liddy to the CRP Committee?

Mr. GRAY. I can't make that jump that this indicates complicity on his part, that he is involved in this. This was a recommendation—my recollection of the FD 302 is—that came from him and from Mr. Krogh in response to Mr. Magruder's request.

Senator KENNEDY. Have you investigated Mr. Dean sufficiently so that you can be absolutely sure that this was not the case?

Mr. GRAY. I think from all of the investigation that we have done, we have found no indications, no leads, and pursued no leads, and tied him in in any way to this kind of thing.

Senator KENNEDY. You have investigated that and pursued that?

Mr. GRAY. I think our total investigation and—

Senator KENNEDY. Just as part of the total, but you haven't looked on him and, given the kind of flares that have been sent up in regards to Dean and Liddy, you wouldn't feel, as a criminologist, that you ought to pursue that to detect whether he actually is involved in this and how extensively before you continue to turn raw investigative files over to him?

Mr. GRAY. No, Senator Kennedy, I said earlier in these hearings—I forget which day—the President of the United States is not going to appoint his own counsel to conduct this investigation, for him to determine this involvement, if the President believes Mr. Dean is involved.

SENATOR KENNEDY. We are not sure what role Mr. Dean is playing, whether he was an attorney for Mr. Ehrlichman or an investigator as he said to you. That is very, very much up in the air. Yet you are prepared at this time to say, without resolving that question, and your understanding is quite a bit different from Mr. Ehrlichman's understanding, that you are still prepared to turn the material over?

MR. GRAY. Yes, because Mr. Dean serves as counsel to the President of the United States. He has an attorney-client relationship with the President; and when the President requires him to conduct an investigation, I am going to do it. It is my duty.

THE CHAIRMAN. Well, you had to do it, didn't you?

MR. GRAY. That is my duty.

THE CHAIRMAN. The President is entitled to those files?

MR. GRAY. That is correct, sir.

SENATOR KENNEDY. Even though according to Magruder's testimony Mr. Dean took Liddy over to a briefing and said he is good at intelligence gathering? You know Mr. Magruder's testimony on that, and given all the things that you know, you would still be willing to turn that material over?

MR. GRAY. Yes, but I think it should be pointed out, too. Senator Kennedy, that Mr. Magruder did not make a determination to hire Mr. Liddy on this basis alone. That was Mr. Krogh's recommendation, too.

SENATOR KENNEDY. Would you, in this kind of situation, Mr. Gray, think maybe you could call the President and say this is the kind of a situation we are in, Mr. President, and before I go any further I want you to be aware of what we are running into on this?

MR. GRAY. No, sir, that thought didn't strike my mind.

SENATOR KENNEDY. I wonder, if the President had sent Mr. Hunt down?

MR. GRAY. Sir?

SENATOR KENNEDY. I wonder if he had sent Mr. Hunt down to get the material?

MR. GRAY. No. I think I previously testified to the committee that as far as these requests are concerned, that the two assistants to the President—I think I mentioned by name Mr. Haldeman, Mr. Ehrlichman, and the counsel to the President.

SENATOR KENNEDY. In a different area, and I will try not to be much longer: I believe in your earlier testimony you said that immediately upon seeing the newsstory alleging that FBI materials were given to Segretti, you called Dean and he denied responsibility. The newspaper clippings indicate that the story appeared on October 15. Your submission for the record shows no call to Dean on that day, but only 3 days later, on the 18th, and a meeting with Dean 3 days later, again on the 18th, when newspapers reported Segretti calls to the White House. Could you be mistaken about your call to Dean, what it was about?

MR. GRAY. No, sir, I think that one—well, I had a series of calls out at Salt Lake City about this. These were from my own people in the Bureau, from Mr. Felt. I was apprised of this by Mr. Felt. I had several discussions out in Salt Lake City with Mr. Felt, and we cannot determine with any degree of certainty whether or not I talked with Mr. Dean on the 17th from Salt Lake City.

We have endeavored to do so, and my best recollection, and so recorded here, is that on October 18, I discussed that with him when I had that particular newspaper in hand in my office.

Senator KENNEDY. But this happened on the 15th and you think maybe you talked to him on what, the 17th?

Mr. GRAY. What I am saying is there is a possibility that I did, because there was a call, but we can't pin it down. Certainly there was a call referred out there and we can't pin down for certain whether or not I returned that call when I was in the Salt Palace. I was holding a press availability and I was making an address there.

Senator KENNEDY. Does the list you provided include all the calls, or some that are or some that aren't—

Mr. GRAY. This list includes all the calls that can be tied down that are definitely and certainly Watergate calls.

Senator KENNEDY. There may have been other calls?

Mr. GRAY. On what, sir?

Senator KENNEDY. On Watergate or anything else?

Mr. GRAY. No, because I can account for the other calls.

Senator KENNEDY. You had one possible call to—

Mr. GRAY. Yes, the one I can't tie down is the one on the 17th. But I put it there because I believe it had to be a Watergate call. I was called on the 16th by Mr. Felt in his usual way as he called me when I was visiting the field offices, and he read off certain items to me and one of these had to do with this particular news story.

Senator KENNEDY. And then there may or may not have been a call on the 17th?

Mr. GRAY. That is my testimony. We have not been able to tie it down. We know a call was referred to the Salt Lake City office. We know that.

Senator KENNEDY. Well, in your testimony you say that:

"I can tell you this, when the newspaper report hit I called John Dean if he had done this and he said, 'I did not, didn't even have those documents with me.'"

Mr. GRAY. I think there are any number of places there in my testimony when I heard it or read it, and I was trying to remember. I hadn't yet conducted this pretty thorough review of telephone calls and the calendar and my notes of my visits to the field offices.

Senator KENNEDY. Then you said:

"I read the story and called John Dean and asked him if he did this."

Mr. GRAY. That is correct.

Senator KENNEDY. You read the story when you came back from Salt Lake?

Mr. GRAY. That is correct.

Senator KENNEDY. Which was really 3 days after that?

Mr. GRAY. That is correct.

Senator KENNEDY. Mr. Gray, I think you are probably familiar with some newspaper stories which have mentioned a number of different potentially embarrassing situations which may involve high-ranking people. I suppose it takes place in any administration, Democratic or Republican. What are you going to do if you are called upon to investigate people who have been friends of Presidents or benefactors or whatever? What are you going to do if you get the impression that as a result of files going to the White House pressure is being

applied down through the Justice Department? What will be your general reaction?

Mr. GRAY. My first reaction, Senator Kennedy is going to be to resist. I think I have already said to this committee if there comes a time when that conflict situation arises, and I can't live with it, I am going to have to depart.

Senator KENNEDY. How about a situation such as the Vesco case, involving political contributions. Do you continue to make investigative files available to the White House?

Mr. GRAY. Senator, if I am put in a position again where the counsel to the President of the United States is charged with the responsibility to conduct an inquiry by the President, I am probably, I am certainly going to comply with that, yes, sir.

Senator KENNEDY. Has there been any time to date that you can tell us about that you felt any pressures at all?

Mr. GRAY. In the present position?

Senator KENNEDY. I want you to think about this and other investigations which you might be involved in, either direct investigation or perhaps even the continuation of an investigation such as a wire tap situation, where there have been strong recommendations within your department, or in the investigating department, for continuation and full prosecution of this, yet there have been the suggestions of potential embarrassment and you felt at least a kind of restraint or resistance?

Mr. GRAY. Normally, it doesn't really happen that way in this position, because we investigate and we do the best possible job that we can do and we deliver the results to the Department of Justice.

I think it was Senator Bayh who asked me a similar question—had I ever felt any pressures—and I had mentioned to him that there was an occasion when I did, as Assistant Attorney General, Civil Division, in which there was a case that hadn't anything to do with this, either ITT or anything else.

Senator KENNEDY. Could you imagine, for example, a situation in which, during the course of an investigation, perhaps a particular wiretap ought to be continued, under a court order, but where the preliminary parts of it might either mention people or situations that would be potentially embarrassing to the administration or the President? What would you do?

Mr. GRAY. Senator Kennedy, I am not sure that it could come up that way, because the court receives that transcript, the assistant U.S. attorney receives it, so I am not sure it could come up that way. But my answer to you, Senator Kennedy, would still be that I would resist pressure or failing that I think I would have to depart.

Senator KENNEDY. Well, if you were, say, to have a continuation of a wiretap, wouldn't you have to go back to the Justice Department to get continued approval?

Mr. GRAY. Under title III, under the other ones, yes, sir.

Senator KENNEDY. In this area, is it your testimony that there has not been any time when you felt any type of pressure from the top, when there was pressure from below to continue a particular investigation, say, in the area of organized crime, and yet there was concern about the continuation of it from the top?

Mr. GRAY. I know of no such situation.

Senator KENNEDY. If there were such an incident what would you do?

Mr. GRAY. My reaction would be to resist and protest and do whatever I could to carry out the investigative function.

Senator KENNEDY. Whom would you protest to?

Mr. GRAY. Well, I would have to resist within the Department, because that is where I exist. That is where I live, in the Department of Justice.

Senator KENNEDY. Mr. Gray, looking back over the course of these hearings, the course of the questions by Members of the Senate, and your own conduct over this period of time, can you think of things that you would have done differently—I think you commented yesterday—in relationship to the speeches, in relationship to the availability of materials, or other things, which is now really Monday morning quarterbacking.

Mr. GRAY. That is right, in hindsight.

Senator KENNEDY. Yes, in hindsight.

Mr. GRAY. In hindsight, Senator, you can see there are things you might do differently when you take another look at them. I mentioned some of those, with regard to the so-called political speeches, that is correct.

Senator KENNEDY. It would be only the political speeches—

Mr. GRAY. No, I think, Senator, when you do a careful analysis of an investigation, any investigation conducted by anybody at any time, and you look at it as we have been looking at this one, very, very carefully, I think you can see things where you would have taken some different steps. I think this is true.

Senator KENNEDY. On the availability of materials or the—

Mr. GRAY. I would not single out any specific area at all, Senator Kennedy.

Senator KENNEDY. I don't know what the chairman wants to do.

I have just a couple other areas.

The CHAIRMAN. Well, let's see if we can finish up. We will recess to 2 o'clock.

[Whereupon, at 12:05 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator KENNEDY. Mr. Gray, just before the lunch hour we were talking about making available to the White House certain files. I think we reviewed the files that you had provided directly to Mr. Dean when he came to visit you. There is really no particular secrecy about the fact that materials are being furnished to the White House, is there, just generally?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

Mr. GRAY. No, I don't think there is.

Senator KENNEDY. For example, your own June 19 memorandum to the Attorney General, which was never sent, said that a copy of the enclosed memorandum was also being furnished to the Honorable

H. R. Haldeman, Assistant to the President. I think you are probably familiar with it.

Mr. GRAY. Yes, I am.

Senator KENNEDY. At the bottom is the figure 14, from which I would gather there were 14 copies?

Mr. GRAY. I don't know what that 14 is.

Senator KENNEDY. In any event, the practice of making copies—that was really the usual process, wasn't it?

Mr. GRAY. Of a writing of that type, in the form of a summary letterhead memorandum, as distinguished from a note or another type of memorandum or writing, which was initiated by us, something that we generated without a request.

Senator KENNEDY. Well, even if it is requested, I think you indicated in this morning's questioning, the procedure was that you usually send it over to the Attorney General?

Mr. GRAY. That is right, sir. I have said, in connection with the types of distribution and dissemination that have been made in the past by the FBI, that I have been trying to move toward a standard for all things that would be in the nature of writings or memorandums or notes that would be disseminated and distributed.

Senator KENNEDY. Now, did you ever indicate to the Attorney General that you were disseminating, in effect, raw files to the White House?

Mr. GRAY. I never indicated, as I testified this morning, Senator Kennedy, to the Attorney General, that I was giving to Mr. Dean the investigative reports and the two volumes of the teletypes, no, sir.

Senator KENNEDY. Did that thought come to your mind? Or did you feel it was not necessary?

Mr. GRAY. No, sir, it did not come to my mind. I did not feel it was necessary in view of the fact I had a request from the counsel to the President of the United States.

Senator KENNEDY. Is there any paper record at all in the regular FBI files that would show that these important materials were actually presented?

Mr. GRAY. Other than the inventories themselves with each packet of the investigative reports.

Senator KENNEDY. But this is really, in effect, out of channels, is it not?

Mr. GRAY. I do not think it is out of channels to make a delivery to the counsel to the President. I just do not see how that can be out of channels.

Senator KENNEDY. No recording of it in the FBI files, no following of the procedure you indicated on your earlier legal memorandums that it be turned over to the Attorney General, neither of those procedures were—

Mr. GRAY. No. I testified this morning to that effect.

Senator KENNEDY. At any time, did anyone protest, either then or since, about sending raw files over to the White House?

Mr. GRAY. Senator Kennedy, I did not send raw files to the White House. I sent FD 302's, investigative reports, and two volumes of teletypes, and no, I have had no protest to my face since then. I don't know whether anybody is protesting in another manner.

Senator KENNEDY. You indicated this morning that you were in touch with Dean, I think, all the way up until October, you were providing materials? I believe you indicated that?

Mr. GRAY. That is correct, I believe, sir. Yes, October 12, 1972.

Senator KENNEDY. Were there a series of transactions between you and Mr. Dean after this? Meetings after the ones indicated in your memorandums?

Mr. GRAY. No, sir.

Senator KENNEDY. How did Mr. Dean get the information after this July meeting?

Mr. GRAY. The October 12 delivery to him was picked up by Mr. Fielding, the assistant counsel to the President.

Senator KENNEDY. Mr. Fielding?

Mr. GRAY. Yes, sir. He came over, and I gave him a briefcase with materials in them.

Senator KENNEDY. Did Mr. Dean call you before that?

Mr. GRAY. Yes, he did. He called me October 12. That call is listed.

Senator KENNEDY. At any other times were there transactions of any other materials?

Mr. GRAY. No, sir.

Senator KENNEDY. And the October date?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. In your conversation with Mr. Dean about requests for additional files, did you perhaps have an opportunity to mention to him that you had seen the President's August 29 press conference where he said he was satisfied with the White House investigation?

Mr. GRAY. No.

Senator KENNEDY. Did he indicate to you that the investigation was still continuing?

Mr. GRAY. He did not, but as I testified this morning I have certainly to assume that it was continuing then and it may even be continuing now. I don't know. The only indication I have now that it may be continuing is the fact at the time of the later interview, either January or February—I guess it was February—when he called regarding the information we had received, if we wanted to interview Mr. Chapin again. So I don't know. That would be speculative and conjecture on my part.

Senator KENNEDY. After the October 12 conversation, when did you talk to him again?

Mr. GRAY. Well, I submitted for the record the list of those telephone calls, and the next one was on the 18th of October at 9:05 a.m., there was a telephone call.

Senator KENNEDY. How many are there between then and the February date?

Mr. GRAY. There is one on the 8th of January 1973; that is when I called him to request the return of the second group of investigative reports.

Senator KENNEDY. I think you testified that in the early part of your investigation, one of your people prepared a summary on June 19 to send to Mr. Haldeman and that you stopped that?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. Now, your submission to the committee about your contacts with the White House shows that Ehrlichman called

you and Dean was in your office 2 days after that, I think it was on June 21. Do you know if Dean saw the whole memorandum?

Mr. GRAY. No, sir, he did not.

Senator KENNEDY. Did anyone ever see the whole memorandum?

Mr. GRAY. I think only people in the Federal Bureau of Investigation, because that was not sent anywhere.

Senator KENNEDY. But there is no way that Mr. Dean might have seen it?

Mr. GRAY. No way, sir. No way.

Senator KENNEDY. Could any of your subordinates have shown it to him?

Mr. GRAY. I certainly doubt that very, very much. I have not asked each subordinate, but I doubt that very, very much.

Senator KENNEDY. Has any other person from the White House staff visited your office?

Mr. GRAY. I know I had a meeting on terrorism, on control of terrorism. I am trying to think of the time.

Senator KENNEDY. Who was there; do you know?

Mr. GRAY. It would be—I think my memory is good on this—it would be Jeffrey Sheppard, Fred Fielding, myself, Mr. Felt, and Mr. Ponder, and that was just about the middle of September.

Senator KENNEDY. Is Fielding the same Fielding who picked up the material?

Mr. GRAY. That is right. He is the assistant counsel to the President.

Senator KENNEDY. Any other meetings with any White House personnel?

Mr. GRAY. Not in my office. I went over to the Executive Office Building for an OMB meeting on our budget with Mr. Mark Alger, and that was—I think that was October. And then after I came back from my illness—I am trying to remember—it was either January or February when I went over again to FOB-7 to appear before a narcotics panel with regard to the role of the FBI in the narcotics trafficking field.

Senator KENNEDY. These were the only contacts that you had with any White House aides during this period?

Mr. GRAY. The only meetings that I can remember; yes, sir.

Senator KENNEDY. Any other phone calls?

Mr. GRAY. Gee. I can't recall the phone calls. Senator Kennedy.

Senator KENNEDY. Has anyone from the White House besides Dean ever seen the files from your office?

Mr. GRAY. No, sir, he didn't look at them in my office.

Senator KENNEDY. Has anyone from the White House personally taken any files?

Mr. GRAY. No, sir.

Senator KENNEDY. And the record which you have submitted, and chronology, is the complete number of times that Mr. Dean visited you or that you called him?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. And there are no other phone calls?

Mr. GRAY. This is the accurate record to the best of my recollection and ability. I might say, Senator Kennedy, that I believe it to be accurate.

Senator KENNEDY. You had meetings, I guess, with Mr. Dean and Mr. Ehrlichman, who called you on the carpet about the leaks. I believe you testified to that?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. What did they want done? Did they want you to conduct an investigation?

Mr. GRAY. They wanted me to conduct an investigation, there is no question about that, but they were obviously concerned about the fact that apparently FBI information, at least attributed to the FBI, was ending up in newsstories. I consistently pointed out that this was not the case, that there were many people who were investigating this particular affair, and that I simply did not believe that FBI agents were doing the kind of thing that would appear in these stories. But the stories very plainly made it appear that this was FBI information.

Senator KENNEDY. Did you call an investigation?

Mr. GRAY. Sir?

Senator KENNEDY. Did you call an investigation in one of your offices?

Mr. GRAY. Did I call an investigation of one of my offices?

Senator KENNEDY. Yes.

Mr. GRAY. Not as a formal thing; no, sir.

Senator KENNEDY. As an informal investigation?

Mr. GRAY. We have techniques and tactics, things we do or try to run down these things without a formal inquiry or investigation.

Senator KENNEDY. Is that called a spot investigation?

Mr. GRAY. No, it is not called a spot investigation.

Senator KENNEDY. What is it called?

Mr. GRAY. The different types of things we do, I would rather not reveal them.

Senator KENNEDY. Would you just tell us what the name of these investigations are?

Mr. GRAY. No, we don't have a name for it, Senator Kennedy.

Senator KENNEDY. But it is an investigation?

Mr. GRAY. Well, if a person thinks of an investigation as an ongoing formal thing where people are interviewed and this kind of thing, yes and no. But different techniques are used, and I would like not to discuss this any further to tell you how we try to do these things.

Senator KENNEDY. That couldn't be what Time magazine was talking about, one of those types of investigations to check out leaks?

Mr. GRAY. No, I don't think it is that type of investigation at all, Senator Kennedy, and I don't have that type of investigation in mind. Believe me, I have something else in mind.

Senator KENNEDY. Did you find out anything as a result of investigation about leaks in the FBI?

Mr. GRAY. No, sir, we were never able to pin those down and attribute them to the FBI.

Senator KENNEDY. And so it was outside the FBI? At least it was your conclusion it was outside the FBI?

Mr. GRAY. We have to conclude that, but I am still not going to sit here and say that it is not possible that some of that material came from the FBI. There is really no foolproof way, you know, to do this

so that I could say to you that I am absolutely positive. And I say this to the people in the FBI. We cannot be absolutely positive.

Senator KENNEDY. Did you form a conclusion in your own mind that it might be the White House that leaked some of this out?

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

Senator KENNEDY. Did Mr. Dean ever ask you to investigate the leakage from the White House?

Mr. GRAY. No, sir.

Senator KENNEDY. Did you ever suggest to him that maybe it was from the White House?

Mr. GRAY. I suggested the possibility that the leaks could have come from other people who were investigating in the city of Washington.

Senator KENNEDY. Who was that?

Mr. GRAY. I was told, and I think it is correct, that there were an awful lot of investigators looking into this, both committees were looking into it, I am told, and we occasionally crossed paths of people who were looking into this as we went about our investigation.

Senator KENNEDY. Is my recollection correct that you testified you gave Mr. Dean only the reports you had read?

Mr. GRAY. No. I testified I gave him those reports that I had either read or looked through, but I may have said read. The reports that were delivered to him were reports that I either read in total, or the administrative page and the cover page and synopsis and index to see what was in them.

Senator KENNEDY. Have those particular items that you have just mentioned here been made available to the committee's chairman?

Mr. GRAY. The committee has not made a request, neither the chairman nor the ranking minority member.

Senator KENNEDY. Are we limited in making the request as well as seeing it?

Mr. GRAY. As far as the request is concerned, if the request is made in the regular manner from the committee, I am sure that it would fall within the instructions that I have received.

Senator KENNEDY. Could we get that material, Mr. Chairman?

Senator HART [presiding]. You enter a broad order.

Senator KENNEDY. You gave them the Magruder report, didn't you?

Mr. GRAY. Yes, sir, I believe that the Magruder report would be in the third group of 10 reports that was delivered in October.

Senator KENNEDY. When did you read that?

Mr. GRAY. I think I received those on the 13th of September, and it would be in between the 13th of September and the 12th of October.

Senator KENNEDY. This was an interview which was on July 24?

Mr. GRAY. That is correct, sir.

Senator KENNEDY. And you read it in September?

Mr. GRAY. That is correct, sir, that is my recollection of it, and I think I testified this morning that I read the teletype, that note on the teletype summarizing the report of the interview which itself was conducted.

Senator KENNEDY. That is the material we would be interested in requesting with the chairman's understanding.

Mr. GRAY. That teletype is part of the Watergate files.

Senator KENNEDY. After you read the Magruder report about the conversations with, and the involvement with, Mr. Liddy, what did you think about this whole process?

Mr. GRAY. I thought it was nothing more than a recommendation of a counsel and a seeking in the White House on the part of Magruder to get some recommendations to get a counsel over to the committee.

Senator KENNEDY. When you saw Mr. Dean's name mentioned and the name of one of the defendants mentioned, what sort of antenna went up?

Mr. GRAY. No antenna went up. I couldn't make that kind of jump at that point in time, that because he had recommended Liddy as a counsel to the committee he had to be involved. And as I testified this morning, Senator, I don't think the President is going to name his counsel to conduct an inquiry of White House involvement if he has any reason to believe the counsel is involved.

Senator KENNEDY. How is the President going to determine this?

Mr. GRAY. I think the President knows perhaps even more than the FBI Director about things that go on within the entire Nation. I don't have the picture on the White House staff.

Senator KENNEDY. Why is he requesting that information from you if he already knows?

Mr. GRAY. That is the President I am talking about, Senator.

Senator KENNEDY. That is the one I am talking about. If you say on the one hand he knows more about it than you people, yet he has requested you people to look into it, then he is relying upon you, isn't he?

Mr. GRAY. He knows more about his own staff and certainly he is not going to have a man there as his counsel who is involved in any way.

Senator KENNEDY. That is a presumption of regularity?

Mr. GRAY. That's got to be. I just can't sit here and imagine that any President of the United States is going to be sitting with a man that close to him and working with him on a daily basis with an attorney-client privilege and have this kind of situation.

Senator KENNEDY. Other Presidents have made mistakes in these areas, haven't they?

Mr. GRAY. Some of them have; yes, sir.

Senator KENNEDY. When you read that the man who was conducting the investigation was either an acquaintance of, or introducing or recommending, one of the defendants, what did that mean to you?

Mr. GRAY. It didn't mean anything to me, to be absolutely honest with you. It was a recommendation of an attorney to the committee, period. I can't make that big a jump of guilt by association or anything like that. It didn't raise that kind of antenna.

Senator KENNEDY. Did you feel that you ought to look into that some more to make sure that your own predilections were accurate?

Mr. GRAY. No, I didn't feel that.

Senator KENNEDY. You felt you could turn those files over as well to Mr. Dean?

Mr. GRAY. Yes, I did, and I did so, Senator.

Senator KENNEDY. Your antenna didn't go up about that either—about turning files over to the President's investigator that mentioned both the investigator and one of the prime defendants?

Mr. GRAY. No, I didn't because it wasn't mentioned in that type of context. It was merely a statement from Magruder that he got these recommendations.

Senator KENNEDY. Pardon?

Mr. GRAY. There is a statement in there, as I remember, that he got these recommendations for a counsel.

Senator KENNEDY. And you didn't feel that should be pursued, just in protecting the President?

Mr. GRAY. No, I did not.

Senator KENNEDY. Just a few more questions, Mr. Gray.

One small point, McCord was the chief person hiring and firing the CREEP guards and I would have thought all the guards would have been interviewed—

Mr. GRAY. I don't know whether we interviewed all of the Committee to Re-Elect the President guards or not, Senator Kennedy.

Senator KENNEDY. I notice that it does not include the name of one of the guards, and I can't tell whether that list is wrong or whether he has not been interviewed. This is the fellow's name. [The witness was shown a piece of paper.]

Mr. GRAY. We would have to check.

Senator KENNEDY. If you could give us that information during the course of the hearing—he was interviewed?

Mr. GRAY. Yes, he was interviewed on the 25th day of July.

Senator KENNEDY. His name was not on this list.

In another area, Mr. Gray, have you heard the phrase "out of channels" ever used in relation to activities going on outside the usual lines of authority, or to action without the usual recordkeeping, or to records kept separate from the normal files?

Mr. GRAY. No, sir.

Senator KENNEDY. You have not heard that phrase "out of channels"?

Mr. GRAY. No, sir.

Senator KENNEDY. Before you got in the FBI?

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

Senator KENNEDY. You are just unfamiliar with those words in any respect?

Mr. GRAY. That is correct.

Senator KENNEDY. Workings, either legitimate or illegitimate agents, of the FBI?

Mr. GRAY. That is correct.

Senator KENNEDY. I asked you one time—you may recall the question—whether you talked to the Attorney General about the Time magazine allegations, and you recall you said you had not talked to the Attorney General at all about that. I mentioned that the Attorney General had written to me saying he had personally contacted you upon hearing about the allegations. Have you been able to straighten that out? I asked the question and then we talked a bit about it.

Mr. GRAY. That is right, I remember that.

Senator KENNEDY. The day the story came out in Time magazine, I wrote to the Attorney General about these allegations and he indicated to me that immediately on seeing the allegations he had talked to you. So we had that apparent contradiction and I was just wondering whether that had been resolved?

Mr. GRAY. I looked back into that and I think my testimony is just the same as it was then. I felt, at the time, that I was contributing to the decisionmaking process in connection with the press release. I felt, in talking to Jack Hushen, he was working directly as a prin-

principal staff man to the Attorney General and I said to you that was the only way I could account for it because I had not talked personally to the Attorney General about it. I think that is the only way that I can account for it.

Senator KENNEDY. But you did not talk to him personally?

Mr. GRAY. I did not talk to him personally on that at all until after that morning that I testified here.

Senator KENNEDY. And then you talked to him after that?

Mr. GRAY. That is right, 12:50 p.m., as I remember. It was two something, shortly after 2 o'clock.

Senator KENNEDY. And he asked you about those allegations then?

Mr. GRAY. No; he didn't ask me about those allegations. I briefed him on the testimony of the morning, that is all, but he didn't ask me about any specific allegations.

Senator KENNEDY. You called him just casually about—

Mr. GRAY. Generally I do call him or generally go up to see him, like that morning I went up to see him early in the morning to tell him what had transpired on the preceding day, the 28th.

Senator KENNEDY. He was aware that you were giving information to this committee fairly routinely if you had been in contact with him every morning?

Mr. GRAY. I don't know that he knew I was making inserts. I told him a lot of questions were being asked.

Senator KENNEDY. He knew you made this offer of materials to members of the committee?

Mr. GRAY. I don't know what materials you are referring to.

Senator KENNEDY. The Watergate files.

Mr. GRAY. The Watergate files in toto?

Senator KENNEDY. Yes.

Mr. GRAY. He knew that because it was well publicized right here. I made the statement that morning.

Senator KENNEDY. So you must have thought you had his approval?

Mr. GRAY. This was on March 1 I talked to him, after February 28, I didn't talk to him before then.

Senator KENNEDY. Did you make the offer of the files available to members of the committee without his approval?

Mr. GRAY. That is my testimony yesterday, and that is my testimony today. I described how that came to pass. I never put the question, Senator Kennedy, right to him saying, "Mr. Attorney General, I am going to do this, do I have your approval?"

Senator KENNEDY. There has been the allegation of a blacklist of people to be shunned by FBI agents, and you wrote in your January 10, memoranda "I know of no such list or of the perpetuation of it." In the 2 months since then, have you found what this is about, the FBI blacklist?

Mr. GRAY. No. I have asked questions on that and I have been told, I think, it is a special correspondence list or something like that and I have also been told that there were people who didn't report favorably concerning the Bureau. But I have never had produced to me—

Senator KENNEDY. I am sorry. I didn't understand.

Mr. GRAY. I have been told there were people who were not favorable to the Bureau.

Senator KENNEDY. Is that on the list?

Mr. GRAY. But I have never seen the list and I have asked, "Is there a list of such people?" I have not gotten a list of such people. As far as I am concerned in the conduct of my operations in the FBI, I don't have that kind of an attitude at all. I don't know whether the attitude existed before to the extent that a list was compiled. I have not seen such a list.

Senator KENNEDY. Is there such a thing as a no-contact group or no-contact people in the FBI?

Mr. GRAY. No, I think once again that there were probably not lists. I know, in going throughout the various field divisions, I gathered the impression from talking with some of the key men in the field divisions, that this particular individual was not favorable toward the FBI and we deal with him at arm's length but I have never seen or heard anybody say this is somebody we don't even talk to. I don't know what Mr. Hoover's personal pleasures in this matter were in regard to people he would or would not see.

Senator KENNEDY. You testified that when you came to the FBI on May 3, "the first thing I said was I will not permit any wiretaps that are not in accordance with the law."

Mr. GRAY. That is correct.

Senator KENNEDY. Why did you say that?

Mr. GRAY. I have said it consistently because some of these allegations have floated around.

Senator KENNEDY. Did you have any specific information?

Mr. GRAY. No; I did not, Senator.

Senator KENNEDY. What were the allegations which were floating around?

Mr. GRAY. Well, you hear it, rumor all the time, all kinds of people are wiretapping all kinds of people, and I wanted to make absolutely certain that we are not going to participate in any kind of illegal activity, period, and that is what I said.

Senator KENNEDY. Did you think it was necessary to say that?

Mr. GRAY. No; I didn't think it was necessary, but I think it was probably good that I put myself on the record with regard to it so that there would not be any misunderstanding about it. It was one of those things that could possibly develop, and I am not, just going to be a party to it.

Senator KENNEDY. Did you ever investigate to see whether it was being done, or ask to track it down?

Mr. GRAY. No, sir.

Senator KENNEDY. You had heard rumors or allegations about it, so you made the statement, but you did not think you had enough information to even look into it at all?

Mr. GRAY. No, sir.

Senator KENNEDY. Why not?

Mr. GRAY. Because I didn't.

Senator KENNEDY. That is all.

The CHAIRMAN. Senator Mathias.

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Gray, there has been a certain preoccupation in the last few days with the episode of the Watergate and related incidents and the conduct of affairs in relation to that. While that is an important subject, which has touched some of our most fundamental national insti-

tutions to the extent it is even getting a little damp up here on Capitol Hill, I think we also have to recognize that there are other considerations which affect your confirmation consideration, such as the review of your directing of the FBI since you were appointed as the Acting Director and some exploration into the way you would function after confirmation as Director of the FBI. So I would like to turn to some of the broader areas of responsibility of the Federal Bureau of Investigation.

I am wondering if you could review for the committee, and I will ask you some specific questions, but in order to put those questions in context, I will ask if you could review for the committee the statutory authority for domestic surveillance on the part of the FBI?

I recognize, of course, that Congress has enacted statutes which give the FBI investigative jurisdiction in matters of espionage, subversive activities, and domestic violence.

There is not, however, I believe, specific statutory provision for determining the scope and the rationale for domestic intelligence and domestic surveillance.

I would add that this is probably the shortcoming of the Congress and not the shortcoming of the Bureau or of the Justice Department, but in the course of your answers I would hope you could define for the committee the guidelines and limits that you found, that you have set, and that you think proper in defining the activities of the FBI with respect to domestic intelligence.

In other words, at what point, in your judgment, do the statutes of the law apply to citizens becoming jeopardized because of the activities of the FBI? It is my understanding of the FBI's activities in the domestic surveillance field originally grew out of the emergency which existed at the time of World War II, and that President Franklin Roosevelt issued Executive orders which were the basis for that surveillance and which were reinstated at the time of the Korean emergency in 1950.

In 1972, Charles Brennan, who was head of the Domestic Intelligence Division, told the Scranton committee that authority for its activities went back to President Roosevelt's 1939 order to investigate subversive activities and it was within the framework of this Executive order that the FBI over the years has been attempting to fulfill its responsibilities.

In 1971, Attorney General Mitchell said that there was a need for public understanding, and I quote:

Of the standard that was used and why it was used in domestic surveillance so that the American people would not feel that they were being disturbed by government activities.

I do not think there has ever been such a clarification and I cannot think of a better time to begin such a clarification. I am hopeful that you will be able to assist the committee in reaching such a clarification.

Mr. GRAY. Well, Senator Mathias, one of the early studies that we made was devoted to the historical background, as I remember it. We go back to 1936 when some of these directives came from the President, and you carry it up on the Executive order side, and you find certain things and you go along there.

Then you come over to the statutory side and you find various statutes that have been enacted by the Congress of the United States.

What I am trying to do, and what we are trying to do in the FBI, as the result of this study, is to tie our responsibility in this field very, very closely to the statutes of the United States and stick as closely as we can to them.

I think I previously testified that I require in the memorandum a justification for the conduct of this type of investigation. You could almost say specifically these investigations are now directed toward violations of specific statutes of the United States, without leaning heavily on the Executive order type of authority.

Generally speaking, those were the investigations in the area of some of those that you have mentioned. Espionage is a completely different area, but some people who are American citizens do engage in that.

But more importantly, I think, the area of political participation or political dissent or political activities of one kind or another, that do not advocate the overthrow of the United States by force or violence, is not within the purview of the Federal Bureau of Investigation.

It is really a question of how you make that judgment on the basis of the information you have available at the time and before you authorize an investigation. That in general, and almost in specific, is the way that we have been doing it. I think basically the only thing that was different before was perhaps greater reliance on the Executive order side of the ledger than I am placing on it now.

I am trying to rely more heavily on the statute side. This is not to say there won't be situations in which we will have reliance on the Executive order side. But I can say to the committee and the American people that each and every case is being looked at very, very carefully before a decision is made to investigate.

Senator MATHIAS. Can you tell us specifically what statutory authority is there for domestic surveillance of U.S. citizens?

Mr. GRAY. Specifically, sedition, conspiracy, the advocacy of overthrow of the Government by force and violence. I don't have my statutory authorities with me. I have the book with me that enumerates those statutes we are relying on.

Senator MATHIAS. Would you make that available to the committee?

Mr. GRAY. I can enumerate these statutes, yes, sir.

Senator MATHIAS. Can you also enumerate the Executive order about domestic surveillance?

Mr. GRAY. Yes. I can do that.

Senator MATHIAS. Are those basically Executive orders which go back to the Franklin Roosevelt Executive orders and the proclamation of emergency at that time?

Mr. GRAY. Yes, they definitely develop and follow on from that. Those areas have been drawn, in bringing it up to the current time in current Executive orders.

Senator MATHIAS. What about statutory authority for the surveillance of foreign agents and aliens and the activities of foreign agents in the United States?

Mr. GRAY. There we would stay pretty close to the statute. Of course, we have some Executive orders from the President that I would say are clearly pertinent in that area. We talk again of two sides.

Senator MATHIAS. Can you supply the committee with the citations of the statutes and the statutes which you rely on in that area?

Mr. GRAY. Yes, sir; I will.

Senator MATTHIAS. In each case the statutes upon which the Executive orders are based.

Mr. GRAY. Yes, sir; I am not sure that all the Executive orders were based on statute, but we will supply that.

Senator MATTHIAS. If you could indicate which are and which are not it would be helpful.

[Mr. Gray subsequently submitted the following document for the record:]

Mr. GRAY. At the request of Senator Mathias there follows for the record a listing of citations of Federal Statutes and Executive Orders on which the FBI's jurisdiction to conduct national security investigations is based.

The following are citations of Federal statutes upon which foreign intelligence-type national security investigations are based:

Title 18, U.S.C. 792-798 (Espionage).

Title 42 U.S.C. 2274-2278 (Atomic Energy Act).

Title 18 U.S.C. 951-953 (Agents of Foreign Governments and Related Sections).

Title 22 U.S.C. 611-621 (Foreign Agents—Propaganda).

Title 50 U.S.C. 851-856 (Persons Trained in Foreign Espionage).

Title 8 U.S.C. 1481-1486 (Loss of Nationality).

The following are citations of Federal Statutes upon which domestic intelligence-type national security investigations are based:

Title 18 U.S.C. 112, 970, 1116-1117, 1201 (Act for the Protection of Foreign Officials and Official Guests of the United States).

Title 18 U.S.C. 231-233 (Civil Disorders).

Title 18 U.S.C. 245 (Deprivation of Civil Rights).

Title 18 U.S.C. 844-845 (Explosives and Incendiary Devices).

Title 18 U.S.C. 953 (Private Correspondence with the Enemy—Logan Act).

Title 18 U.S.C. 954-967 (Foreign Relations—Neutrality Matters).

Title 18 U.S.C. 2101-2102 (Riots).

Title 18 U.S.C. 2151-2156 (Sabotage).

Title 18 U.S.C. 2381-2382 (Treason and Misprision of Treason).

Title 18 U.S.C. 2383-2385 (Overthrow or Destruction of Government).

Title 18 U.S.C. 2386 (Registration of Subversive Organization).

Title 18 U.S.C. 2387-2388 (Activity Affecting Armed Forces—Sedition).

Title 18 U.S.C. 2389-2390 (Recruiting or Enlisting to Service Against U.S.).

Title 22 U.S.C. 401 and 1934 (Neutrality Matters—including Illegal Exportation of War Materials).

Title 28 U.S.C. 533 (Authority of Attorney General to Order Investigation by the FBI).

Title 42 U.S.C. 2011-2181 (Atomic Energy Act).

Title 50 U.S.C. 781-798 (Title I, Internal Security Act of 1950—as Amended).

In addition to the Statutes cited above, the FBI has investigative responsibilities relating to the national security growing out of Executive Order 10450.

Executive Order 10450 was issued April 27, 1953. It revoked and replaced Executive Order 9835, issued March 21, 1947, which was based on the Hatch Act of August 2, 1939, and Title 5 U.S.C. 301 (Authority to Prescribe Regulations).

Executive Order 10450 was based on provisions of Title I, Internal Security Act of 1950.

Executive Order 10450 was amended by Executive Order 11605, issued July 2, 1971. However, Executive Order 11605, which requires functioning of a Subversive Activities Control Board, must be implemented by Congressional action. Thus Executive Order 10450 is considered to still be in effect.

Senator MATTHIAS. In the period of your conduct with the Bureau, have you ever felt the absence of guidelines; do you feel you have sufficient guidance in handling these problems?

Mr. GRAY. I think, on the basis of my experience in the Federal Bureau of Investigation, that we do have. We know how to operate within them. There is an area, perhaps on the Executive order part of

the ledger in which improvements could be made. We have not finalized any recommendations in that area, not made any recommendations at all.

Senator MATHIAS. Do the dossiers on Members of Congress still exist?

Mr. GRAY. Senator Mathias, I don't speak in terms of dossiers.

Senator MATHIAS. Files? Records?

Mr. GRAY. Yes. I do speak in terms of files, sir. I think you may have reference to the summary memorandums that were prepared as the end product of the congressional relations program.

Senator MATHIAS. Do those records still exist?

Mr. GRAY. The summary memorandums do still exist; yes, sir.

Senator MATHIAS. And do they cover all Members of Congress?

Mr. GRAY. I supplied an insert for the record on that, and my recollection is that that program started early, and we put in the record also a long letter to Senator Ervin. Senator Ervin wrote me a letter with some very probing questions in this area, and we supplied him a very detailed reply, and that is in the record.

My recollection is that it covers all Members of Congress from 1950, 1954 on.

Senator MATHIAS. Is there any authority cited within the Bureau—granted that 1954 is well before your time—any authority recognized within the Bureau as the basis for keeping such files?

Mr. GRAY. I don't recall that there was any authority as such cited, Senator Mathias. It was a program that was developed, as explained to me when we looked into it, to assist those men at the executive level who were rendering services to Members of Congress, to know a little something about the Members of Congress before they contacted them. I made a determination to terminate the program.

Senator MATHIAS. Is the FBI familiar with the numerous publications that Congress itself makes available to the public for biographical information about Members?

Mr. GRAY. This is one of the reasons that I stopped the program. I felt that there was no need for it, and that the information could be readily obtained elsewhere.

The information was obtained from public source material anyhow, plus information that may have been contained in our FBI files at the field office level or at the headquarters level.

Senator MATHIAS. Is there any reason why these files should not be destroyed?

Mr. GRAY. Well, Senator Hart and I engaged in a discussion on that. I did look into the matter of the destruction of these files, but once again it becomes a question of reading them and of who is going to certify that I have destroyed them or the Federal Bureau of Investigation has destroyed them. The question also arises, do we have to get permission from the Archives to destroy them? The answer is yes. The next question is whether the Archives have to read them, and that is six of one and half a dozen of the other, and to say the least it is muddled.

I think I said to Senator Hart that if a law were passed to empower the Acting Director to destroy those, they would be destroyed. The materials from which they were compiled were destroyed as soon as the summary itself was prepared.

Senator MATHIAS. You referred to Senator Ervin's letter on this subject. In the past, he has suggested the criteria should be whether congressional files of this sort are useful and whether they are necessary. I would conclude from your expressed attitude toward them that they are neither useful nor necessary?

Mr. GRAY. I think it is helpful for our people to know something about a U.S. Senator or a Member of the House of Representatives, to try to work with him and render congressional services to him, but I think we can obtain that information elsewhere.

Senator MATHIAS. And you would not feel that there was any need for continuing this?

Mr. GRAY. I don't; no, sir.

Senator MATHIAS. Now, when you were before the committee on the 1st of March, I posed several written questions to which you kindly responded, one of which concerned the National Criminal Information Center and the fingerprint operation. You stated it would be technically possible for the National Criminal Information Center to comply with a congressional limitation on the dissemination of its raw arrest data to noncriminal Justice agencies.

Just to be clear on that answer, does that include a limitation on the dissemination of the information available from the fingerprint division?

Mr. GRAY. Would you tell me, Senator Mathias, where you are reading from on that page?

Senator MATHIAS. Well, I don't have the page number on my memorandum, but it relates——

Mr. GRAY. I don't really understand the question. That is the problem. I was trying to put it in the context of the material.

Senator MATHIAS. You say that the information on raw arrest data does not have to be disseminated except to law enforcement agencies?

Mr. GRAY. That is right.

Senator MATHIAS. You can limit dissemination so that only law enforcement agencies get raw arrest data. How about fingerprint information? Can that be similarly assimilated?

Mr. GRAY. As distinguished from the computer system division?

Senator MATHIAS. Yes.

Mr. GRAY. I think, Senator Mathias, that that material is limited to responding to the law enforcement agency except in those cases where there have been State statutes passed for licensing or employment. The Attorney General has approved providing such information. My understanding is, talking on the manual side now, that the information is sent to the State agency which is making the request for the employment, State employment and licensing purposes.

Senator MATHIAS. But to your knowledge it goes to no one other than public bodies?

Mr. GRAY. That is correct, sir. Unless—and I think Senator Byrd raised this question before—unless one of the police agencies or State agencies would make that available to somebody else. We will then inform them we would take some action, pose some sanctions on them, put them out of our operations for maybe 90 days, not receiving our services. It is that type of sanction we propose.

Senator MATHIAS. Senator Ervin proposed a bill which did pass the Senate, although it did not survive a conference with the House,

which did impose a limitation on dissemination on raw arrest data, similar to the one about which I raised the question with you. Would you have any objection or do you know of any objection in the Department?

Mr. GRAY. I try not to comment on Department legislation, leaving that to the Department, but I think the Department does have an objection. I don't remember exactly Senator Ervin's proposal, but I think there were a couple, but I am not sure that I remember exactly which ones they were.

One had to do with—we had to have full and complete arrest data which indicated by a plea of guilty or nolo contendere or some final action before we distributed and disseminated any record.

Senator MATHIAS. But you will still stand on your answer to me that it is technically possible to limit that data?

Mr. GRAY. Yes, sir.

[Mr. Gray subsequently submitted the following document for the record:]

Mr. GRAY. I am speaking solely as this question relates to the computerized NCIC file. As I advised in response to your written questions, should the Congress prohibit dissemination of "raw arrest data to noncriminal justice agencies" it would be possible, technically, to identify the "raw arrest data" in the NCIC on the basis of definition. Responsibilities for restricting dissemination would rest with the control agency in each State and the Federal control terminal.

With respect to our manual fingerprint operation, this is an entirely different matter. Senator Ervin's proposal which you referred to would have prohibited the FBI from disseminating an arrest record for employment and licensing purposes unless such record resulted in a plea of guilty, nolo contendere or a conviction. We currently have in file more than 20 million individual fingerprint identification arrest records against which we are processing approximately 25 thousand fingerprint cards daily. As I have previously testified, arrest and disposition data are submitted voluntarily to the FBI and the disposition data submitted is oftentimes brief and meager. The FBI must work with the present contents of multiple arrest fingerprint records on file. We simply cannot expect the young clerks who man our fingerprint assembly-line operations, or even professional lawyers to make judicial determination as to whether disposition data reading "bail forfeited," "ordered confined to mental institution for indefinite period," or "report to probation officer—6 months" constitute pleas of guilty, nolo contendere or convictions. We carefully studied Senator Ervin's proposal which related to the non-Federal applicant fingerprint program (processing of applicant fingerprint cards for local authorities for licensing and employment purposes) and concluded that it would not be possible to provide this service within the restrictions imposed.

Senator MATHIAS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Burdick.

Senator BURDICK. Mr. Chairman.

Mr. Gray, about a week ago, on March 8 to be exact, I asked you about two things. One was the delivery by you to Mr. Dean of the Dita Beard memorandum which took place about a year ago, and I asked you about the delivery of this so-called raw material to Mr. Dean recently. In answer to the question, you gave this answer:

Senator BURDICK. As I recall, your testimony was that the Dita Beard memorandum was delivered by someone to Mr. Dean, attorney for the President?

Mr. GRAY. Yes, sir; Mr. Dean called me and asked me if this could be made available to him. And I made it available to him.

Senator BURDICK. Then, thereafter, that memorandum found its way into the hands of the ITT Corp.?

Mr. GRAY. That I don't know as a fact, I still don't know it as a fact. On page 804 of the confirmation hearings, Mr. Abell testified the ITT had that memorandum.

Senator BURDICK. I would like to call your attention to the record which was made a year ago on that point. I refer to pages 803, 804 and 805 of the Kleindienst hearings.

Mr. Tunney asked the following question:

Mr. Geneen, when did you hire Dr. Walter McCrone and Mrs. Pearl Tytell to do an analysis of the Anderson-Beard memorandum?

Mr. GENEEN. Senator, that was turned over to the legal department. I didn't have anything to do with it. If you want an answer, it would be better to ask counsel.

Senator TUNNEY. Can I ask counsel?

Mr. GENEEN. Sure.

Senator TUNNEY. When did you hire those two individuals?

Mr. GILBERT. Are you talking to me, Mr. Tunney?

Senator TUNNEY. Yes.

Mr. GILBERT. I don't know when the outside experts were employed. I had nothing to do with it myself.

Senator TUNNEY. Does anyone know who had something to do with it?

Mr. GILBERT. Yes; yes. The law firm of Skadden, Arps certainly talked to them. I have no knowledge at all as to when they were hired.

Senator TUNNEY. Were they given any instructions?

Mr. GILBERT. In what respect, Senator?

Senator TUNNEY. Well, instructions as to the analysis, of course.

Mr. GILBERT. I am sure they were given instructions as to what they were examining.

Senator TUNNEY. Well, who instructed them?

Mr. AIBEL. Senator, this was basically a piece of work that was under the supervision of my organization by a lawyer named DeForest Billyou.

Senator TUNNEY. What did Mr. Billyou—is that how you pronounce it?

Mr. AIBEL. Yes, sir.

Mr. GILBERT. That's right.

Senator TUNNEY. What did Mr. Billyou tell them to do?

Mr. AIBEL. Senator, I can only respond generally that he asked them, first, Mr. and Mrs. Tytell and then Dr. McCrone, to examine into the question as to whether the document had been typed in our office and to determine if they could tell when it had been typed.

Senator TUNNEY. When was that?

Mr. AIBEL. I am sorry, I can only estimate that it was approximately 3 weeks, 2½ or 3 weeks ago. I can supply the precise date later.

Senator TUNNEY. And do you know for how long a period of time they had the document available to them?

Mr. AIBEL. Senator, I do not.

Senator TUNNEY. Could you get that information for us, too?

Mr. AIBEL. Yes; I can.

The CHAIRMAN. What is this document?

Senator TUNNEY. This is the document, the alleged Beard memorandum that was presented to the committee by Mr. Anderson, which Mr. McCrone and Mrs. Tytell said was typed around January 1972, and which the FBI indicates, as far as they can tell, was typed around June 1971.

The CHAIRMAN. Well, now, I want the record to show this: I gave those documents to Dave Bowers of the FBI. That was the third time they were sent down there. The first time they were sent on the 10th of March; the second time around the 16th of March. They were transmitted those two times through the Justice Department, which is the normal procedure to get to the FBI. There was some question about the Justice Department people handling the documents so I sent Mr. Bowers of the FBI. I was again approached—I don't remember by whom—that ITT had employed two scientists to look at those documents. My instructions were that that was a decision the FBI should make, but under no conditions were they to leave the control of the FBI.

Now, I further stated that, after all, these were stolen documents and the property of this company and they had, I thought that they had, a right under proper supervision to see those documents. In any court of law in this country they would certainly have had that right, and I thought it was nothing but fair that they do it, but yet I left it, it was the decision that the Bureau had to make.

Senator TUNNEY. Thank you, Mr. Chairman. I was just getting to a point that

I was trying to figure out when the analysis was done, over what period of time—

The CHAIRMAN. Now, look, I think the record ought to show here also that we have not received a report from ITT; there have been references in the press, but we have received no report about their examination and whether they examined the documents or not. I do not know.

Mr. AIBEL. Mr. Chairman, that report was completed in New York; that is, the physical process of reproducing it, last night. It arrived in Washington after these hearings began, so, therefore, I could not bring them with me. They will be available shortly.

Senator TUNNEY. They will be available shortly?

Mr. AIBEL. Yes, Senator.

The CHAIRMAN. I am going to take what the FBI said about it.

Senator TUNNEY. Mr. Aibel, it is reported, in the New York Times, that Mrs. Tytell apparently testified for Louis Wolfson, financier, and that she received \$78,000 for her services. How much did she receive for her services in this case?

Mr. AIBEL. I don't think she has gotten paid anything, and I don't know what the retainer arrangement with her is.

Senator TUNNEY. How much did Dr. Walter McCrone get?

Mr. AIBEL. I will have to give the same answer.

Senator TUNNEY. Would you make that information available to the committee?

Mr. AIBEL. Certainly, if it is available.

Senator TUNNEY. Are you going to be making available to the committee their analysis and report?

Mr. AIBEL. Excuse me, Senator—

Senator TUNNEY. Are you going to make the report available to the committee? Are you or aren't you?

Mr. AIBEL. Yes.

Senator TUNNEY. Why can't you make available to us the amount you paid them?

Senator COOK. Maybe they haven't gotten a bill yet.

Mr. AIBEL. That is exactly the point I don't know whether we have that.

Senator BURDICK. Then at page 557 of the Kleindienst hearing record:

Senator HART. Finally, for the Chair, may I ask for the report which has been described and discussed today, the document analysis and examination of the Beard memorandum prepared by two experts for ITT?

Mr. GILBERT. Yes, sir, do you want that now?

Senator HART. You can leave it with the staff, yes. It will be made a part of the record.

Mr. GILBERT. Yes, sir

Senator HART. It being 4 o'clock—

Mr. GILBERT. Sir, there are two—one is by the Tytells and the other is by Dr. McCrone—reports.

Senator HART. These two documents are the reports that we have talked about, is that right?

Mr. GILBERT. The report of the experts?

Senator HART. Yes.

Mr. GILBERT. There are two reports, one from Mr. and Mrs. Tytell's firm, the other from Dr. McCrone. We have given them both to the gentleman.

Senator BURDICK. Now, Mr. Gray, is there any question that ITT had that memorandum?

Mr. GRAY. I don't think there was, and I don't think there is now, but I think it was Senator Byrd who reminded me about that testimony.

Senator BURDICK. Well, I asked you last week about that. Then I asked you this question last week. I said:

If in fact the Dita Beard memorandum did find its way in the hands of the ITT after being examined by the FBI, and if in fact the raw interview of Mr. Segretti did find its way into his hands, would not those facts be rather disturbing to you?

Mr. GRAY. They would.

I have characterized the latter as a grievous error. I think I said serious or most grievous breach of trust * * *

Now, given the ITT memorandum, it would be a most serious breach of trust, would it not?

Mr. GRAY. I believe I qualified it, and even in that testimony you are following, I characterized that as a breach of trust, but I also said what this committee really was interested in was the authenticity of that document. I went on to say that but I don't remember my exact testimony.

Senator BURDICK. I will give it to you exactly:

Then we come down to this year, we find that a raw interview of Mr. Segretti was also delivered to Mr. Dean, the President's attorney?

Mr. GRAY. It was among those, Senator Burdick, that I previously testified I did deliver to Mr. Dean in his capacity, his official capacity, as counsel to the President in conducting the investigation.

Senator BURDICK. That is the same Mr. Dean?

Mr. GRAY. Yes, sir; that is the same Mr. Dean.

* * * * *

Senator BURDICK. If in fact the Dita Beard memorandum did find its way into the hands of the ITT after being examined by the FBI, and in fact the raw interview of Mr. Segretti did find its way into his hands, would not those facts be rather disturbing to you?

Mr. GRAY. They would.

I have characterized the latter as a grievous error. I think I said serious or most grievous breach of trust to the President, who has entrusted this man with the responsibility of conducting an investigation for the President. But I have evidence in the story itself that, at least, it didn't occur as the story related. That is obvious on the face, Senator Burdick. It just didn't occur.

But to answer your question, it would be a breach of trust, there would be no question about it.

Mr. GRAY. With regard to the authenticity, I was talking about the Dita Beard memorandum. That testimony is questionable.

Senator BURDICK. I will give you the question again.

Mr. GRAY. No, I understand, Senator.

With regard to the Dita Beard memorandum, I think I went on to say about that matter that what the committee was interested in was its authenticity. But there is no question about the testimony you are reading there.

Senator BURDICK. What do you think now about the breach of trust on the part of Mr. Dean?

Mr. GRAY. If this occurred; yes, sir.

Senator BURDICK. Did it not occur? I read you the record. ITT examined the Dita Beard memorandum.

Mr. GRAY. Yes, sir; and that is why I am saying, Senator Burdick, in connection with that Dita Beard memorandum, I think my answer went on to say that this committee was really concerned with the authenticity of that document.

Senator BURDICK. You did not say it in response to my question. You may have said it to some other question.

Mr. GRAY. Yes, sir; I think I did.

Senator BURDICK. My point is that I think this is a breach of trust, and doesn't it not kind of rebut the presumption of Dean's regularity?

Mr. GRAY. I think if you assume it is a fact, but I do not think we can assume it is a fact.

Senator BURDICK. You mean you cannot assume it is a fact that the Dita Beard document got in the hands of ITT? Is that not a fact?

Mr. GRAY. That is a fact, according to the testimony, yes, sir.

Senator BURDICK. Well, the Kleindienst hearing record shows that the Dita Beard document was examined?

Mr. GRAY. Yes, sir.

Senator BURDICK. Well, was there a breach of faith under your terms?

Mr. GRAY. That is how I characterize it, yes, sir.

Senator BURDICK. Now, later you gave another document to the same man who allegedly gave that document to Mr. Segretti, and you said you did not inquire any further about it because he had—I think the words were—the presumption of regularity. Well, having had one incident a year ago where there was a breach of trust of some kind, would that not have put you on notice not to give this man material again?

Mr. GRAY. It did not, Senator Burdick. That is all I can say to you. I gave the material to Mr. Dean as counsel to the President in his official capacity of conducting an inquiry for the President.

Senator BURDICK. But after having this experience a year ago, you did not want to look into the Segretti matter on a presumption of regularity?

Mr. GRAY. The only thing I can say, I was reminded by page 804, and I did not think about it and it did not occur to me.

Senator BURDICK. Well, one of the questions that several of my colleagues have asked me is why we did not dig deeper into the Segretti affair. Your answer was that Mr. Dean came under a presumption of regularity. I am pointing out here—

Mr. GRAY. I am saying to you that I did not think about that. It did not come to my mind and I did not know about this testimony until it was read to me here. I just did not think back there. That is the way my mind worked.

Senator BURDICK. Thank you.

Senator ERVIN. Senator Gurney.

Senator GURNEY. Just one or two clarifying questions.

On the point of the Dita Beard memorandum that you have just been discussing with Senator Burdick, am I right in my recollection that there is not any proof before this committee of how the memorandum got from wherever it was to ITT? Is that not the fact?

Mr. GRAY. Yes, sir: I do not know.

Senator GURNEY. We do not know that Mr. Dean gave it to the ITT. It is certainly true that it should not have gotten there, but this committee has no knowledge that Mr. Dean gave it to ITT, and I think that is a very salient point.

We had a lot of discussion this morning about the Dean-Liddy affair; that is, their relationship, the extent of it, and their involvement with each other. There has been a great deal of news from time to time in the press about this also, as though this were a key point, the key point being that if there were any relationship here between Liddy and Dean, then you, Mr. Gray, should not have furnished Mr. Dean with FBI files because they might have ended up in Mr. Liddy's hands or information might have gotten to Mr. Liddy. But after listening to this testimony, I guess I spent an hour, three quarters of an hour on it this morning, the fact is that you had no knowledge of any such relationship at all at the time you had your transactions with Dean in July. Is that not a fact?

MR. GRAY. I believe that to be a fact, subject only to the actual reading of that note, which I believe I read on July 24, summarizing the interview. This did not mention anything about how Mr. Liddy was hired at the committee. The FD-302, the report of the interview did, in connection with his hiring there, indicate that he was recommended by Mr. Dean and Mr. Krogh. But at that time I had that kind of knowledge and no more, as I testified this morning. I cannot make a jump just because the man is recommended over there for a position that there is something wrong with that relationship.

SENATOR GURNEY. The other fact that occurred to me was that during the very extensive investigation by the FBI of White House personnel and Committee To Re-elect the President personnel, as I understand it, nothing in these investigations or interviews has shown any relationship between Dean and Liddy other than this recommendation to the Committee To Re-elect; is that true?

MR. GRAY. That is correct, Senator Gurney. I testified to that this morning. There is the sum total of our investigation. We have not seen anything pointing to Mr. Dean.

SENATOR GURNEY. Therefore, in these very extensive investigations, there was nothing to alert you that Dean and Liddy had any clandestine relationship?

MR. GRAY. No, there still is not anything to me in the Watergate investigation file.

SENATOR GURNEY. There was a great deal of discussion this morning also on the mechanics of handing these files to Mr. Dean; that is, how they were turned over. This memorandum, the legal memorandum of July 20, 1972, from Mr. Felt, was discussed at some length, and I would like to take that up, if I may, and clarify for my own benefit. Now, this memorandum was written at a request by you, Mr. Gray?

MR. GRAY. Yes. I am pretty sure it was. My best recollection of it was that I was talking with my acting Associate Director, Mr. Felt, and I asked that he cause this kind of a memorandum to be prepared by the Office of Legal Counsel.

SENATOR GURNEY. My understanding of the memorandum, is that it generally sets forth FBI procedures for handling information about a criminal investigation that has been requested by the White House. The memorandum says that the normal procedure would be to turn over the information first to the Attorney General and, as the memorandum says, leave the rest to him; is that right?

MR. GRAY. That is correct, sir. Then it goes further than that.

SENATOR GURNEY. Well, I am going to get to that. But these were establishing general procedures?

MR. GRAY. That is correct.

SENATOR GURNEY. You in your mind were establishing what we used to call a SOP in the Army, standard operating procedure; is that correct?

MR. GRAY. With regard to letterhead memorandums that we were going to initiate without somebody giving us a prod to do so.

SENATOR GURNEY. Now, I also see here in the memorandum that it says something else very specifically. It says this on the first page. We did not consider the matter of disseminating such information where there is a specific White House request. In this latter situation, we assume the President is the top officer of the executive branch. He can

obtain from that branch any information he wishes. As I understand that, that means to me that if the President wants an FBI file for some reason, or as in this case instructs his attorney to get some FBI files so that he can conduct an investigation for the President, this legal memorandum of your Department says to you that it is in order for you to hand over those files?

MR. GRAY. That is certainly the way I interpret it, and that certainly has been the practice in the past of the Federal Bureau of Investigation.

Senator GURNEY. That is the way I interpret it, too, and, as I understand it, that is what the memorandum itself says. As you pointed out, in the past that is what Mr. J. Edgar Hoover did in these situations.

MR. GRAY. Correct, sir.

Senator GURNEY. Now we come down to these actual mechanics of handling files which received so much attention this morning. Mr. Dean asked for some and, as I understand it, you asked him to come down to your office and pick them up. You had him do that because you wanted to be sure that these files were completely safeguarded, safeguarded to such an extent that they were not even in the hand of a courier taken from your office to the White House. You wanted to see that they were picked up personally by Mr. Dean so you knew personally that the person the President had in charge to take a look at these files actually had them in his own hands?

MR. GRAY. That is correct.

Senator GURNEY. And you did this in order to safeguard the files?

MR. GRAY. That is correct. That is what was going through my mind, and that is why I did it.

Senator GURNEY. Then there was the fact that nobody in the Federal Bureau of Investigation knew anything about it. What are you supposed to do, send a bulletin to everybody in the FBI that you are sending files to the President?

MR. GRAY. No, I do not think that has been done before. I have no knowledge that has been done before.

Senator GURNEY. I would doubt that, too.

MR. GRAY. May I point out, Senator Gurney, at this time some time had elapsed since the investigation began. Distribution of these files had been made to others, to the assistant U.S. attorneys, to the Criminal Division within the Department, and certainly I felt that when the President of the United States designates his own counsel to conduct an inquiry and that counsel asked if I will make available to him investigative reports and teletypes that I have available—

Senator GURNEY. Then the other point that I wanted to bring out was that you kept an accurate record, as I understand it—

MR. GRAY. That is correct.

Senator GURNEY [continuing]. Of files given to Mr. Dean and what was contained in the files.

MR. GRAY. That is correct.

Senator GURNEY. And he signed for them?

MR. GRAY. He did not sign for them. He received them from me and when they came back I made certain every single one of them was there on the inventory.

Senator GURNEY. Well, here is one Senator that thinks you could not have handled it more regularly than that.

Now, one other matter. That is this ITT thing. We spent a lot of time on that this morning.

Senator BURDICK. I have a question on that when you are through.

Senator GURNEY. Do you want me to yield?

Senator BURDICK. Yes, I would, to keep continuity in the questioning.

Senator Gurney said that there is no proof that the Beard memorandum went into the hands of the ITT from Mr. Dean, no evidence or a witness of actual delivery. Let me ask you about the sequence. This memorandum was given to the chairman of this committee by Mr. Jack Anderson. The chairman gave the memorandum to the FBI. The FBI gave it to you. You gave it to Mr. Dean.

Now, let us go back. Did you give it to the ITT yourself personally?

Mr. GRAY. No, sir.

Senator BURDICK. Did the Attorney General give it to the ITT?

Mr. GRAY. No, sir; I do not know that he did.

Senator BURDICK. I know that the chairman did not give it to ITT. So Dean was the last stopping point before it got to ITT?

Mr. GRAY. That I do not know, sir.

Senator BURDICK. You gave it to Dean, that much you know?

Mr. GRAY. Yes, sir.

Senator BURDICK. And from there we find it in the hands of the ITT?

Mr. GRAY. That apparently is testimony in the record, Senator Burdick.

Senator BURDICK. That is all.

Senator GURNEY. Well, the point I was making, of course, is that we have no evidence before the committee as to how the memorandum got in the hands of ITT. I hope some day we will find out. I am very serious about it, too.

But to get back to the ITT discussion we had this morning. This, of course, is on the investigation that the committee has asked to be done, following up the possible perjury that may have occurred before this committee in the Kleindienst hearings. I would like to go over that a little bit because there was some impression left, I think, that you, Mr. Gray, may have been deeply involved with the ITT affair at the time that you were in the Justice Department, and I wanted to clear that up some for my own information.

Did you have anything to do with the ITT antitrust suit within the Department of Justice?

Mr. GRAY. No, sir. The first time I had anything to do with it was when Mr. Kleindienst asked that his hearing be reopened and he be permitted to come up here and testify. That is when I began learning something about this whole matter.

Senator GURNEY. You never worked with Mr. McClaren on this case?

Mr. GRAY. No, sir.

Senator GURNEY. Or Mr. Kleindienst?

Mr. GRAY. No, sir.

Senator GURNEY. You never worked with Mr. Mitchell on this case?

Mr. GRAY. No, sir.

Senator GURNEY. Did you ever work with anybody on ITT?

Mr. GRAY. No, sir. I did not know anything about that case at all until I started here with Mr. Kleindienst in support of him, as I testified this morning.

Senator GURNEY. My understanding is that the only involvement you had with ITT was what occurred in this committee room in the Kleindienst hearings when you were helping him as a member of the Justice Department in preparing testimony and answering questions before this committee: is that correct?

Mr. GRAY. That is correct, sir, preparing "issue and answers" papers, and also there did come a time when I began to make the decisions on the documentation to be provided to the committee. As I testified this morning, I recall the first letter I signed on this was March the 17th of that year.

Senator GURNEY. Now, there was some question about a possible conflict of interest in this present FBI investigation of possible perjury, because you are the Acting Director of the FBI and because of your involvement in the Kleindienst hearings. I cannot see how there possibly could be, but I am curious—you are not conducting this investigation personally within the FBI, are you?

Mr. GRAY. No, sir, the agents, once again, are doing the job they have been trained to do without any interference from me.

Senator GURNEY. The facts that are developed go to the Justice Department?

Mr. GRAY. Yes, sir: the Committee on the Judiciary referred the entire testimony to the Criminal Division for analysis. They in turn are directing us in our investigation, and I understand that the Attorney General of the United States and Assistant Attorney General have disqualified themselves in this case.

Senator GURNEY. There was some question raised about whether the evidence that is produced in this investigation ought to go to the Justice Department. Who else could it go to? Is not the Criminal Division of the Justice Department responsible for any prosecution of this case if there is evidence of criminality that requires prosecution?

Mr. GRAY. Yes, sir. The committee referred the record there and the Justice Department will have to do its work.

Senator GURNEY. There is not anybody else who could do it? The sheriff of Nottingham could not do it?

Mr. GRAY. No, sir.

Senator GURNEY. That is to go to the Justice Department and the Criminal Division and then be assessed and decided whether it will be prosecuted?

Mr. GRAY. That is correct, Senator.

Senator GURNEY. One other point that was raised this morning, and I am not sure whether there was any clarity on it or not. There was some question whether during your tenure as Acting Director people brought pressure on you. I want to ask the same question again, or several questions in this area.

Has anybody in the administration ever brought any pressure on you to do anything or not to do anything during your tenure as Acting Director of the FBI?

Mr. GRAY. No, sir.

Senator GURNEY. That is all.

Senator BURDICK. Mr. Gray why did you give the Dita Beard memorandum to Mr. Dean?

Mr. GRAY. Mr. Dean called me and asked me if I could make this available to him.

Senator BURDICK. Did he give you any reason why he wanted it?

Mr. GRAY. No, sir, he did not.

Senator BURDICK. You just gave it to him when he asked you?

Mr. GRAY. Yes, sir. The only thing I can add to that, Senator Burdick, and I have said it quite a few times, that man is counsel to the President of the United States and when that man calls or the assistant to him calls there is a duty on the part of the Director of the FBI to produce that sort of thing for them. I bear in mind my earlier discussion about files, but this was not a matter that involved an individual or anything of that sort. It involved a question of authenticity, as far as I could see.

Senator BURDICK. Mr. Dean gave you no reason at all?

Mr. GRAY. No, sir. He asked me if I could make that Dita Beard memorandum available to him for his inspection.

Senator BURDICK. And, thereafter, we find it in the hands of the ITT, out of your control?

Mr. GRAY. That is the testimony of record, Senator Burdick.

Senator BURDICK. That is all.

Senator ERVIN. Is it customary that FBI information, gathered by the FBI, be transmitted to the Department of Justice so they can determine whether it justifies a prosecution?

Mr. GRAY. Yes; Senator Ervin, that is correct.

Senator ERVIN. Does the FBI furnish it only to the Department of Justice in that connection or does it also furnish it to the district attorneys?

Mr. GRAY. Senator Ervin, quite a few cases in the field are referred directly and we work directly with the U.S. attorneys. Very often in those cases in the field the decision is made at the U.S. attorney's level, or if he is in doubt he would request the Department for the prosecution.

Senator ERVIN. Is the information transmitted directly to the district attorney by the FBI rather than through the instrumentality of the Department of Justice?

Mr. GRAY. I believe that it is, yes, sir. He is provided with copies of the investigative reports which are placed right in his mailbox in the field offices.

Senator ERVIN. You have testified that information was furnished to the Department of Justice in respect to the Watergate investigation, and also to Mr. Dean as counsel for the President. Do you know whether any information was furnished by the FBI to any other official?

Mr. GRAY. Other than the assistant U.S. attorney and the U.S. attorney level, and I think a copy of that summary memorandum of July 21 went to the Deputy Attorney General and Assistant Attorney General, Criminal Division.

Senator ERVIN. The only White House aide who got any was Mr. Dean?

Mr. GRAY. That is right. I made the delivery to him personally and got the receipt and got it back from him.

Senator ERVIN. Was Mr. Dean the only person other than the FBI agents present at the time that the FBI took statements from the White House aides?

Mr. GRAY. I think Mr. Dean was present, certainly, on all of those. Perhaps when—I do not think Mr. Dean was present when Mr. Wong of the Secret Service was interviewed. I think my memory is correct on that. I do not know whether Mr. Dean sat in on each of those White House interviews or whether it was Mr. Dean or Mr. Fielding.

Senator ERVIN. As I understand, you testified before that when the FBI interviewed the employees of the Committee to Re-Elect the President, that the committee insisted that their counsel be present?

Mr. GRAY. Yes, sir, to the best of my recollection, Senator Ervin. That was a discussion that those attorneys had with the assistant U.S. attorneys and this did, in fact, occur.

Senator ERVIN. Do you know what particular individuals acted as counsel when members or employees of the Committee to Re-Elect the President were interviewed?

Mr. GRAY. Well, Mr. Kenneth Parkinson, who was representing the committee in connection with the civil lawsuit, certainly was there. I believe he was the chief counsel there, the counsel of record, and he made the arrangements with the U.S. attorney. The counsels who were there with him were Paul O'Brien and Kissler and Jackson and a man named Glenn Sedam, who was an attorney for the Committee to Re-Elect the President. But they did not all sit in en bloc on all the interviews. There were one or two always present in an interview.

Senator ERVIN. Do you have any questions, Senator Hruska?

Senator HRUSKA. No, sir.

Senator ERVIN. I am awfully sorry the President will not let Mr. Dean come down and testify.

I have what purports to be a Xerox copy of a letter written by Mr. John W. Dean III, counsel to the President, to Dr. Jeremy J. Stone, director of the Federation of American Scientists, 203 C Street NE., Washington, D.C., on White House stationery, The White House, April 20, 1972. It says:

DEAR DR. STONE: Thank you for your recent letter enclosing a copy of the F.S.A. Newsletter with the article on Executive Privilege. I found the article most interesting.

You asked whether President Nixon or any former Presidents have ever asserted a claim that Presidential aides have blanket immunity from testifying before the Congress on any subject. I am not aware of any public statement by President Nixon or any past President to this effect.

This Administration adheres to the same doctrine of Executive Privilege which has been developed through precedent and tradition, and followed by all recent Administrations. The precedents indicate that no recent President has ever claimed a "blanket immunity" that would prevent his assistants from testifying before the Congress on any subject. The fact that this Administration has also not made such a broad assertion is clearly evidenced by the examples cited in your newsletter and the testimony of Mr. Flanigan before the Senate Judiciary Committee.

With best regards,

JOHN W. DEAN III,
Counsel to the President.

I would like to have this inserted in the record.
[The letter referred to follows:]

THE WHITE HOUSE
WASHINGTON

April 20, 1972

Dear Dr. Stone:

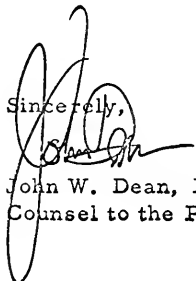
Thank you for your recent letter enclosing a copy of the F. A. S. Newsletter with the article on Executive Privilege. I found the article most interesting.

You asked whether President Nixon or any former Presidents have ever asserted a claim that Presidential aides have blanket immunity from testifying before the Congress on any subject. I am not aware of any public statement by President Nixon or any past President to this effect.

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With best regards.

Sincerely,


John W. Dean, III
Counsel to the President

Dr. Jeremy J. Stone
Director
Federation of American Scientists
203 C Street, N. E.
Washington, D. C. 20002

546-3300

Senator HRUSKA. Could the letter to which it is a response be inserted?

Senator ERVIN. I do not have it.

Senator BAYH. Could we send a copy of that letter to Mr. Dean?

Senator HRUSKA. Maybe Mr. Gray could be given special dispensation to make it available to Mr. Dean.

Senator BAYL. You had better check with Mr. Kleindienst to see whether that is permissible or not. [Laughter.]

Senator ERVIN. I have to express a very deep regret that the President has taken the action he has in restricting the testimony of Mr. Dean because I think there are some things he could throw some light on. I see no reason in the world not to allow him to do so.

I have nothing further.

Senator GURNEY. May I comment on that, Mr. Chairman?

It is true the President did say Mr. Dean could not come here and testify, but he also said we could direct any and all questions we wanted to in the form of interrogatories. So he has not denied entirely the right of the committee to inquire about these matters. I understand the point of view of the distinguished Senator from North Carolina that it is better to have a witness before you. I understand that, but it is also true that the President has made available a way in which we could get a lot of information if we would avail ourselves of it.

Senator ERVIN. I practiced law a long time and I will tell the Senator that I never could find a way to cross-examine words written on a piece of paper. I think those with experience in law enforcement and with private cases know that the only way you can get from a witness what the witness knows is by having him present in person.

Senator GURNEY. I might point out that on the occasion of Mr. Fortas' confirmation hearing before this committee—I was not present, but I think the Senator from North Carolina probably was—there was a request for a witness to come up from the White House who was an attorney to the President. I do not remember his name now. This was in connection with the possible assistance by the then Justice of the Supreme Court in drafting proposed legislation. The invitation was denied, and at that time, apparently, there was not any tremendous protest by this committee, and certainly the then incumbent of the White House, President Johnson, did not even give an offer of interrogatories. So I think we have other precedents here that bear on the work of this committee.

Senator ERVIN. I was on the committee when Mr. Fortas was before the committee and it appeared from his cross-examination that he had talked to the President and so we did not need the witness to supply that evidence. At least that is the view I think the committee took at that time.

Senator HRUSKA. Was Mr. Fortas on the President's staff at the time?

Senator ERVIN. No. The complaint was that a Justice of the Supreme Court should not advise a President. Of course, that has been more honored in the breach than not, not only in that case but in other cases.

Senator HRUSKA. I would like to subscribe to the thought expressed by the Senator from Florida that we have not availed ourselves of the opportunity to elicit information from Mr. Dean by written interrogatories.

We all know it is better to have a witness before us in person so that we may examine and cross-examine. On the other hand, vast volumes of litigation are conducted on the basis of written interrogatories, even greater volume by deposition. Limiting my comments now only to interrogatories, it is resorted to only in those cases where it is not

practical or possible to get the personal presence of a witness before the court or commission or investigatory body. I would imagine, unless we want to stand on principle, if we are interested in results, if we are interested in the information that Mr. Dean can give us on those points to which we seek to address ourselves, that it is available. He has said so.

Now I am confident that if the type of examination that we have witnessed, such as that to which Mr. Gray has been subjected, if that is the objective of having Mr. Dean present here, I would fully subscribe even more firmly that the President should not allow him to come here. After all, his presence here would be a substituted presence for the President of the United States and there should be some sense of dignity and respect exhibited for people of high office, and I would seriously question whether that has always been the rule here in the interrogation of several witnesses, including Mr. Gray, at all times.

Senator ERVIN. When depositions are taken everybody is authorized to be there in person and question the witness.

Under the law of my State you cannot take a deposition if a man lives within 70 miles of where the court is sitting. You have to produce him in person. I do not believe it is 70 miles from here to the White House. [Laughter.]

Senator HRUSKA. The Senator from Nebraska made an exception as to depositions, because both parties are notified, both parties have the right to be represented, if they are not present themselves.

However, on written interrogatories, in my State we allow them to be used by both parties in a civil lawsuit.

Senator ERVIN. The plaintiff can submit written interrogatories to the defendant to answer, but the plaintiff does not have to do that. He can subpoena the defendant as a witness. I think there is quite a distinction, with all due respect to my good friend. I get letters from my constituents and I write them back and they write me back and say I didn't answer the question and it is a case of interminable letter writing.

Senator GURNEY. I have had the experience of interminable letter-writing, too. We might have that in written interrogatories to Mr. Dean. But I don't think it would be one smidgeon of the interminability of questioning that goes on in this hearing. I think we could settle the question with interrogatories.

Senator BAYH. I would observe that there may be some relationship between the perception of questioning as interminable and the issue involved.

The Senator from Indiana may be as guilty of that varying interpretation as anybody else.

Senator GURNEY. I was not referring to the Senator from Indiana, but if he wants to include himself it is all right with me.

Senator BAYH. I think the Senator's description speaks for itself.

Mr. Gray, as I recall, you responded today to Senator Kennedy, in relating just when these reports were going to Mr. Dean and when you—when the FBI—found out about the Dean-Magruder-Liddy conversation, you said that to the best of your recollection there was nothing there that alerted you to Dean's being involved. That is, in the FD 302 that you got the day before. My recollection is that yesterday you responded just the opposite to me.

Mr. GRAY. I am sorry, sir. That doesn't sound correct to me.

Senator BAYH. A day or two before the reports started going to Dean, I thought you told me yesterday, there was known the relationship between Dean, Magruder, and Liddy.

Mr. GRAY. I probably did tell you that, but I think my testimony was that the first information I had regarding Mr. Magruder came in the form of a teletype which I believe I saw on July 24. As I remember, the white note on that teletype, in the upper left-hand corner, which is what we generally read—it is a summary of the teletype—contained nothing that would indicate that. I then went on to say that within the FD 302, the report of interview of Mr. Magruder, there were those words, as I remember them.

Once again I am testifying now in substance, but I have already said, and it is on the record, that Mr. Magruder had asked for recommendations and had received them from Mr. Dean and Mr. Krogh, that is correct. But I didn't have that particular FD 302. It came up to me in the third packet of investigative reports on September 13.

Senator BAYH. There were a number of reports that went to Mr. Dean, however, after you did have this information?

Mr. GRAY. Yes, sir, the third batch of those FD 302's and two volumes of teletypes went to him.

Senator BAYH. I do not want to drag this out. You have been patient and I feel that you have been very direct with the committee.

I do want to tie up a couple of loose ends. I am concerned with the use of the information, perhaps, by Mr. Dean, and the propriety of his presence. You have been very open with us on all that.

The whole purpose of Mr. Dean's getting the reports, the request by the President, was to accomplish what?

Mr. GRAY. Well, I have testified quite a few times, Senator, that he requested them within his official capacity as Counsel to the President of the United States, in connection with the inquiry he was conducting regarding White House involvement.

Senator BAYH. How long did he continue to get the reports?

Mr. GRAY. The last time that he asked me for any reports was in October.

Senator BAYH. Why is it that he was asking you for reports in October when it was on August 29 that President Nixon announced that Mr. Dean had completed the investigation and reported to him that no person then employed at the White House had been involved in the Watergate?

Mr. GRAY. I think we must keep in mind there were investigations conducted later on, following certain grand jury testimony. All I know is Mr. Dean asked for them and I supplied them. This is a possible reason, but I don't know that that was his reason. I don't know to this day whether his inquiry is open or closed.

Senator BAYH. I think one of the unfortunate aspects of this hearing is that Mr. Dean's purpose and Mr. Dean's motives will never be aired, and the refusal to let him participate tends to put you in a light which I personally feel is unfortunate.

On the ITT investigation, you said that Mr. Kleindienst has disqualified himself?

Mr. GRAY. Yes, sir, I was advised during the noon hour that Mr. Kleindienst and Mr. Petersen, the Assistant Attorney General in charge of the Criminal Division, had disqualified themselves.

Senator BAYH. What sort of position does that put you in?

Mr. GRAY. That puts me in the same position as I was before, as Acting Director of the FBI, to make sure that we do the best investigating job possible and turn that information over to them and follow out their mandate to us in the memorandums that they are sending to us, Senator Bayh.

Senator BAYH. What were the instructions? You mentioned something, I recall, about a full court press.

Mr. GRAY. That is just a manner in which we are conducting the investigation, but I respectfully declined this morning to discuss the investigation, and I relied once again on the traditional rules and regulations and policies of the Department of Justice.

Senator BAYH. I don't want to know the substance of the investigation. I thought this morning you had relayed to us the substance of the instructions.

Mr. GRAY. Yes; I said they were scoping out for us, if you will, if that is the correct terminology, in their memorandums to us, and as we furnish reports to them they review those reports and furnish additional requests to us. These are the career attorneys in the Criminal Division who are moving this investigation and we are doing the investigating work for them as they direct.

Senator BAYH. Are there any limitations on the scope of the perjury investigations by the Justice Department?

Mr. GRAY. No, sir, because I think you know, Senator Bayh, the committee has referred that record over there. Then those attorneys study it and come up with these memorandums and tell us to go do this, and we comply and report back to them and they look at those reports and tell us again to do this or this. This is the way it is going. We work with them.

Senator BAYH. Was anybody excluded from the investigation by instruction from the Justice Department?

Mr. GRAY. I don't really quite—

Senator BAYH. Were you told not to investigate certain individuals?

Mr. GRAY. No, we were being told to investigate individuals. It is a positive kind of thing.

Senator BAYH. The instructions did not say conduct a full investigation except for the following people?

Mr. GRAY. Oh, no, sir.

Senator BAYH. To get a general impression, since we can't get the specifics, of the comprehensiveness of the Watergate investigation, I want to throw this in. I noticed in the New York Times yesterday a story about a team, which included several of these Watergate defendants, recruited to carry on violence, harassment of protest demonstrations, and so on. I wonder if the investigation of Watergate was sufficiently comprehensive to pursue this? Did you find that this did in fact exist? Did you find that any of the funds of the Committee to Re-elect the President were used for this type of thing?

Mr. GRAY. I think once again, Senator Bayh, when you go into the substance, what those FD 302's reveal, I would respectfully decline to answer that question. But I would say, as I have testified earlier, that this investigation was oriented toward an intercept of communications violation.

Senator BAYH. If in the process of investigating an interception of communications violation you accidentally stumble on the violation of something else I suppose you have a responsibility to pursue it, would you not?

Mr. GRAY. Let me tell you what happens. These reports are going to the assistant U.S. attorneys and to the Criminal Division. Questions are raised and my prior testimony has been to the effect that I did raise such a question and that I did get a response to it. Then a couple of days later an individual within the FBI, in an executive level position, had a discussion with the people in the Criminal Division regarding that. You are correct. When we unearth something like that, it comes to the attention of the U.S. attorney or it comes to our attention and we ask about it.

Senator BAYH. I share the concern expressed by my colleagues that we are not going to have access to the files. When the Attorney General gave that order, did he give you a reason for it?

Mr. GRAY. No, sir; he just called me up and he reeled off the instructions and I wrote them down and I said, "Yes, sir," and that was the end of it. He hung up the phone.

Senator BAYH. Did he say that no information at all could be given that was contained in FBI files?

Mr. GRAY. Yes, sir; he told me that I was no longer to discuss those files.

Senator BAYH. This was not just the raw data?

Mr. GRAY. No, sir; the Watergate file and that I was to follow the policy of the Department of Justice with regard to our files.

Senator BAYH. And written materials relating to your Cleveland speech, the memo showing the internal investigation conducted in regard to the Ehrlichman transmittal letter, material on the memo from the FBI legal advisor's office, all these fall into the prohibited categories?

Mr. GRAY. Yes, sir; they all come under the general rules and regulations of the Department of Justice.

Senator BAYH. It is rather far reaching, isn't it?

Is that not to anybody or just not to the Senate?

Mr. GRAY. No, sir; I am to fall back on the traditional standards of the Federal Bureau of Investigation. It is not available to anybody, other than the exceptions that have been made with respect to the Watergate files with regard to members of the Judiciary Committee and its two staffers and Senator Ervin's Select Committee and its two staffers.

Senator BAYH. Thank you.

I appreciate your patience.

Mr. GRAY. Thank you, Senator Bayh.

Senator HRUSKA. Mr. Chairman. I have received a copy of a letter from a longtime member of the City Club of Cleveland in regard to the speech which Mr. Gray made there last fall. I think it is pertinent to the discussion that has been had on that matter. I ask unanimous consent that it be included in the record.

Senator ERVIN. Without objection it is so ordered.

[The letter referred to follows:]

FORD, HOWLAND, WHITNEY & HAASE,

ATTORNEYS AT LAW,

Cleveland, Ohio, March 7, 1973.

THE CHAIRMAN,
The Senate Judiciary Committee,
Senate Office Building,
Washington, D.C.

DEAR SIR: The question having been raised as to whether Mr. Gray's appearance before the City Club of this city had political implications, this is a piece of testimony on that score. I enter a vigorous denial.

I have been a member of this club for many years, and on this occasion listened attentively to the entire proceeding in order to form a judgment about Mr. Gray's qualifications in this responsible position. His conduct, speech, and answers to interrogatories were all of a very high order. He dedicated his main remarks to an exposition of the nature and operations of the Federal Bureau of Investigation. It was factual and informative and exactly what the Club had sought when it solicited his speech; in short, it was true to the nature of the Club's function of bringing enlightenment on important subjects to its listeners.

I doubt if it crossed anyone's mind, among his listeners, that there were any political implications in what he said. He was faithfully carrying out a mission of information.

At the conclusion, he was heavily applauded, and the impression which all of us carried away was that the nation was fortunate to have such an experienced and dedicated man in this important position. Nothing which has transpired since has altered that opinion.

Faithfully yours,

DAVID K. FORD.

Senator ERVIN. You have no other questions?

Senator HRUSKA. No.

Senator ERVIN. The chairman has instructed me to recess the hearing to 10:30 in the morning.

[Thereupon, at 4:15 p.m., the committee recessed, to reconvene at 10:30 a.m., Thursday, March 23, 1973.]

NOMINATION OF LOUIS PATRICK GRAY III

THURSDAY, MARCH 22, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Hart, Kennedy, Bayh, Byrd of West Virginia, Tunney, Hruska, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, and Francis C. Rosenberger, Thomas D. Hart, and Peter Stockett, professional staff members.

The CHAIRMAN. The committee will come to order.

Senator Byrd, you may proceed.

Senator BYRD. Mr. Gray, you said that when you left the Navy in 1960, you served "on the staff of the then Vice President Nixon in his Senate Office."

Were you on the Vice President's Senate payroll?

TESTIMONY OF LOUIS PATRICK GRAY III—Resumed

MR. GRAY. No, sir, I was not.

To the best of my recollection, at that time I was paid by the Republican National Committee. The reason for that is that I had my U.S. Navy retired pay at that time.

Senator BYRD. Were you working in Mr. Nixon's Senate office?

MR. GRAY. Yes, sir, that is where I worked.

Senator BYRD. Have you talked with Mr. Dean since the hearings on your nomination began?

MR. GRAY. Have I talked to him since these hearings began?

Senator BYRD. Yes.

MR. GRAY. Yes, sir, on and off I have.

Senator BYRD. When?

MR. GRAY. I don't remember the exact dates.

Senator BYRD. How many times?

MR. GRAY. Well, it would have to be really an estimate, and I would have to check for you. But I would estimate that it may be, oh, 8, 10, or 12 times since these hearings began.

Senator BYRD. Were these all telephone communications?

MR. GRAY. Yes, sir. He has not been in my office and I have not been in his.

Senator BYRD. And you have not met with him personally since the hearings began?

MR. GRAY. No, sir, I do not believe I have that I can recall.

SENATOR BYRD. Were these calls initiated by you or by Mr. Dean?

MR. GRAY. I think that some of them probably were initiated by him and some by me. I don't remember specifically.

SENATOR BYRD. What was the subject of the discussions, as you recall them?

MR. GRAY. These hearings and what was transpiring at these hearings?

SENATOR BYRD. And precisely what in connection with these hearings?

MR. GRAY. I can't remember the precise matters discussed, other than I would try to give him a feel of how they were going and that type of thing, but I can't—

SENATOR BYRD. Why would you try to give him a feel of how they were going?

MR. GRAY. I think probably he would be interested and I think some people at the White House might be interested in how these hearings are going. After all, I am a Presidential nominee, and I certainly feel that I can talk to them.

You know, I still have the right of association.

SENATOR BYRD. You are not the nominee of Mr. Dean?

MR. GRAY. Sir?

SENATOR BYRD. You are not the nominee of Mr. Dean?

MR. GRAY. No, I am not the nominee of Mr. Dean, but he is the Counsel to the President.

SENATOR BYRD. Why would you call Mr. Dean to relate to him how the hearings were going?

MR. GRAY. I would call him the same as I made a couple of calls to Mr. Ehrlichman. I have contact over there and Mr. Dean is the person on the White House staff who does have the Department of Justice and the Federal Bureau of Investigation as a part of his departmental liaison responsibilities.

SENATOR BYRD. Well, there has been an element of ubiquity about Mr. Dean that we can't seem to explain.

What else was discussed with Mr. Dean?

MR. GRAY. Well, I may have had other calls on other matters. I am trying to remember now. Certainly on Wounded Knee—I remember one just yesterday on Wounded Knee—that type of thing. I talk about other things with Mr. Dean, Senator, other than just this.

I have to continue to direct the work of an ongoing bureau, you know.

SENATOR BYRD. I understand that. But you said you talked to him relative to these hearings and how they were going.

MR. GRAY. That's right, and I would make the same kind of report to the Attorney General.

SENATOR BYRD. What would you say in relating how they were going?

MR. GRAY. I would relate in general the tenor of questions that were being asked and that type of a conversation. It wasn't anything specific, as did somebody ask me this or that question. It was the scope and the type of questions that were being asked.

SENATOR BYRD. Why would you not wait for him to call you?

Mr. GRAY. I think there is no real difference as to who calls whom. I think we both have have the right to telephone one another and, just to be absolutely honest with you, I didn't think of it in those terms. I can't see myself being placed in an absolute cocoon and not talking to anyone.

Senator BYRD. I don't question your right to call, but do you have the responsibility to call Mr. Dean and relate to him how the hearings are going?

Mr. GRAY. Yes, I think I do and as Counsel to the President I think he would be interested.

Senator BYRD. Did he recommend your nomination?

Mr. GRAY. No, sir; he didn't recommend my nomination, that I know.

Senator BYRD. Then you would say that the Time story in the last issue of Time was incorrect?

Mr. GRAY. I haven't read that story, Senator Byrd.

Senator BYRD. Would you supply for the record the dates, the times, of those telephonic communications and recall as exactly as you can the nature of them and the content thereof?

Mr. GRAY. I would respectfully decline to make any submission of that information for the record, sir, under the policies of the Department of Justice that those are internal records and memorandums of the Department.

Senator BYRD. Do these constitute raw files of the Department?

Mr. GRAY. Pardon me, sir?

Those are internal records and memorandums, if there are any in connection with those calls.

Senator BYRD. Would these particular calls involve raw files of the FBI?

Mr. GRAY. No, these particular calls would not involve raw files of the FBI.

Senator BYRD. Are you saying the Justice Department policy, which changed the groundrules recently, precludes you from supplying to this committee information concerning telephonic conversations with Mr. Dean since these hearings began?

Mr. GRAY. No. I wouldn't put it that way. I would say initially, when I came up here and made my initial offer, I read the rules and regulations and the policies of the Department of Justice and now I have been instructed to pursue those policies and to adhere to them, Senator Byrd.

Senator BYRD. You have indicated that such recent conversations did not involve raw files. Did they involve any conversation in connection with the Watergate investigation?

Mr. GRAY. Not in connection with the conduct of the Watergate investigation or the substance of the Watergate investigation. They involved this particular hearing, what was transpiring here, and other matters of business.

I remember specifically one yesterday on the Wounded Knee situation.

Senator BYRD. Well, this hearing hasn't gotten into the Wounded Knee situation, but if your calls to Dean involved this hearing and what transpired at this hearing, that's all-embracive. Can you be more specific as to what was discussed and can you specifically say that the

Justice Department's new policy, which you are now following—of not permitting this committee to see raw files—also encompasses information with respect to these telephonic conversations which have occurred between you and Mr. Dean since these hearings began?

Mr. GRAY. Yes, sir. I would say those conversations concern these hearings. They also concern other matters of business, other cases, other situations, and I am adhering to the rules and regulations and policies of the Department of Justice in respectfully declining to provide these.

Senator BYRD. Mr. Gray, I am not interested in information with respect to other cases, Wounded Knee, et cetera, et cetera. I am only interested in conversations which have a direct bearing on your qualifications to serve as Director of the FBI. This would embrace the Watergate break-in. It would embrace other things that have been gone into during the conduct of these hearings. Now, could you confine yourself to those things and supply that information to the committee?

Mr. GRAY. Senator Byrd, I am testifying here to the best of my knowledge and recollection with regard to these calls, and as to the number of them. I know what the substance of them was, and I am going to stand on that testimony, if I may, Senator.

Senator BYRD. And you are going to deny this information to the committee?

Mr. GRAY. Yes, sir; I am going to stand on my testimony.

Senator BYRD. Is the Watergate investigation continuing?

Mr. GRAY. Yes, sir.

Senator BYRD. The FBI is continuing its investigation?

Mr. GRAY. The FBI at this point in time is being directed by the Department of Justice to look into certain areas.

Senator BYRD. Would you delineate those areas.

Mr. GRAY. No, sir. I prefer not to discuss the substance of that investigation at all.

Senator BYRD. Is Mr. Dean being supplied further with raw files or letterhead memoranda?

Mr. GRAY. No, sir; he has not made any such request.

Senator BYRD. Since when?

Mr. GRAY. Since the last request that he made, sir.

Senator BYRD. When was that?

Mr. GRAY. That was in October of last year.

Senator BYRD. And the October 12 submission of report was the last submission?

Mr. GRAY. That is correct, Senator.

Senator BYRD. Can the FBI not initiate investigations into possible criminal activities on its own?

Mr. GRAY. There are areas in which this occurs. There are other areas when we work closely with the assistant United States attorneys as we do in the preponderant majority of our cases. We are guided and directed and work very, very closely together, shoulder-to-shoulder with the assistant U.S. attorneys.

Senator BYRD. Was the FBI precluded from initiating investigations on its own, beyond an investigation involving the IOC statute in connection with the Watergate matter?

Mr. GRAY. No. I think what you may be referring to is when I initially asked about some of the activities of Mr. Segretti, and then this

was discussed with the Department. The Department was well aware of what we were doing in connection with the interceptive communications. On the basis of the information available at that time, the conclusion was reached that we did not need to proceed into any of these other areas, that we stay right in the intercept of communications area.

Senator BYRD. But that does not answer my question.

Could the FBI not have initiated investigations on its own which would have gone beyond the investigation involving the violation of the IOC statute?

Mr. GRAY. Not in that particular area, because that involved the possibility of election laws violations, and there is a prescribed policy within the Department for that. These requests were made of the Department and these discussions were had with the Department.

Senator BYRD. How can an investigation be given "full court press" when it is restricted to the possible violations, in this kind of situation, of one statute only—the IOC statute?

Mr. GRAY. We gave it a full court press in connection with our investigation insofar as the alleged violations of the IOC statute were concerned, Senator Byrd.

Senator BYRD. How much time do you spend away from your office, Mr. Gray?

Mr. GRAY. In what time frame are we speaking, Senator Byrd, because it varies. My workweek on the average, on the low average, will run 52 to 58 hours and on the high average will run pretty close to 70 hours, because wherever I am I have briefcases with me, I have work with me. I work every evening at home. I don't go out in the evenings. When I come home I sit down and work. It is that kind of a position.

Senator BYRD. You are talking to an old pro.

Mr. GRAY. I realize that, a Senator's work is very, very hard, too.

Senator BYRD. How much time have you spent away from your office? I am speaking generally. I am not asking for exact hours or minutes. Going back over the 10 months of your acting directorship, I noted that when this matter involving the Watergate raid broke on June 17 last year, you were away from Washington, which was all right, but you were 4 days in getting back to Washington, and yet when you talked with Washington on June 17, you recognized that this was a very tough, difficult, complex, sensitive case, and that it might involve who knows whom, and yet you did not come back to Washington until the 21st. Then, time after time thereafter, when things came up in this matter you were called in St. Louis, or some other distant place. During the time that you made your decision with respect to the shooting out of the tires of the Southern Airways airplane you were in Connecticut. Although the hijacking had been going on for 29 hours, you were in Connecticut.

Just to be very blunt, what kind of a Director of the FBI is this who spends so much time away from the FBI, especially during the 10 months of a very critical test period of his acting directorship?

Mr. GRAY. I think one of the greatest utilizations of my time, Senator Byrd, involved my visits to the various field offices. It was a tremendous educational exercise for me, to try to learn how the FBI works. Also, I think it was a tremendous benefit to the men and women of the FBI.

It is true, of course, that I made these field office visits and I tried to visit each one of them. I visited 58 of the 59 field offices.

Senator BYRD. What field office did you not visit?

Mr. GRAY. I did not visit Honolulu.

Senator BYRD. Mr. Tunney asked for the date on which Mr. Colson sent Mr. Hunt out to see Dita Beard. Your answer came back, "March 1972"; can you be more specific?

Mr. GRAY. That is the answer we have and we cannot be more specific, Senator.

Senator BYRD. Mr. Gray, on March 7, when you and I were discussing the circumstances of Mr. Dean's handing over the equipment taken from Mr. Hunt's office to the FBI, you stated, "This came up as a result of agents desiring to find out whether or not Mr. Hunt had an office there, and Mr. Dean said that he would have to check whether or not Mr. Hunt had an office there and would ascertain that." Are we to presume the FBI did contact Mr. Dean concerning Mr. Hunt on June 19?

Mr. GRAY. I think this may have come up at the time of the interview with Mr. Colson when that statement was made. I believe that to be the time when it did come up, Senator Byrd.

Senator BYRD. But you indicated that the circumstances of Mr. Dean's turning over the equipment which he had gotten from Mr. Hunt's office to the FBI did come about as a result of agents desiring to find out whether or not Mr. Hunt had an office there, and Mr. Dean said that he would have to check whether or not Mr. Hunt had an office there. That is your own testimony.

Mr. GRAY. That is correct, and I think you are reading it accurately from the record, Senator.

Senator BYRD. What agents were involved?

Can you identify the agents?

Mr. GRAY. I think maybe one of them was an agent named Lano, and I think the other was Mahan. I believe that is correct.

Senator BYRD. Do you know precisely when these agents contacted Mr. Dean and at what time they contacted Mr. Dean desiring to find out if Mr. Hunt had an office there?

Mr. GRAY. I don't know the exact time of the day but I know it was during the time of the interview with Mr. Colson.

Senator BYRD. The FBI agents contacted Dean at that time?

Mr. GRAY. It just came up at that time. Mr. Dean was there and the testimony that I have given you is exactly the way it came up.

Senator BYRD. But when did the FBI agents contact Mr. Dean?

Mr. GRAY. They didn't contact Mr. Dean. Mr. Dean was sitting there at that time. That was during the Colson interview that this exchange occurred.

Senator BYRD. At which time Mr. Dean indicated he would have to check it out?

Mr. GRAY. That is correct, sir.

Senator BYRD. When was that?

Mr. GRAY. That was at—this exchange of conversation occurred at the time of the Colson interview, during the Colson interview.

Senator BYRD. What day was that?

Mr. GRAY. That was the 22d day of June.

Senator BYRD. The 22d day of June?

Mr. GRAY. Yes. I am sure that was the date of interview.

Senator BYRD. Are you saying that Mr. Dean, on the 22d day of June, indicated that he would have to check it out as to whether Mr. Hunt had an office, notwithstanding the fact that on the 19th, 3 days prior to that, he had asked Mr. Kehrli and Mr. Fielding to go into Mr. Hunt's safe and on the 20th those possessions from Mr. Hunt's safe had been put in his—Dean's—office? Are you saying that?

Mr. GRAY. I am just telling you what happened at the Colson interview, Senator Byrd. That was the statement that was made at the Colson interview and later reported.

Senator BYRD. Which was on the 22d?

Mr. GRAY. Yes, sir.

Senator BYRD. Dean indicated at that time that he did not know whether Mr. Hunt had an office?

Mr. GRAY. He said he would have to check it out.

Senator BYRD. Check it out.

And all the while the possessions of Mr. Hunt's safe were hidden in Mr. Dean's office?

Mr. GRAY. That could very well have been.

Senator BYRD. That is correct, isn't it?

Mr. GRAY. No, that is after the fact.

Senator BYRD. But it is correct?

Mr. GRAY. That is right, but I did not know it at the time of the Colson interview. I did not know it at all during that period.

Senator BYRD. But you should have known it at least on the date of the 27th and on the date of the 28th after Mr. Dean had turned over these possessions to the FBI on the 26th. Did this not create any suspicions in your mind?

Mr. GRAY. No, it did not create any suspicions in my mind at all. I testified, I think previously on this particular subject, that this man is the Counsel to the President. He is conducting an official inquiry for the President. These are Presidential papers and there is a long history regarding the character of Presidential papers and what can and cannot be done with Presidential papers. I think in that same exchange of questions and answers that we had, Senator, that I testified along these lines.

Senator BYRD. Well, Mr. Hunt had been identified as a suspect in the Watergate case on the 17th.

Mr. GRAY. No, sir; I would not conclude that. We were not at all prepared to reach that conclusion at that time. I think my testimony earlier with regard to this subject was along those lines.

Senator BYRD. Well, your own testimony indicates that the Washington field office interviewed Mr. Hunt at his home on the evening of June 17, and your own testimony indicates that Mr. Butterfield at the White House was informed by the Washington field office on June 17 at 5:30 or around 6 or 7 o'clock that Mr. Hunt might possibly be involved in the Watergate break-in.

Mr. GRAY. That is right. We didn't know and we can't make that assumption based on the information we had available to us at that time that he was involved in the IOC aspects of it. All we had, as I recollect, was a check to his country club at that time.

Senator BYRD. But it was enough, apparently—

Mr. GRAY. It was enough to make us want to go call upon him and talk with him and he didn't see fit to talk with us.

Senator BYRD. And it was also enough for Mr. Butterfield at the White House to be informed by the FBI that Mr. Hunt was possibly involved?

Mr. GRAY. That's right.

We suspected he was involved, but, you know, just to suspect that a person is involved doesn't mean that the person is. We had no basis on which to say this man is a suspected participant in the IOC. We did not have that kind of information at that time. We had to go out and acquire all kinds of information in order to build that mosaic, that evidentiary pattern.

Senator BYRD. But that is beside the point.

What I am saying here is that the FBI had good reasons to suspect that Mr. Hunt was involved in the Watergate break-in on June 17, the date on which that break-in occurred.

Secondly, Mr. Dean had Mr. Kehrl and Mr. Fielding break open Mr. Hunt's safe in an office in the Old Executive Office Building on the night of June 19, and the properties of Mr. Hunt that were taken from that safe were placed under the possession of Mr. Dean the next day on the 20th, and kept by him until the 26th, on which day he turned those properties over to the FBI.

In the meantime on June 22, during an interview that was being conducted by the FBI with Mr. Colson and in the course of which interview Mr. Dean was sitting in, the question came up as to whether or not Mr. Hunt had an office in the EOB. Mr. Dean indicated at that time—he was not being interviewed, this was Colson being interviewed, according to your testimony—but Mr. Dean indicated, apparently volunteered the information, that he would have to check to see, knowing all the time that the office was there, that the safe had been broken open by his orders, that the possessions had been removed, and that they were in his own possession. Then on the 26th, those possessions were turned over to the FBI. You had conversations with Mr. Dean, I believe, on the 27th and again on the 28th. Didn't Hunt's possible involvement; didn't the breaking in of the safe; didn't the keeping of these properties belonging to Mr. Hunt by Mr. Dean in his office for 6 days without involving the FBI, knowing all the time the FBI was investigating Mr. Hunt, and having at least two opportunities on the 21st and the 22nd in your office, I believe, to reveal this information, but not having revealed it, didn't all this create some kind of suspicions and wonderment and questions in your mind that should have been asked of Mr. Dean, should have been pursued and followed?

Mr. GRAY. No, sir.

I have explained this several times.

He turned over to us the material that came from that office. We found it to be incriminating to say the least, and furthermore he has a responsibility as Counsel to the President of the United States to safeguard the Presidential papers, to make absolutely certain that confidential, classified material and that sort of thing is safeguarded. This is not going to raise those kind of suspicions.

I would like to say further, too, Senator Byrd, that as far as the FBI is concerned this man, Hunt, at that time was potentially involved, as you said to me just now in this exchange. We had no real tie to bring him into this particular IOC thing at that time other than the finding of this check. We had to go out and develop it.

Senator BYRD. That is again beside the point entirely that I am discussing here. He was already suspected by FBI agents. The FBI wanted to know whether or not he had an office in the old Executive Office Building. So it is beside the point as to what may not have been proved about Hunt at that time. It was enough evidence to raise one's eyebrows.

Mr. GRAY. I would say, at the time, it wasn't enough to raise my eyebrows or the eyebrows of the agents who were doing the questioning. Later when these papers were delivered to us, we were not concerned because we had the papers and we know this man has a duty to the President and that these Presidential papers are the property of the President.

Senator BYRD. You have known of Presidents being betrayed, have you not, by a confidant?

Mr. GRAY. I think there may have been some Presidents in our history who have found themselves in this situation, yes, sir.

Senator BYRD. And surely Senators have been betrayed?

Mr. GRAY. Yes, sir.

Senator BYRD. Governors betrayed?

Mr. GRAY. Yes, sir.

Senator BYRD. Even Christ was betrayed by one of His chosen few. What I can't understand, this presumption of regularity goes so far and so deep that everything is accepted at face value, without question, without the slightest iota of suspicion.

Mr. GRAY. I wouldn't say that. not everything. You are asking me about something—

Senator BYRD. Everything with respect to what I have just asked you.

Mr. GRAY. You are asking me about a specific area.

Senator BYRD. Why did the agents have to ask Mr. Dean as to whether or not Mr. Hunt had an office in the Executive Building?

Mr. GRAY. It was as has been reported to me. It was a chance remark on the part of the agent.

He did not know what he was looking for or what he was after. It is one of those things that an agent will ask.

Senator BYRD. It wasn't exactly chance, I would say. You are talking about a conversation on the 22d of June, when on the 17th Mr. Hunt was suspected of involvement and such information was relayed by the FBI to the White House. Why didn't the FBI pick up the telephone and call the White House switchboard to see if Mr. Hunt had an office there?

Mr. GRAY. I think a number was called there. We were trying to find out exactly what number that was, and I don't know whether they have pinned that down. We did make that call.

Senator BYRD. Did the phone ring?

Mr. GRAY. The phone rang, yes.

Senator BYRD. Did you try again?

Mr. GRAY. No, sir, the phone rang and it was answered.

Senator BYRD. By whom?

Mr. GRAY. My recollection is that this has not been placed in the public record, and this is substance and I would refer the Senator to the record.

Senator BYRD. What information is substance? We already know Mr. Hunt had an office there.

Mr. GRAY. That is correct, sir, but you are asking questions, Senator Byrd—

Senator BYRD. Concerning a telephone call.

Mr. GRAY [continuing]. That are going into substance, and all I am saying to you, sir, is this is in the Watergate investigative file.

Senator BYRD. Well, as I recall a news story, someone from one of the local newspapers made the call and had no problem getting through the switchboard.

Since Mr. Dean said that he would have to check it out as to whether or not Mr. Hunt had an office in the EOB, did the agents follow up on Mr. Dean to see if he checked it out, and if not, why not?

Mr. GRAY. I believe I previously testified on the record here, and that is why I am going to respond to you, Senator Byrd, in accordance with my instruction, that yes, these materials were voluntarily delivered to the FBI.

Senator BYRD. Would you say that again, please?

Mr. GRAY. These materials were voluntarily delivered to the agents of the Federal Bureau of Investigation.

Senator BYRD. But this does not answer my question.

I am an FBI agent. I am sitting in on an interview with a gentleman here. You are Mr. So-and-So. The question comes up as to whether or not Mr. Hunt has an office in the Old Executive Office Building. You say, "I will have to check this out." Why wouldn't I, as an FBI agent, follow that up and see if you checked it out? I would follow that up the next day.

Mr. GRAY. The only way I can account for that is that those agents were working around the clock on many, many leads. They had the answer from Mr. Dean, and they thought eventually it would be followed up. That is the only way that I can account for it. This happened down at the working level, and I learned about it, you know, after the fact in great and copious detail in preparing for these hearings, Senator Byrd. But I did not know this at that time in that detail.

Senator BYRD. Did any FBI agent ever express concern at Mr. Dean's having gotten Mr. Hunt's possessions that were in the safe instead of the FBI's having gotten the possessions?

Mr. GRAY. I think we were interested in the chain of custody. It was in regard to being able to utilize those materials as evidence should we have to and that we did. I recollect I had a telephone call on that subject.

Senator BYRD. From whom?

Mr. GRAY. I think Mr. Dean called me, my recollection of it is, and—yes, it was during that call on the 27th day of June of 1972 at 9:28 a.m. when I mentioned to him the chain of custody regarding Mr. Hunt's effects. In that same telephone conversation, I asked if he could provide us with photos to assist in identifying the person alleged to be with Mr. Hunt at the Playboy Club in Miami, and also in that same telephone conversation, I pointed out to him the fact that a gun had been found in Mr. Hunt's effects delivered to us. I asked what security precautions existed at the White House to prevent this kind of thing from occurring, people carrying guns into the White House.

Senator BYRD. The next day Mr. Dean called you at 10:25 a.m., regarding leaks concerning material delivered to the FBI. What particular leak and what specific material did he have in mind?

Mr. GRAY. He was calling me then about those rumors that were continuing, as he put it, to the effect that the FBI was dragging its feet in this investigation and that a gun had been found in Mr. Hunt's effects. This was the subject of that call, as best as I can recollect it, sir.

Senator BYRD. On the same afternoon at 4:35 you called him. You state you have no recollection of the substance of that call. Could it have been with respect to Mr. Hunt's properties?

Mr. GRAY. No, I do not think it was. I covered that pretty thoroughly in that morning call. That is why I am sure it isn't. I have tried to remember it. It could have been on leaks, it could have been on toll call records, or it could have been on witness interviews, but I just don't know.

Senator BYRD. Going back to Mr. Dean, when he indicated that he would have to check to see if Mr. Hunt had an office in the Old Executive Office Building, he lied to the agents; didn't he?

Mr. GRAY. I would say looking back on it now and exhaustively analyzing the minute details of this investigation, I would have to conclude that that probably is correct, yes, sir.

Senator BYRD. Now, you just conclude that at this point.

How about on the 27th, the day after—

Mr. GRAY. No, sir. No, sir, there were none of us that discussed it in that time frame. We did not even consider it. We didn't think about it.

Senator BYRD. I cannot for the life of me, with all due respect to you, imagine how these things would not have occurred to you in the face of the chain of events that are on the record.

Mr. GRAY. We are looking at it in hindsight, Senator Byrd.

Senator BYRD. I am talking about the 27th—looking back on the 19th and the 22d of June.

Mr. GRAY. I think you have to place it in the proper perspective as we looked at it with a fast moving, fast-paced investigation, with events and reports and details coming in. I am saying to you that it did not occur to us then. We were concerned at the time about the chain of custody. There is no question about that.

Senator BYRD. Mr. Gray, hindsight is a very useful agent. Let's take hindsight for a moment. You indicated that Mr. Dean probably lied to the FBI agents as you now look back, yet yesterday you said you would continue to send to him raw FBI files if he requested them. Why would you now continue to send raw FBI files to an individual who probably lied, to use your words, to an FBI agent?

Mr. GRAY. Well, Senator Byrd, I think that you have got to realize once again that I am a Bureau Chief in an executive department of the Government, that I have to take orders from somebody, that I do report to somebody, that I am just not out there in the open, you know, independent and doing exactly as I please, and that man is Counsel to the President of the United States.

Senator BYRD. I recognize all this.

Mr. GRAY. I think you know that his first duty—I would like, if I may, to let the record clearly show that I have testified that his first duty was to the President of the United States in connection with the

Presidential papers in the White House, and this was a recognized duty of long standing.

Senator BYRD. Mr. Gray, where does your first duty lie, to the President of the United States or to the FBI?

Mr. GRAY. I'm sorry, sir?

Senator BYRD. Where does your first duty lie, to the President of the United States or to the FBI?

Mr. GRAY. I think that that is a tough question and I have said that before. I am a Bureau Chief in an executive department of the Government. I take orders from the President of the United States and, as I think I previously testified, if the Congress wants to put this FBI out into independent orbit and let its Director operate the FBI as he sees fit, we may indeed be creating a situation in which we are going to develop a national police force. This is a very real risk. It is a very serious question. It is not a light question. But at this time, by virtue of congressional enactment, I am in the position of Acting Director at the pleasure of the President of the United States. I do take my orders from the President of the United States. I can't evade that.

The CHAIRMAN. Well, does the law subject you to the President?

Mr. GRAY. Yes, it does, Senator.

The CHAIRMAN. Congress has had a hand in that; hasn't it?

Mr. GRAY. Yes, sir, that law was enacted by the Congress of the United States.

Senator BYRD. Granted all that, why couldn't you have called the President and said, "Mr. President, do you want these raw files? May I have a letter from you requesting them?"

Mr. GRAY. I did not deem it appropriate under the circumstances to do it. I did not at any time during these investigations deem it appropriate to do that.

Senator BYRD. I find it especially intriguing, Mr. Gray, that you, as late as October 12, would submit to Mr. Dean raw investigative files after the President, in the August 29, 1972, press conference, referred to the White House investigation as a "complete investigation," saying that no one "presently employed" in the White House staff, or in the Administration, was involved in "this very bizzare incident." Yet in the face of the President's having said the investigation was complete—2 months later you would supply to a man, whom you have stated under oath and on the record here as one who probably lied to FBI agents, raw files without any question as to whether or not the White House investigation was continuing, without any suspicion in your mind as to how those files might be used, without seeking further instructions from the man from whom you do take orders and to whom you owe the supreme duty. This is intriguing. Would you like to comment on it?

Mr. GRAY. Yes, sir. I am not at all certain that the President made those exact remarks—

Senator BYRD. You are not?

Mr. GRAY [continuing]. So I cannot comment on them. But if you were reading from that announcement, of course, those are the remarks I don't know. I am saying to you I don't remember the exact remarks.

Senator BYRD. No, I wasn't reading it. Let me read it for the record. This is from the press conference of the President on August 29, 1972,

at San Clemente, Calif. I will ask that the transcript be put in the record.

The CHAIRMAN. So ordered.

[The document referred to follows:]

PRESS CONFERENCE NO. 27 OF THE PRESIDENT OF THE UNITED STATES

LA CASA PACIFICA, SAN CLEMENTE, CALIF.

THE PRESIDENT. We will go right ahead with your questions, because I know you want to cover perhaps some international as well as domestic matters, including, I understand, for the first time, political matters.

Question. Mr. President, are you personally investigating the mishandling of some of your campaign funds, and do you agree with former Secretary Connally that these charges are harmful to your re-election?

THE PRESIDENT. Well, I commented upon this on other occasions, and I will repeat my position now.

With regard to the matter of the handling of campaign funds, we have a new law here in which technical violations have occurred and are occurring, apparently, on both sides. As far as we are concerned, we have in charge, in Secretary Stans, a man who is an honest man and one who is very meticulous, as I have learned from having him as my Treasurer and Finance Chairman in two previous campaigns, in the handling of matters of this sort.

Whatever technical violations have occurred, certainly he will correct them and will thoroughly comply with the law. He is conducting an investigation on this matter, and conducting it very, very thoroughly, because he doesn't want any evidence at all to be outstanding, indicating that we have not complied with the law.

Question. Mr. President, wouldn't it be a good idea for a special prosecutor, even from your standpoint, to be appointed to investigate the contribution situation and also the Watergate case?

THE PRESIDENT. With regard to who is investigating it now, I think it would be well to notice that the FBI is conducting a full field investigation. The Department of Justice, of course, is in charge of the prosecution and presenting the matter to the Grand Jury. The Senate Banking and Currency Committee is conducting an investigation. The Government Accounting Office, an independent agency, is conducting an investigation of those aspects which involve the campaign spending law. Now, with all of these investigations that are being conducted, I don't believe that adding another special prosecutor would serve any useful purpose.

The other point that I should make is that these investigations, the investigation by the GAO, the investigation by the FBI, by the Department of Justice, have, at my direction had the total cooperation of the—not only the White House—but also of all agencies of government. In addition to that, within our own staff, under my direction, Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House staff or anybody in the Government. I can say categorically that his investigation indicates that no one in the White House staff, no one in this Administration, presently employed, was involved in this very bizarre incident.

At the same time, the committee itself is conducting its own investigation, independent of the rest, because the committee desires to clear the air and to be sure that as far as any people who have responsibility for this campaign are concerned, that there is nothing that hangs over them. Before Mr. Mitchell left as campaign chairman he had employed a very good law firm with investigatory experience to look into the matter. Mr. MacGregor has continued that investigation and is continuing it now. I will say in that respect that anyone on the campaign committee, Mr. MacGregor has assured me, who does not cooperate with the investigation or anyone against whom charges are leveled where there is a prima facie case where those charges might indicate involvement will be discharged immediately. That, also, is true of anybody in the Government. I think under these circumstances we are doing everything we can to take this incident and to investigate it and not to cover it up. What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up. I would say

that here we are, with control of the agencies of the Government and presumably with control of the investigatory agencies of the Government with the exception of the GAO, which is independent. We have cooperated completely. We have indicated that we want all the facts brought out and that as far as any people who are guilty are concerned, they should be prosecuted.

This kind of activity, as I have often indicated, has no place whatever in our political process. We want the air cleared. We want it cleared as soon as possible.

* * * * *

Senator BYRD. The President said on August 29:

In addition to that, within our own staff, under my direction, Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House staff or anybody in the Government. I can say categorically that his investigation indicates that no one in the White House Staff, no one in this Administration, presently employed, was involved in this very bizarre incident.

Mr. GRAY. Yes, sir; I just wasn't familiar with the language.

I gave testimony yesterday, I believe, to the effect that when Mr. Dean called and requested these additional investigative reports, I did not question his right to do it. I did not question his purpose, and I assumed he was continuing to conduct his inquiry. Indeed, he may even be conducting his inquiry now. I don't know.

Senator BYRD. But in any event, and notwithstanding that, FBI raw files will continue to be submitted by you to Mr. Dean if he asks for them?

Mr. GRAY. He is there in his official capacity as Counsel to the President.

Senator BYRD. One might say then that in this particular situation they are being sent to the White House as a matter of course?

Mr. GRAY. No, sir, one might not say that, because they have not been requested. The last request was made in October. I have had no further requests.

Senator BYRD. Mr. Gray, you supplied for the record on March 7, at page 329, an inventory of the contents of Mr. Hunt's office that had been turned over to the FBI by Mr. Dean on June 26. In that inventory there was a list of items that were contained in a black attaché case. The list is a bit confusing. I wonder if you could straighten it out?

The list reads, "Four Kel-Com Transceivers Technical Manual and Operating Instruction—Bell & Howell, 148-174 MCS." Does that mean that four walkie-talkies were there and a technical manual and operating instruction book?

Mr. GRAY. I am pretty sure that's what that means, Senator. What we would call walkie-talkies are the black boxes, I guess, of 8 to 10 inches in height, with a little antenna sticking out at the top. That was the type of equipment similar to that utilized by the individuals who were apprehended at the Watergate.

Senator BYRD. What is really being stated then is that there were four Kel-Com walkie-talkies, not four Kel-Com Transceiver Technical Manuals?

Mr. GRAY. No.

Senator BYRD. Four walkie-talkies?

Mr. GRAY. That is my recollection of it and I have looked at that material during the preparation of these hearings.

I am being advised that they were four technical manuals for Kel-Com transceivers.

Senator BYRD. And not four transceivers?

Mr. GRAY. No, sir.

Senator BYRD. Were there any transceivers?

Mr. GRAY. I recollect I saw some, but—

Senator BYRD. Would you look at your list there?

Mr. GRAY. Yes, I will have to look at this list because I am relying on memory now.

No, I think not, sir.

Senator BYRD. There were not?

Mr. GRAY. No, sir.

Senator BYRD. There were no walkie-talkies?

Mr. GRAY. No, sir.

Senator BYRD. I note that this inventory is made up of two parts: One, a list of items which apparently were turned over by Mr. John Dean; and a list of items which apparently were turned over by Mr. Fred Fielding. Is that correct?

Mr. GRAY. No, sir, I supplied this list for the record, but I didn't supply any more than that. The details of the turnover, contained in the Watergate investigative file, is substance and I am going to have to respectfully decline to answer that question.

Senator BYRD. But the information you have already supplied states that Mr. Fred Fielding furnished Special Agents Daniel C. Mahan and Michael J. Kean of the FBI, one large cardboard box sealed with tape and marked with pen "Top Secret."

An inventory of the contents of that box was listed, and item 10 in that box is the black attaché case.

Mr. GRAY. You are referring now to the inventory schedule itself that is here?

Senator BYRD. By Mr. Fielding—

Mr. GRAY. Yes, that is correct.

Senator BYRD. Was Mr. Fielding ever interviewed by the FBI with respect to the contents of that box?

Mr. GRAY. Mr. Fielding was interviewed by the FBI and was also interviewed by the assistant U.S. attorneys regarding the contents: yes, sir.

Senator BYRD. Was there any indication that the full contents of the box were turned over to the FBI?

Mr. GRAY. Yes, sir.

Senator BYRD. Or were not turned over to the FBI?

Mr. GRAY. They were turned over to the FBI.

Senator BYRD. Did the FBI consider the possibility that Mr. Hunt may have returned to his office at the Executive Office Building after the break-in?

Mr. GRAY. We thought about it, and of course we cannot talk to Mr. Hunt. We have no information that he did return.

Senator BYRD. What other steps could you have taken or did you take to ascertain whether in fact he did return to the Old Executive Office Building?

Mr. GRAY. I don't know that we did take any other steps to ascertain whether or not he had returned.

Senator BYRD. Why not?

MR. GRAY. I don't know that during the course of the investigation it came up. I know that we checked—it did come up to check. I recall, it did come up to check his safe deposit box.

Senator BYRD. Well, wouldn't it have been important to ascertain whether or not he went back to the Old Executive Office Building following the Watergate break-in? Wouldn't this have been quite important?

MR. GRAY. Well, yes, you can look at it now and say it would have been quite important, but I would still say that you have to place some kind of reliance on the security of the White House and the security afforded to Presidential papers.

I am not at all sure that we did this. I really do not know. I cannot answer that question.

Senator BYRD. But here is a man who was involved in the Watergate break-in, was suspected even on the day of the break-in. He had formerly worked at the White House. Why wouldn't it be important to ascertain if he went back to the Old Executive Office Building that night to say to someone, "Boys, we'd better get this out of here, we'd better get that out of here, things have gone wrong." Why wouldn't it have been important to try to determine if this might have happened?

MR. GRAY. It may have been done. I am just saying I don't know.

Senator BYRD. Would you check the records and see if it was done?

MR. GRAY. I think that would be in the Watergate files.

Senator BYRD. Did the FBI check the sign-in records of the EOB?

MR. GRAY. I think that information would be in the investigative file.

Senator BYRD. That wouldn't be classified, just to give me a yes or no answer, would it?

MR. GRAY. Senator, I am not in a position to discuss those files, and I am not going to discuss them.

Senator BYRD. Now, before you started turning over the investigative reports to Mr. Dean, I am not clear—I was here part of the time yesterday—I am not clear as to whether you did or did not ask for a legal opinion with specific reference as to whether or not you could turn those raw files over to Mr. Dean?

MR. GRAY. No, I did not ask for a specific legal opinion regarding the turning over of the investigative reports and the two volumes of teletypes that I did turn over to Mr. Dean. No, I did not ask for a legal opinion in connection with that.

Senator BYRD. Why would you ask for a legal opinion with respect to a July 21 letterhead memorandum but not ask for a legal opinion with respect to the much more sensitive, classified, undigested, raw files which were being requested by Mr. Dean?

MR. GRAY. I think that I previously testified, Senator Byrd, to the effect that what I was trying to do in the FBI from the time I arrived was to get some of these dissemination procedures standardized. This is one of the reasons why I asked for that opinion from the Office of Legal Counsel. It had to do with material that we would put together, that we would initiate, and that we would be forwarding.

Senator BYRD. Which do you consider, Mr. Gray, to be the more sensitive, the LHM or the FD-302?

Mr. GRAY. As I answered to a question yesterday, Senator, I responded that the letterhead memorandum represents a summary in every case. We do the summary work, we summarize it and present it in the form of a letterhead memorandum. Obviously, the material in the investigative file, the FD-302 and the teletype, is material that is in much more detail.

Senator BYRD. And more sensitive, would you say?

Mr. GRAY. Not necessarily so, Senator Byrd. It depends in each case as to what is in there.

Senator BYRD. You told us that the investigative files were sent directly to Mr. Dean rather than through the Attorney General. I hope I am not being repetitions. Could you tell us how this was physically done?

Mr. GRAY. Yes, sir, I testified to that yesterday, too. This was an actual delivery made by me personally to Mr. Dean by handing him a briefcase containing the investigative reports on the first occasion. Then on the second occasion, by handing a briefcase to Mr. Fielding with the 10 investigative reports and the two volumes of teletypes that were 3½ to 4 inches thick.

Senator BYRD. Now, with respect to the October 10 submission, how were these reports turned over to Mr. Dean?

Mr. GRAY. This was the October 12 one I think you are referring to, sir.

Senator BYRD. Right.

Mr. GRAY. Those were picked up in my office by Mr. Fielding, as I recollect. It was around 5 o'clock in the afternoon.

Senator BYRD. On October 12?

Mr. GRAY. Yes, 12.

Senator BYRD. There were 10 of them?

Mr. GRAY. There were 10 investigative reports, FD-302's, and two volumes of teletypes about 3½ to 4 inches thick.

Senator BYRD. I find nothing in the listing of telephone calls with Mr. Dean concerning the October 12 submission of the reports.

Mr. GRAY. That is correct, sir, you don't. I didn't give my full testimony with regard to any of this for obvious reasons, because as soon as this becomes an insert, it is going to be in the newspapers. I wanted to reserve the right to testify in response to questions here to give you the full story.

Senator BYRD. Why would you have in your insert indicated the dates on which Mr. Dean requested July 21 LHM and the day on which he requested the 82 investigative reports and not indicate on the listing the date when Mr. Dean requested the reports delivered to him on October 12?

Mr. GRAY. For the reasons I have previously given. I wanted to come here and testify and spell the answer out on the whole record.

Senator BYRD. In other words, we were going to have to ask you—

Mr. GRAY. I was going to tell you because I knew somebody was going to go down the list of these telephone calls and I would tell you as I am telling you now, Senator.

Senator BYRD. Why not put them all on there? That was supposed to be a list in a response to a question asking for all the telephonic communications, and you are saying now that in response to that request, you supplied only a partial list.

Mr. GRAY. I am not saying that. I am saying that I did not specify everything that occurred in each telephone conversation beside each telephone notation. I tried to do it, and there is no way you can write it without leaving more questions unanswered, and I prefer to testify here.

Senator BYRD. When did Mr. Dean request these?

Mr. GRAY. He requested them in that telephone conversation of October 12, 1972, at 3 p.m. of that date.

Senator BYRD. And they were submitted to him that day?

Mr. GRAY. Yes, that afternoon.

That afternoon he told Mr. Fielding to come over to pick them up in my office.

Senator BYRD. Are there other dates involving telephonic communications and appointments with Mr. Dean that were not placed on the list but which you are waiting to divulge in this hearing?

Mr. GRAY. No, sir. The content is what I am specifying I did not spell out in complete detail.

Senator BYRD. When did the President appoint Mr. Dean to conduct an internal investigation to see whether White House staff were involved in the Watergate break-in?

Mr. GRAY. It was my understanding that he was going to do that from the very first day.

Senator BYRD. When did Mr. Dean first tell you that he had been asked by the President to conduct that inquiry?

Mr. GRAY. He first told me in the very first telephone conversation I had with him, sir.

Senator BYRD. Which was—

Mr. GRAY. That was on the 21st day of June.

Senator BYRD. He told you on the 21st? Do you suppose that because of his sitting in on interviews, past or then White House aides were already suspect?

Mr. GRAY. I'm sorry, sir, I missed that question.

Senator BYRD. He told you on the 21st that he was to be asked by the President to conduct that inquiry; is that correct?

Mr. GRAY. He told me he was going to conduct an inquiry and had been designated by the President to do this.

Senator BYRD. By the way, are there any sanctions on individuals who lie to the FBI in the course of interviews?

Mr. GRAY. I don't know unless they are sworn, and I am not really sure unless it is a sworn interview, making a false official statement.

Senator BYRD. I note that Mr. Bruce Kehrli was interviewed on the 19th of June and again on the 14th of August 1972. Why was he not interviewed before the 14th of August in view of the fact that he had been asked by Mr. Dean to assist Mr. Fielding late on the night of June 19 in breaking open the safe and taking therefrom the possessions of Mr. Hunt?

Mr. GRAY. I cannot answer that question specifically, but the answer is in the investigative file. My recollection on that August 14 interview is that it grew out of grand jury testimony.

Senator BYRD. But why was he not interviewed on the 27th of June, after Dean had turned Hunt's properties over to the FBI?

I note Mr. Fred Fielding was interviewed on the 27th. That would have been the day following the turnover of Mr. Hunt's possessions to the FBI.

Why was not Mr. Kehrl interviewed on that date?

Mr. GRAY. Mr. Kinley is pointing out to me that we have since determined from a corrected list that Mr. Kehrl was interviewed on the 27th day of June and the 14th day of August, and not the 19th day of June.

Senator BYRD. Why was this not picked up at the time this listing was submitted to the committee?

Mr. GRAY. The only reason I can give is that when we were checking and having our skull sessions in an effort to make absolutely certain we were delivering accurate information, this came up. We checked all the index cards in these two boxes here and came up with a corrected list.

Senator BYRD. In the course of those skull sessions and the subsequent studies, were any additional errors found in the listing that was previously submitted to the committee in this connection? You found this one thing which you have not listed. Were there others? If so, could you indicate what they were?

Mr. GRAY. I do not know if there were others, but what we would like to do, Senator Byrd, is submit this list now to the committee.

Senator BYRD. Do what?

Mr. GRAY. Submit this list, the current corrected list to the committee.

Senator BYRD. Fine, and this will be for all members to see?

Mr. GRAY. The previous list was submitted as an insert to the record and certainly I will submit this as an insert.

(The document referred to follows:)

Name	Position	Dates contacted
White House personnel:		
James George Baker.....	Protective Security Division U.S. Secret Service, supervisory security specialist.	June 29, 1972.
Arthur W. Bauer.....	Fiscal Service Officer, Office of Management and Budget, Executive Office of the President.	August 10, 1972.
Margaret L. Beale.....	Personnel Office, Office of Management and Budget, Executive Office of the President.	August 7, 1972.
Alex P. Butterfield.....	Deputy Assistant to the President.	June 17, 1972.
John Campbell.....	Staff Assistant, Office of Domestic Council.	August 7, 1972.
John James Casfield.....	Consultant to the Director of Treasury Law Enforcement.	June 26, 1972.
Dwight L. Chapin.....	Deputy Assistant to the President.	August 28, 1972, March 5, 1973.
Kathleen Ann Crenaw.....	Secretary to David Young.	July 3, 1972.
Charles W. Colson.....	Special Counsel to the President.	June 22, 26, August 29, 1972.
John Wesley Dean III.....	Legal Counsel to the President.	June 22, 26, 27, 28, July 7, 8, August 28, 1972.
John D. Ehrlichman.....	Assistant to the President for Domestic Affairs.	July 21, 1972.
Fred Fielding.....	Assistant to the Legal Counsel to the President.	June 26, 27, August 30, 1972.
W. Richard Howard.....	Staff assistant.	August 8, 1972.
Wilbur Jenkins.....	Administrative officer, White House.	August 7, 1972.
Bruce Kehrl.....	Staff secretary to the President.	June 27, August 14, 1972.
William Rhatican.....	Staff assistant.	September 28, 1972.
James Rogers.....	Personnel office, White House Office.	August 7, 1972.
Gordon Strachan.....	Staff assistant at the White House.	August 23, 1972.
William E. Timmons.....	Assistant to the President for congressional relations.	September 3, 1972.
Alfred Wong.....	Special agent in charge, technical security U.S. Secret Service.	June 22, 27, 1972.
David Reginald Young.....	Special staff assistant, National Security Council.	July 3, 7, August 30, 1972.

Name	Position	Dates contacted
Committee to reelect the president personnel:		
Stephen Tingley Anderson	Security guard	June 30, 1972 (twice)
Paul E. Barrick	Treasurer, Finance Committee, CRP	June 30 July 24, 1972.
Thomas Deveraux Bell	Assistant to Ken Reitz	Nov. 3, 1972.
James William Bennett	Security guard	June 30, 1972.
Ronald Bruce Buchanan	Security guard	July 12, 1972.
Monico Bungato	Messenger, mail service	June 26, 1972.
James E. Caudill	Security man for Republican National Committee.	July 25, 1972.
James Edward Cooper	Security supervisor	June 30, 1972.
Lewis Webster Creel	Security guard	July 10, 13, 1972.
Connie K. Cudd	Staff secretary	July 6, 1972.
Jane Dannenhauer	Secretary	June 30, July 17, 1972.
Maureen C. Devlin	Receptionist	June 30, 1972.
Yolanda Dorminy	Secretary	July 13, 17, 1972.
Martha Duncan	Office manager	June 30, July 3, 1972.
John W. Ernst	Security guard	June 30, 1972.
Morgan Lee Elliott	Security guard and chauffeur	Sept. 25, 1972.
Timothy Michael Flynn	Security guard	June 30, 1972.
Peter Fokine	Assistant of finance	June 30, 1972.
Kristin Forsberg	Personal secretary to Mrs. Mitchell	June 30, 1972.
Carl Andre Foster	Chauffeur	Oct. 12, 1972.
Laura Alice Frederick	Personal secretary to Fred LaRue	July 21, 1972.
Millicent (Penny) Macey Gleason	Security officer	June 17, 30, July 1, 2, 17, 18, 1972.
V. Elaine Hall	Special projects	June 30, 1972.
Mrs. Sally Harmony	Secretary to G. Gordon Liddy	June 30, 1972.
Judith Graham Hoback	Assistant to the Treasurer, Finance Committee, CRP.	June 23, 26, July 11, 18, 25, Aug. 1, 2, 31, 1972.
Peter Holmes	Assistant to the Treasurer	June 30, July 18, 1972.
George Roger Houston	Security guard	June 30, 1972.
Robert Houston	Security supervisor	June 30, 1972.
Robert L. Houston	Security coordinator	June 20, 26, 27, July 3, 13, 17, 1972.
Ronald Charles Howard	Security guard	July 12, 1972.
Margaret Kerwan	Secretary	June 30, 1972.
Stephen B. King	Bodyguard for Mrs. Mitchell	June 30, 1972.
Fred LaRue	Special consultant to the campaign manager.	July 18, 21, 1972.
Job Stuart Magruder	Deputy campaign director	July 20, Aug. 11, 1972.
Robert Mardian	Special assistant to the campaign manager.	July 17, 1972.
Michael Terrence Masse	Security officer	June 30, 1972.
Michael Miller	Man in charge of victory dinner	June 30, 1972.
Joseph Earl Ray Mills	Security guard	July 24, 1972.
John N. Mitchell	Campaign director	July 5, Oct. 3, 1972.
Powell A. Moore	Director of press and information	July 24, 1972.
Lee Nunn	Finance chairman, Finance Committee, CRP.	June 23, July 13, 1972.
Paul L. O'Brien	Cocounsel	July 21, Aug. 11, 1972.
Robert C. Odle, Jr.	Director of administration	June 19, 20, 23, 28, 29, July 11, Oct. 12, 1972.
Sylvia Panarites	Secretary	July 3, 1972.
Kenneth Wells Parkinson	Counsel	July 21, 1972.
Charles Pashayan, Jr.	Vice-chairman on the Finance Committee	June 30, 1972.
Ann Pinkerton		June 30, 1972.
Herbert Lloyd Porter	Director of scheduling	July 19, 1972.
Louis James Russell	Investigator	June 27, July 3, 1972.
Glen J. Sedam, Jr.	General counsel	June 23, 26, July 26, Aug. 11, 1972.
George Ellis Shanks	Security guard	June 30, 1972.
DeVan L. Shumway	Director of Public Affairs	July 24, 1972.
Hugh Walter Sloan, Jr.	Former Treasurer of the Finance Committee, CRP.	July 17, 18, 24, 1972.
Maurice Stans	Chairman of the Finance Committee, CRP.	July 5, 14, 28, 1972.
Kenneth Talmage	Aide to Maurice Stans	June 30, 1972.
Florence Thompson	Secretary	June 30, 1972.
Cary Longhorne Washburn		June 30, 1972.
Tyloe Washburn	Assistant to the Assistant Treasurer	June 30, 1972.
Truman Jacob Weaver	Security guard	July 18, 1972.
Tom Wince	Driver for Mrs. Mitchell	June 30, 1972.

Senator BYRD. According to the New York Times, March 20, the Securities and Exchange Commission documents—that were made public by a House Subcommittee on March 19 of the SEC violations of security laws by ITT officials—state that former Attorney General Mitchell had talked to President Nixon about the merger cases. On Tuesday, March 14, 1972, during the Kleindienst hearings, Mr. Mitchell stated on page 552, and I quote, “but specifically with respect

to ITT or any other litigation, no, I have never talked to the President about it.

Mr. GRAY, to your knowledge has the FBI pursued this allegation made by the SEC concerning Mr. Mitchell's participation in the ITT case?

Mr. GRAY. To my knowledge, no, sir. I do not have that knowledge.

Senator BYRD. Why wouldn't you?

Mr. GRAY. That matter was referred by the Committee on the Judiciary of the U.S. Senate to the Department, and Department attorneys have been reviewing that record and have been specifying the areas of investigation for the FBI.

Senator BYRD. The assignment was given to the FBI on December 5, 1972, to investigate possible perjury. If these allegations made by the Securities and Exchange Commission are true, should not the FBI recommend to the Justice Department that they prefer perjury charges against Mr. Mitchell?

Mr. GRAY. The FBI is not in that kind of position, Senator Byrd, and I believe this is well recognized. We are an investigative agency and we do not make these kinds of formal recommendations.

What occurs in the discussions between the senior officials of the FBI and the attorneys in the Department of Justice is another matter. I don't know that this is being said, at least it hasn't been said to me that I should do something about this.

Senator BYRD. Why do you suppose that the FBI was not assigned the investigation of possible perjury in the Kleindienst hearings until December 5—which is your testimony?

Mr. GRAY. I think there were a considerable number of volumes of testimony sent over to the Department of Justice. The attorneys had to review it very carefully and then decide on the type of investigation they wanted the Federal Bureau of Investigation to conduct, Senator.

Senator BYRD. Mr. Gray, on February 28, you stated for the record, in answer to a question by Senator Gurney, your account of the handling of the skyjacking of the Southern Airways aircraft whose tires were shot out in Orlando, Fla., on November 10, 1972.

At the time of the hijacking were you aware of the understanding regarding termination of hijacked flights as set forth between the Department of Justice and Department of Transportation which states in part:

The pilot in command has the responsibility to indicate whether or not he desires the aircraft to be immobilized and hijacking terminated by the force necessary to terminate it. It is fully understood by the pilot, FBI and personnel of the FAA it is the pilot's determination whether or not to give the signal.

The date of that memorandum is December 1971. I believe that policy is still in effect today, is it not?

Mr. GRAY. If you are talking about the departmental memorandum between the Department of Justice and the Department of Transportation, yes, I am familiar with that. I am also familiar with the implementation of the policy in practice when a pilot is not a free agent under extreme conditions, and this occurred in cases prior to the Southern Airways hijacking.

Senator BYRD. We will get to that in a moment. But I am asking you, is this memorandum still in effect?

Mr. GRAY. That memorandum, if it is the one between the Department of Justice and the Department of Transportation, is still in effect, yes, sir.

Senator BYRD. In other words, the pilot in command has the responsibility as to whether or not he desires the aircraft to be immobilized and hijacking terminated by the degree of force necessary to terminate it?

Mr. GRAY. Yes, but the implementation of that policy in practice has been different, and I can testify to that because we looked into it. I had discussions from the beginning when I came into the Federal Bureau of Investigation with regard to this particular policy. Our own policy is that where there is a threat to national security or in circumstances of an extremely critical nature where prior consultation is impossible, we will act accordingly. I think that this is known to the people in the industry.

Senator BYRD. Are you saying that the FBI has a policy separate, different, and independent of the memorandum dated December 1971 between the Department of Justice and the Department of Transportation?

Mr. GRAY. No, sir; I am not saying that. I am just reminding myself that there is a civil action pending now with regard to a prior incident that occurred in another State, and I just don't think I ought to be testifying on this particular policy.

I am just going to leave it, Senator Byrd, if I may, that the policy in its implementation in practice in the field under existing conditions is a bit different when the pilot is not a free agent. But we always confer with the company. I am trying to be helpful and tell you how we do it when we are on the firing line, not when we are reading and drafting a piece of paper back in the safety of Washington.

Senator BYRD. Are you saying Capt. William R. Haas was not a free agent on November 10, 1972, in control of his aircraft?

Mr. GRAY. Every instance that we had of that type indicates that one of those murderers, hijackers, was right at his head with a gun and I don't know how you can be a free agent under those circumstances, Senator Byrd.

Senator BYRD. Are you aware of the fact that Captain Haas disputes that?

Mr. GRAY. I am aware of the fact that he does, and of course we differ with him.

In fact, I have a letter which I have already introduced in the record from a passenger—maybe I haven't introduced this letter into the record.

Senator BYRD. Would you introduce it into the record?

Mr. GRAY. Yes, sir.

He indicates that when the action was taken the attitude of the hijackers changed completely and, in part, he writes as follows—

Senator BYRD. How lengthy is the letter?

Mr. GRAY. It is not that lengthy.

Senator BYRD. Would you read it in its entirety if it isn't too long?

Or read it in part, make whatever point you wish to make.

Mr. GRAY. All right, sir. Maybe I will read the whole letter. It is addressed to me.

Dear Mr. Gray: I was on board the Southern Airways Flight No. 49 that was hijacked last week. It was not until after returning to Miami that I learned many of the details of the Federal Bureau of Investigation's efforts and the important part played in bringing the flight to a happy conclusion. The passengers and crew should be deeply grateful for the all-out effort that eventually met with success.

The incident at Orlando which involved the shooting of the tires on the plane resulted in a situation on board that caused much fear and concern among the passengers as well as the crew. This action no doubt was the result of a very difficult decision on your part and a calculated risk that could not be avoided.

I was, I believe, the closest passenger to the co-pilot during the resultant shooting and certainly was closest to Henry at the time of the shooting and to say that I was extremely concerned, being the possible second victim to be selected to be shot would be an understatement.

Senator BYRD. Could I interrupt you there? Who is Henry?

Mr. GRAY. Henry is one of the hijackers, sir.

Nevertheless, I feel quite certain, as you no doubt do, that the action that the FBI personnel took based on a decision to immobilize the plane was a good decision at the time and proved to be the primary factor that brought the flight to a successful conclusion.

It was after this incident that the hijackers' attitude changed. I feel they began to recognize the futility of their efforts and were more concerned with the prospects of their getting on the ground and out of the plane safely.

I shall always be grateful for the fine service the FBI performed in this instance.

Sincerely,

ARTHUR TONSMERE, JR.

He is president of the First Federal Savings and Loan Association, Mobile, Ala. This letter is written on his letterhead, sir.

Senator BYRD. Mr. Gray, I would like to read to you the testimony by Captain Haas which appears on page 180 of the hearings before the Subcommittee on Aviation of the Committee on Commerce, U.S. Senate, January 1973:

Captain HAAS. I was able to communicate signals as they stated yesterday. I was certainly able to tell them whether I wanted armed intervention or not and I displayed no such signal.

Senator CANNON. Were you questioned from the ground? Were you consulted as to whether you wanted armed intervention to try to terminate the flight?

Captain HAAS. No, sir.

Senator CANNON. That was never discussed with you at all?

Captain HAAS. No, sir.

Senator CANNON. Did you have any advance knowledge that armed intervention was going to take place to try to terminate the flight prior to having your tires shot out?

Captain HAAS. No, sir. I had no time to condition these people that this was about to happen. As a matter of fact, I felt like on the ground at Orlando my chance of getting the passengers off the airplane at Chattanooga had been aborted by the great number of people that showed up at the airport, spectators that continued to move in closer and closer to the airplane.

These people felt that each person out there represented some sort of a security man with a telescopic rifle to pick him off if he stuck his head out of the window. I had thought that I was going to get the people off at Chattanooga. We had already made arrangements to carry the apparent heart attack victim off the rearsteps of the airplane and lay him beside the runway.

And this, of course, was aborted by the number of spectators that had gathered by this time, as I said before, moving closer to the airplane.

Senator CANNON. How close were the spectators at that time?

Captain HAAS. Less than 100 yards, and quite a number of people.

Senator BYRD. So Captain Haas stated before a committee that he was a free agent—this would indicate that he was indeed his own agent at the time?

Mr. GRAY. I don't think we can conclude that on the basis of all the information we had, Senator. The pilot either did not reply to requests from those on duty at the airport near Key West where the plane landed before proceeding on to Orlando or he replied with a curt yes or no. On one occasion the pilot stated he could not answer any more questions. We also had information from our interview of the copilot that it was his opinion that the hijackers had no intention of releasing any of the passengers or crew at any time. I think I previously testified, when I was responding to Senator Gurney's question, that my special agent in charge of the special agents who were directly under this hijacked aircraft at Orlando went to the fuel truck and tried to determine whether or not there were a set of headphones there in order to plug them in and talk to the pilot. There were no headphones on that fuel truck. So I think on balance we made every effort that could be made to handle the situation in view of all of the other exigencies that I have previously testified to, Senator.

Senator BYRD. Who made the decision to shoot out the tires?

Mr. GRAY. I did, sir.

Senator BYRD. You made the decision?

Mr. GRAY. Yes, sir, I did it.

Senator BYRD. Why did you make that decision to shoot out those tires?

Mr. GRAY. I had all of the information coming to me through a night and through a day, and I had been analyzing it and discussing it back and forth with my senior people. Toward the end of Saturday—along toward 8 o'clock in the evening and I recollect perhaps around 7:30—I received a call from my command post in Washington in which I was advised again that the company strongly recommended that this flight not be permitted to take off from Orlando. I analyzed the pros and cons of what course of action had to be taken. I called back, and I remember this very well, it was at 8 o'clock. I told the people to mark the time. "I am giving orders to terminate this flight by shooting out the tires."

Senator BYRD. Notwithstanding the letter of termination between the FAA and the Department of Transportation that such action will not be taken until the pilot so indicates?

Mr. GRAY. That's right, and if that plane had taken off and dropped in the ocean between Switzerland and Africa, I would have been severely criticized. It is one of those situations you find yourself in, six of one and half a dozen of the other.

Senator BYRD. Suppose the aircraft had not gotten off the ground and had crashed on takeoff?

Mr. GRAY. I would be in the same situation—

Senator BYRD. Then what would you have relied on?

Mr. GRAY. I couldn't have relied on anything. I would be in the same situation I am today. It was one of those situations where the best information available to us and all the tests that had been conducted by the experts in the business indicated that aircraft, after having had its tires shot out, was not supposed to be able to take off.

Senator BYRD. You gave this committee in response to a question by Mr. Gurney several reasons why the flight had to be terminated, among which were these: A very severe stress situation, not only from the standpoint of equipment, but from personal fatigue, and further,

that the oil condition in the engines was becoming rather severe, and in fact the pilot himself in landing at Key West stated over the system that he would have to have oil, the engines would not continue to function. Do you remember those statements today?

Mr. GRAY. Yes, I do, because those were the facts that I was operating on.

There is no question about that. There was the crew fatigue, the aircraft fatigue, the engine fatigue, the intention of the hijackers demanding charts to Switzerland or Africa, that they were attempting to take this airplane that distance even knowing that the airplane is not able to fly that distance.

Senator BYRD. The fuel truck went up to the plane, why didn't they put oil in it?

Mr. GRAY. Several times the fuel trucks went up to the plane and they were not able to get oil in. I don't remember in this specific case. I think there was none added during the Key West stop and none added at Orlando. I don't remember the exact reason, but in one case the fuel truck operator was so nervous he could not get fuel into the engine.

Senator BYRD. Why didn't he put oil in?

Mr. GRAY. He didn't. My recollection of the report is he was so nervous he couldn't get the oil in. These people were not happy going out to that hijacked aircraft.

Senator BYRD. Were you aware of the fact that there were no repairs of this engine in Cuba before it was flown back to Atlanta?

Mr. GRAY. I know that and I know it was reported there was a very, very low level of oil on board.

It was not a repair situation; it was an oil situation, Senator.

Senator BYRD. But let's go to that oil situation a moment. There were 8 quarts, even the hijackers recognized this. The plane starts at 16 quarts, that is full. The oil gage showed 8 quarts. They had been up 29 hours. There was no indication of danger with respect to temperature or pressure, which really are the things that count more so than the amount of oil, as long as there was as much as 8 quarts in that plane, the plane could have flown on up the east coast and picked up some oil somewhere. He had plenty of oil to go for awhile.

There was no critical situation concerning oil temperature or pressure. You made the statement that the oil was too low. That is not what the pilot said.

Mr. GRAY. I was informed by the chief pilot of the company. I didn't make the decision the oil was too low. It was one of the bits and pieces of information I used in reaching my decision.

Senator BYRD. Let me give you the reaction of the pilot. I talked with the pilot last night, Capt. William R. Haas in La Grange, Tenn., with respect to your having said that the truck was located. I believe—

Mr. GRAY. Off the starboard beam and about 50 yards out; yes, sir.

Senator BYRD. The pilot didn't say this. He said the truck was forward of the aircraft. The copilot—I also contacted him last night. He lives in College City, Ark. He happens to be the mayor of that town, population of 645 people. Mayor Johnson, who was the copilot, had been flying with Southern Airways since 1965, and he could see the

truck outside his window. He said the truck after an inordinately long delay finally showed up at the aircraft, and then came up to the side of the plane, and put in some fuel. There was never any indication on the oil gage that oil was put in. Although the pilot had been promised that oil would be put into the plane at Orlando, no oil was put in it. The copilot stated that the oil truck was there a long time, and then when no oil showed up on the gage, the truck having delayed a long time in its coming to the plane, and with the oil truck having delayed a long time in putting in fuel, the hijackers became suspicious.

The pilot stated that the truck was forward of the aircraft at about a 45 degree angle on the right side. He said, "I could have blown out the tires." He said he could have done that himself.

I indicated to him that you had stated, I believe, that you had flown up from Atlanta on a National Airlines plane the day before you appeared here in the hearings—

Mr. GRAY. That is correct, sir.

Senator BYRD. And the pilot had told you that any time you ever needed him to come and get him?

Mr. GRAY. Anytime, and there was a United Airlines pilot, too, who said if I found them in a similar situation come and get them.

Senator BYRD. By the way, I thought you flew only on an Air Force plane?

Mr. GRAY. No, I said there were occasions when I did do that.

Senator BYRD. Well, in any event, I talked with a representative of the Airline Pilots Association about the conversation of last evening. He said they had been trying to find out who this pilot was who made that statement. Will you identify him?

Mr. GRAY. No, sir, I will not identify him.

Senator BYRD. Does this come within the —

Mr. GRAY. No, sir, it does not. It is a man's right to privacy at stake and I do not think it is relevant nor germane. I am trying to be as helpful as I can and I will leave it at that. I don't want to disclose that man's name.

Senator BYRD. The representative of the ALPA indicated there are 31,000 pilots who don't agree with that pilot—who don't agree with him at all.

Now, Mr. Gray, the captain says your facts are inaccurate. I quote him, "He"—meaning you—"didn't even know where the gas truck was."

Now, with respect to how docile and subdued the hijackers became after shooting out the tires, this is what he said: "They were so docile that they shot my copilot and threatened to start killing all the passengers."

Those were his words. The copilot indicated, "It was only after the shooting I was attacked, and the hijackers went wild."

I asked the captain about the fatigue aspect. He said, "Well, who is to know how fatigued I was after having flown 29 hours, why not 25 hours, why not 20 hours? At what point would someone in his home hundreds of miles away determine that I was too fatigued to fly that aircraft?"

There was really no serious engine trouble, and I also brought up the matter about the plane's possibly flying to Switzerland. He said, "We might have gone somewhere else." He said, "There were a lot of desti-

nations that these hijackers had picked out, but we changed their minds. Perhaps we would have changed their minds on this one. He indicated this plane could have flown to Switzerland. He indicated the plane could have flown up the east coast, could have made two or three stops for fuel, cross Gander, over to Europe, if that was the way it had to be. This could have been done. He has had 14 years of flying with Southern Airways. He said that he was "in the midst of negotiations with these hijackers at Orlando."

He felt that Orlando was the best spot and the last chance to get the passengers off. He said, "We had told them that we had complied with their instructions, that the ransom was on board," and he said, "with a little more time and with no intervention" he thought he could have gotten the passengers off at Orlando.

I talked with the copilot, Mayor Billie Harold Johnson, College City, Ark. He said, "We stopped at Orlando. We shut down the right engine to add oil. We stayed long enough. We couldn't see by the gauge that any oil was added." I quote his words: "They went crazy after the tires were shot out."

As to the location of the gas truck, he said it was "favoring the front rather than the back." He said they heard guns, they felt the plane settling, and then, quote, "The hijackers became enraged, ordered me out of the seat." He said the jump seat was down, and he said, "I had to crawl over the jump seat," and he said, "Two of the hijackers dragged me and dragged me over that jump seat and pushed me to about the third row back." He said, "I sat down with the passenger." He said, "One hijacker then went to the copilot's window and fired out and one fired out the pilot's window." He said he was asked to stand up by one of the hijackers, who said that "I had double-crossed them." He said, "I was accused of having doublecrossed the hijackers. They thought I had given the signal to shoot out the tires, because I had done the talking over the radio prior to landing." He said, "The hijacker was going to shoot my eye out." He said, "I dived between the seats and got shot in my arm." He said, "The bullet went through the seat back and the tray table, 'else it probably would have ended up in my chest.'" He said, "About the same time this was going on, the captain in the cockpit was preparing to get the aircraft off the ground. He asked, 'What's going on back there,' when he'd heard the shot, and the hijacker told him the copilot had been shot. The pilot said, 'Is he dead?' The hijacker said, 'No, they shot him in the arm.'" The pilot said, "Get him up here, I have to have him to assist me in getting this off the ground.'" In the meantime, the hijacker who had shot the copilot told him to get up off the floor, he was going to kill him. Just then the hijacker came back from the cockpit and said the pilot needed the copilot in the cockpit. The copilot was brought back to the cockpit. He said he didn't get his seatbelt fastened until after takeoff. He said the FBI action "definitely provoked the shooting." He said, "I am not able yet to pilot a plane. The doctor has not released me yet. I won't be released until the 1st of May." He said, "There was plenty of oil." He said that even the hijackers recognized this. He said, "We could have gotten oil up the east coast. We could have flown for several hours. The temperatures were still looking good." He said, "They had told us we could go this route," meaning up the east coast, Newfoundland, Iceland, and so forth. "There was no indication of any immediate problem; no engine problem."

As to having flown the aircraft 29 hours, the pilot indicated to me that they could have gone longer. He said, "The adrenalin was flowing." He said, "I didn't want to sleep." He said—this is the copilot talking—"Had we gotten oil promptly, we probably could have gotten the passengers off. We didn't get the cooperation promised. We were told cooperation would be prompt and charts would be provided, but there was an apparent stall. The fuel truck was slow. He put kerosene in and no oil." The pilot indicated that following the shooting out of the tires is when "things went haywire." "The hijackers went crazy. The copilot was shot and the hijackers threatened to kill all of my passengers." The copilot stated that prior to the shooting out of the tires, they were getting along very well with the hijackers, calling them by their first names. The hijackers in the meantime had drunk up all the liquor on the aircraft.

The copilot said that the hijackers even brought some of the money up and offered to divide it up with the pilot and the copilot.

The hijackers appeared to be more interested in the city of Detroit's paying the ransom than in seeing Southern Airways pay the ransom. The pilots tried to verify how much money was put on board—\$10 million was expected. The copilot inquired via the radio how much money was on board. They were told \$10 million was on the aircraft, \$9 million having been given by the city of Detroit, \$1 million by Southern Airways—whereas in truth only \$2 million was on board. While the stewardesses were counting the money, the hijackers came up and said, "Fellows, we are not so interested in ransom from Southern Airways, it is Detroit, and as far as we are concerned, Southern Airways can have their money back, you guys take some of this money, we don't care what you do with it." And the copilot said he stashed away several bundles of bills over near him and the pilot stashed away several bundles of bills over near him, and they opened up some kind of compartment in the floorboard and poured the remaining bills down in that area. "Castro's men got it all," he said.

All this seemed to indicate exactly what he said, that they were getting along all right and were making progress in negotiations with these hijackers, and it was only after the shooting out of the tires that the hijackers "went crazy," "went wild."

These are the words of the captain and the copilot. These statements have been substantiated by Mr. O'Donnell, the president of the Airlines Pilot Association; also substantiated by the counsel of that association—all of which would appear to indicate, Mr. Gray, that your statement of events and circumstances which led up to this situation was entirely at odds with what the circumstances were, as related by these men.

Mr. GRAY. It would appear to indicate that as you have recounted it, but there are a great many details on the tapes that would indicate otherwise. Certainly the reports that we were receiving from the company indicated the need for oil, and in fact the pilot himself radioed prior to Key West that he needed oil in both engines.

There were different facts on which we were operating, than what Captain Haas and Captain Johnson have told you. Captain Johnson told us in his interview that, in his opinion, the hijackers had no intention of releasing any of the passengers or the crew at any time. He also said that the hijackers were relatively calm when the plane was in

the air, but each time they were on the ground they became extremely nervous, and it was his impression that they felt that some kind of intervention was going to take place. But on the basis of all the information available to me, and the request of the company that this flight not be permitted to leave the ground at Orlando, I made the decision to take the action that was taken, Senator.

The CHAIRMAN. Weren't they afraid, as I understand it, that they would crash that plane in the city of Detroit and kill a lot of people?

Mr. GRAY. I think at earlier stages, Mr. Chairman, there were threats made to crash it in Oak Ridge.

The CHAIRMAN. Oak Ridge and Detroit, and wasn't that the reason that Detroit put this money up?

Mr. GRAY. I don't recall the Detroit part of it, Mr. Chairman. I do recall the Oak Ridge part, though.

Senator BYRD. Apparently, Mr. Gray, you didn't really have all the facts.

Mr. GRAY. I think we had all the facts that were available. The pilot wasn't doing all this talking over the FDA circuits. We had the facts coming over the circuits available to us, and I previously testified that his answers were generally yes or no, and he wasn't doing too much talking on that circuit at all.

Senator BYRD. As you are aware, Mr. Gray, hijackers can take a course in hijacking by simply reading some of these hearings if certain information is divulged therein.

Mr. GRAY. That is correct, sir. I know that, and I am trying to guard my answers with regard to it.

Senator BYRD. You and I both know what we have reference to here. Why shouldn't that information which you have just alluded to have indicated to you that the facts were not necessarily as they may have seemed?

Mr. GRAY. No, I would not say that at all. It was a question of one person reading a set of facts and other persons reading a set of facts and having a different opinion of them.

I don't think we can say they indicate different facts. It is the interpretation they would place on those facts and the reaction they would have to them, Senator.

Senator BYRD. Mr. Gray, I am constrained to say that on the basis of the testimony that was given by Captain Haas and by Mr. O'Donnell and by Mr. Gross, vice president of Southern Airways, to subcommittees in both Houses of the Congress—and keeping in mind that all things are not as they seem, you know what I am talking about, we are trying to protect people against future hijackers when I phrase my words that way, all things are not as they seem by prearrangement—as Acting Director of the FBI, you made a decision which should have been made by the pilot because the pilot can only make the decision. Why? He can communicate. He is the person who knows the facts.

By virtue of these things, we have to speak in riddles about this to some extent, and you know why, but that pilot knows what the facts are in his situation. According to the memorandum of understanding, he is the person who should make the decision as to when the flight is to be aborted.

So, with all due respect to you, the pilot thinks you made a bad judgment; 31,000 pilots in ALPA think you made a bad judgment. Thank

God that plane didn't have 75 passengers on it. It was only about a third of a full load, and that pilot was able to get it off the ground with flat tires; or else there would have been a holocaust. Captain Haas has a wife and family for whom the story would have been different. Captain Haas wouldn't have been around, to question your decision.

MR. GRAY. I would say, Senator Byrd, that I think I made the correct decision under the circumstances, the facts and circumstances existing at the time. Both the company and the FBI very, very carefully considered and thought very long and hard, and I did, too, before I made that decision, because our prime criterion is the safety of human life.

Senator BYRD. So is the captain's.

MR. GRAY. I realize that, sir.

Senator BYRD. And it is his ox that is being gored; it is his life that is also in the balance.

Now, do you have a record of the interview with Captain Haas to which you referred a moment ago, that you could submit to this committee?

MR. GRAY. No, sir, I am not going to submit that interview because that was during the course of talking with us and it bears that stamp again of being part of an FBI file. I am going to respectfully decline to provide that to the committee.

Senator BYRD. I thought the new policy was only with respect to files that had some bearing on the Watergate, some bearing on Mr. Dean, et cetera, et cetera. Are we to understand that you will not submit to the committee a recorded interview with Capt. William Haas?

MR. GRAY. Senator, I think I answered this question a little earlier by saying this is not a new policy. I am falling back on the traditional policies of the Department of Justice with regard to FBI files. I am placed back in the same framework I was in before I made the unprecedented offer in connection with the Watergate case.

Senator BYRD. I have one final question.

Would you ask the Attorney General whether or not this recorded interview—it was recorded, I assume—with Capt. William R. Haas would fall within the new policy or whether or not it could be submitted for the record of the committee, and if you get that approval would you submit it?

MR. GRAY. Senator Byrd, I have a feeling that this ought to be a request that is made to the Attorney General by the committee. I can convey this to him, but I think he is going to want a formal request from the committee.

Senator BYRD. Well, you are his agent as of now before this committee. It is your confirmation that is being judged.

MR. GRAY. That is correct, sir.

Senator BYRD. You are the one who has been carrying out the policy here. Why would you not want to ask him?

MR. GRAY. Well, I think that I am going to be responsive. I am going to receive it when the request is made in writing by the committee, and I will consider it because that is the Department policy and has been the Department policy over a period of time.

Senator BYRD. Do you suppose the committee could subpoena that interview?

Mr. GRAY. I don't know, sir.

Senator BYRD. Well, Mr. Gray, I have completed my questioning with respect to this hearing.

I have always been a strong supporter of the FBI. I made law and order speeches, to my recollection, before President Nixon started making them. Several weeks ago, I stated my position with respect to your nomination, and I stated my reasons therefor. My conclusions have only been substantiated by the developments that have occurred in the course of the hearings. To be specific, they are as follows, as I see them:

One: As Acting Director, you made speeches which you yourself have, during the hearings, admitted were political in the eyes of others; you accepted an invitation, at the request of the White House, to make a speech in Cleveland, Ohio, a State which was considered vital to the Republican campaign; although you earlier testified that, prior to the White House request, you had received a formal invitation directly from the Cleveland Club, you later stated that this was not the case and that the White House invitation antedated any formal invitation from Cleveland.

Two: The FBI, again at the request of the White House, secured information from 21 field offices in 14 States to be used in support of the Presidential campaign, such request for information having gone out over your name—and, although you earlier left the impression with the Judiciary Committee that you had launched an investigation into the matter, you subsequently revealed that such investigation had really not been instigated until the story broke in the press several weeks after the political act occurred, and the evidence shows that the investigation really was not pursued vigorously and produced little, if any, results.

Three: What started out initially to be a "full court press" investigation soon was reduced to an investigation only with respect to the IOC statute; possible violations of other statutes were not pursued, the pretext being that there were no indications of other violations, and that the FBI was not requested to go beyond the IOC statute by the Attorney General's office.

Four: Serious questions have been raised about the decision of the FBI's Acting Director to shoot out the tires of the Southern Airways aircraft on November 10, 1972; additionally, the statements under oath by the Acting Director are completely at odds with statements by the captain of that aircraft and by the president of the Air Line Pilots Association.

Five: The repeated absences from Washington at critical times by the FBI Acting Director—for example, during the Southern Airways skyjacking; and often during the Watergate investigation, an investigation which the Acting Director himself recognized initially as an extremely serious matter, one which had every indication of involving people in high positions in the administration.

Six: A handling of the Watergate investigation which has raised serious questions regarding its thoroughness, independence, and objectivity.

Seven: Failure on the part of the FBI Acting Director to demonstrate independence in dealing with John Dean, Counsel to the President, and accepting at face value and almost without question the statements, directions, and requests of John Dean, all of which indicate

a pattern either of blind loyalty, faith, and trust in, or subservience to, the White House. Specific examples can be cited:

(a) Transmission of the July 21 letterhead memorandum to John Dean.

(b) Transmission of 82 investigative reports (raw files) directly to John Dean, at Dean's request, without authorization by the Attorney General and apparently without knowledge of others in the FBI.

(c) Allowing, without protest, John Dean to sit in on interviews of White House personnel.

(d) Supplying John Dean with investigative reports of reinterviews of certain personnel of the Committee for the Re-Election of the President, such reinterviews having been made at the request of the CRP personnel who wanted to be interviewed out of the presence of CRP attorneys.

(e) Accepting, without question, the response of John Dean to the inquiry of the FBI Acting Director regarding whether or not Dean had shown Donald Segretti certain FBI files as implied in press reports.

(f) Trusting implicitly in, and justifying his actions upon, a "presumption of regularity," the FBI Acting Director repeatedly turned over raw files to John Dean and failed to ask Dean questions where questions logically should have been asked regarding the use of those files and regarding leaks of information, et cetera.

(g) Dean's recommendation of Gordon Liddy to CRP and Liddy's later involvement in the Watergate raid created no apparent concern on the part of the FBI Acting Director with regard to Dean's being entrusted with raw FBI files.

(h) Although Dean had Mr. Howard Hunt's property removed from Hunt's office on the night of June 19, 1972, and stored it in his own office until he turned it over to the FBI 6 days later, the FBI Acting Director saw no reason to seriously question Dean's actions, even though Hunt proved to be involved in the Watergate break-in, and even though Dean knew at the time the property was stored in his office that Hunt was being investigated by the FBI, and even though Dean, during those 6 days, failed to inform the FBI of what had transpired, notwithstanding the fact that Dean talked by telephone six times with the FBI Acting Director and met with the FBI Acting Director on two separate occasions in the latter's office during the 6 days Dean was in possession of Hunt's property.

(i) During the Kleindienst hearings, Mr. Gray turned over to John Dean the famous Dita Beard memorandum which had been entrusted to the FBI by the Judiciary Committee under orders that it not leave the possession of the FBI. The Beard memorandum subsequently went to the ITT before being returned to the FBI and the Judiciary Committee. Notwithstanding this experience, FBI Acting Director Gray demonstrated an implicit faith in John Dean in turning over to him all FBI raw files requested by Dean with respect to the Watergate break-in. Here again, Mr. Gray acted, in his words, on the "presumption of regularity."

Eight: FBI Acting Director repeatedly stated during the hearings, and as recently as yesterday, that he would continue to turn over FBI raw materials to John Dean as requested. The supplying of FBI raw files to Mr. Dean has continued without questions being raised by Gray

even subsequent to August 29, 1972, the date on which President Nixon stated in a press conference in San Clemente, Calif., that "Within our own staff, under my direction, Counsel to the President, Mr. Dean, has conducted a *complete investigation* of all leads which might involve any present members of the White House staff or anybody in the Government." (Emphasis supplied.)

Nine: Even though Mr. Gray sought a legal opinion before supplying Mr. Dean with the July 21 letterhead memorandum, Mr. Gray sought no legal opinion whatsoever in following up repeatedly with supplying FBI raw files (FD302's, interview reports, teletype information, et cetera) which were even more sensitive than an LHM.

Ten: FBI Acting Director Gray sought no request orally or in writing from the President before supplying Mr. Dean with letterhead memorandums and FBI raw files, and has continued to send raw files to Mr. Dean as late as October 12, 1972, on the "assumption" that the White House investigation is "continuing."

Eleven: Submissions of raw files to White House echelon personnel, even those FBI reports regarding private reinterviews made at the request of CRP personnel, have seriously compromised the "presumption of confidentiality" which heretofore has been applied with respect to information given to the FBI by informants.

Twelve: In view of the exorbitant claim of executive privilege that has been advanced to deny a formal appearance by Mr. John Dean before the Judiciary Committee to answer questions bearing upon the qualifications of Mr. Gray, I believe that the Senate committee should reject the nomination.

Thirteen: Although I have nothing personal against the FBI Acting Director and could possibly vote to confirm his nomination for some other office, I cannot vote to confirm his nomination for the office of Director of the FBI. I think that the image of the FBI has suffered, in view of all the developments which occurred during his acting directorship, and I think that the professionalism, morale, and efficiency of the FBI have likewise suffered, as has public confidence in the FBI. There is too much evidence of political activity on the part of the Acting Director; there is too much evidence of subservience to the White House; there are too many unanswered questions with respect to the possible misuse of FBI files in connection with the Watergate investigation—all of these, together with the foregoing detailed reasons, are sufficient to justify a fear that the FBI could, in the future, become a White House national police force to be used in political campaigns, thus endangering the constitutional liberties of all Americans.

For the foregoing reasons, I would now hope to see an up or down vote on the nomination of Mr. Gray. I think he is entitled to an up or down vote, but more than he, the FBI is entitled to an immediate decision in this matter, and I believe that for the good interests of the FBI, as the top law enforcement agency and intelligence-gathering network in this country and the free world, the nomination ought to be rejected.

I speak with all deference to you, Mr. Gray, and most respectfully when I say again that it might be quite possible for me to vote for your nomination for another office. I cannot vote for the present nomination before the Judiciary Committee.

Do you wish to respond?

Mr. GRAY. Yes, if I may, Senator Byrd. As I told you when I met with you in your office, I understood and appreciated your position, and I said at that time that I hoped that I might be able to persuade the Senator to change his mind. All I can say to you on this occasion is that I understand the reasons for your statement, and I regret that I have not been able to persuade you.

Thank you very much.

Senator BYRD. Thank you, Mr. Chairman.

Senator HART. The chairman indicated that we would recess until 2:30.

[Whereupon, at 12:50 p.m., the subcommittee was recessed, to reconvene at 2:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator TUNNEY.

Senator TUNNEY. Mr. Gray, Senator Kennedy was asking you yesterday about the scope of the investigation the FBI is conducting into possible perjury in connection with the ITT Kleindienst hearings which were held last year.

As you know, the record was referred by this committee to the Justice Department last summer with the request that a report be made to the committee in 30 days. The Justice Department wrote the chairman and requested an extension of time.

You have testified that the record was not referred to the FBI until December 5, and that you have only a few more interviews to complete. You have also said that both Mr. Kleindienst and Mr. Petersen have disqualified themselves from working on the matter since they were both involved in the ITT hearing. Does that represent a correct summary of the facts?

Mr. GRAY. Yes, sir, I think that does.

Senator TUNNEY. You were involved in the ITT hearings, also, as the person in the Justice Department who, after mid-March, made decisions about which documents were to be made available to the committee. Have you disqualified yourself in making decisions respecting the investigation?

Mr. GRAY. No, sir, I have not. I think I answered this question for Senator Kennedy when he asked me. I think this, once again, goes to a full understanding of the participation of the Acting Director in an investigation and when decisions come up to my level. But normally the modus operandi within the Federal Bureau of Investigation is to have the case work its way with the trained investigators and with the field supervisors and the SAC's and the assistant directors doing it. Then the type of question comes up, I think I cited several examples here where recommendations were made to me with regard to interviews.

This case is being actually scoped out for us by memorandums from the Department, and, you know, we give our reports to them and get additional memorandums. This is the way that case is being worked.

Senator TUNNEY. So you are not making any decisions with respect to how, where, when, and why these are to be conducted?

MR. GRAY. Yes, sir, I would say I have not done so yet. The situation has not been presented to me where I as Acting Director have to make a decision, but that could occur.

Senator TUNNEY. Do you feel that you ought to disqualify yourself?

MR. GRAY. I don't think I should. I said this to Senator Kennedy. I know it might be an easy thing for me to say, "Yes, Senator Tunney, I'm disqualifying myself" and perhaps take a lot of heat off my back. But I think, sitting in the chair where I sit, I have the duty to try to resolve it and when it reaches the point where I cannot, then I have to make the other decision.

Senator TUNNEY. As to whether or not you ought to disqualify yourself on specific decisions as it relates to the investigation of possible perjury?

MR. GRAY. That is correct, sir.

Senator TUNNEY. And you made that decision when you had to, when it was the kind of issue framed that you felt that there might be conflict of interest?

MR. GRAY. I have a hard time trying to see how this will come up, because we deal primarily with information reported to us. It may or may not be fact, but at least it is information. We transmit this data to the Department of Justice attorneys who make the legal decisions as to what to do from there.

Senator TUNNEY. Well, I was thinking of the possibility of the decision as to which witnesses ought to be interviewed. As an example, I can see where there could be a tough decision that would require the Director to decide definitively whether a person ought to be interviewed by the FBI or whether he should not be.

MR. GRAY. Generally, these individuals are set out in the investigation scoped out for us by the Department, and when our return reports are made then other memorandums come.

Now, it is conceivable that in those reports there may be leads developed by the Department of Justice itself and they give us another memorandum, and it is also conceivable that our people would recommend these. You know, it is not going to be a situation where I am going to sit up there and say no.

Senator TUNNEY. Who is making the decision in the Department?

MR. GRAY. I am testifying now from memory, and I believe it to be—I think this man is the senior Deputy Assistant Attorney General in the Criminal Division, Mr. Shapiro.

Senator TUNNEY. When did Mr. Kleindienst and Mr. Petersen disqualify themselves?

MR. GRAY. I don't know, sir.

Senator TUNNEY. But you do know that they have disqualified themselves?

MR. GRAY. Yes, sir.

Senator TUNNEY. When the record was referred to you on December 5, do you recall who signed the referral memo? Was it Mr. Kleindienst or Mr. Petersen?

MR. GRAY. No, sir, the initials on it are "REE" and the memo is from Ralph E. Erickson, Deputy Attorney General.

Senator TUNNEY. And would that be normal, a normal procedure, if Mr. Kleindienst and Mr. Petersen have disqualified themselves, for it to be from Mr. Erickson?

MR. GRAY. I believe that would be a normal procedure, because he would be acting for the Department.

Senator TUNNEY. Do you have any knowledge as to why Mr. Shapiro did not sign it?

MR. GRAY. No, sir, I do not.

Senator TUNNEY. When the record was referred to you, what were you asked to do, if you could tell us?

MR. GRAY. Senator Tunney, I would respectfully decline to answer because this is an on-going investigation and I would adhere to the traditional rules and regulations and policies of the Department.

Senator TUNNEY. Can you supply the referral memo for the record?

MR. GRAY. No, Senator, I would respectfully decline, sir.

Senator TUNNEY. Well, if you cannot supply it, can you comment on the impression that I get from your testimony that you were directed to conduct interviews of certain people whose names were specified in the referral memo; is that an accurate estimate?

MR. GRAY. That was initially, and it goes on from there as this investigation begins to develop.

Senator TUNNEY. I understand from what you supplied for the record last week that you have only four more interviews to go?

MR. GRAY. That was so at that time, but that does not mean that as a result of the information from those interviews being turned in we won't be directed into other areas.

Senator TUNNEY. Can you indicate to the committee what other things besides interviews that you are doing?

MR. GRAY. I would respectfully decline, Senator Tunney.

Senator TUNNEY. Can you tell us whom you have been interviewing?

MR. GRAY. No, sir, I would respectfully decline, Senator.

Senator TUNNEY. In an article in today's Chicago Sun Times it says that the FBI has not contacted the following: Mr. Geneen, Mr. Aibel, Mr. Reinecke, Mr. Hunt, Mr. Brit Hume, Mr. Howard Hunt, and Mr. Hugh Sloan. It also says that Mr. John Mitchell and Mr. Petersen won't say whether they have been interviewed.

The only people we know have been interviewed are some officials of ITT's Washington office, Mr. Ryan, Mr. Goodrich, and Mr. Horner. Inasmuch as the gentlemen which this article says have not been interviewed were the principals or among the principals involved in the ITT hearing, and as there were inherent inconsistencies under oath from a number of these people, which would seem to indicate that somebody was lying, it is hard for me to believe how this investigation could be pretty well wrapped up without these people being interviewed.

MR. GRAY. I don't think, Senator Tunney, that we should conclude that it is pretty well wrapped up. As information is developed, there is more direction and guidance probably going to be given. But this, you know, is a subject that I really cannot discuss.

Senator TUNNEY. The reason that I mention it is because it is my understanding from your testimony earlier that you only had four more interviews to conduct, and I have mentioned Geneen, Aibel, Brit Hume, Ryan, Howard Hunt, Hugh Sloan, Horner, and possibly Peter Petersen. We are up to eight people who were principals and who have not been interviewed. It would seem to me that just insofar as the interview portion is concerned, you have a long way to go and you

have been at it for quite some time, since December 5. I wonder if you have any comments to make on that?

Mr. GRAY. No, sir. I don't have any comments other than to say we are taking it step by step by step.

Senator TUNNEY. Mr. Shapiro is apparently directing the investigation. Do you feel that this is the way the FBI should be investigating a matter of this kind, taking such specific instructions from the Department of Justice? Or should the FBI be able to do a full court press and conduct the kind of investigation that it feels ought to be conducted?

Mr. GRAY. No; I feel in this case, Senator Tunney, this report was referred to the Department by the Committee on the Judiciary of the U.S. Senate and that we are taking our instructions from the Department. We are making our reports to the Department and we are reporting everything that we develop to the attorneys there who are making the decisions.

Senator TUNNEY. Can you explain why it would not be necessary to interview, for instance, Mr. Harold Geneen or Mr. Aibel, who were two principals involved? Mr. Geneen particularly, I recall, had testimony under oath that was in conflict with the testimony under oath of another witness.

Mr. GRAY. No, sir, because to answer that question I have to go back and review that file, the whole transcript, like the attorneys are doing in the Department of Justice.

Senator TUNNEY. Have your investigations or interviews turned up substantial new leads?

Mr. GRAY. Senator Tunney, I must respectfully decline to answer that because that is a question I am not permitted to answer under the rules and regulations.

Senator TUNNEY. Can you answer this: Has the Justice Department directed you not to interview these? Can you tell us that?

Mr. GRAY. I have no recollection of any directions not to do something.

Senator TUNNEY. On the other hand, you cannot run the type of investigation that would be in any way outside specific instructions that you get from the Justice Department?

Mr. GRAY. Traditionally over the years this is the way these cases have been handled that are referred by committees of the Congress to the Department. They are studied by the attorneys there and then the attorneys direct the investigating arm to do certain things.

Senator TUNNEY. And they closely circumscribe the nature of the investigation?

Mr. GRAY. I don't know that I could agree to that kind of a characterization, because they are developing the case and I have no idea at this point in time as to what is going to turn out to be the full investigative thrust of it.

Senator TUNNEY. If we can believe the Chicago Sun Times story, apparently their direction of the case has omitted interviews with some of the major witnesses who testified before this committee and who were directly involved in conflicting testimony under oath. If this report is accurate, it would seem that the investigation so far is clearly circumscribed in such a way that none of the principals are going to be embarrassed or going to be investigated. I hope that would not be the continuing policy, if it is the policy now.

On Monday of this week the Commerce Committee of the House of Representatives released a 70-page SEC summary of the report of ITT materials buried somewhere in the Justice Department. I assume that this SEC document has been in the Justice Department for a long time; is this true?

Mr. GRAY. Senator, I don't know about those documents at all. I have never seen them and I do not know where they are in the Justice Department. I would have to assume they are in the Justice Department. I would just have to assume they are in the Criminal Division but that would be an outright assumption.

Senator TUNNEY. They were not there when you were with the Justice Department?

Mr. GRAY. I don't recall that they were or weren't or if they came over when I was there. The only thing that I know is that I have never seen those documents and I do not know where they are located.

Senator TUNNEY. Nor the summary?

Mr. GRAY. No, sir.

Senator TUNNEY. Have you made any attempt to see the summary since the news stories broke in Jack Anderson's column over the weekend?

Mr. GRAY. No, sir, because I don't really view that as my function as the Acting Director of the FBI. I don't have that kind of authority. It isn't something that just occurs to me to do.

Senator TUNNEY. Well, if you can believe the reported stories, that would indicate that somebody was lying, doesn't it?

Mr. GRAY. I haven't read the story. I really have not read the story that you are referring to, this particular column.

Senator TUNNEY. Did you read the news story in the Wall Street Journal?

Mr. GRAY. No, sir.

Senator TUNNEY. The Wall Street Journal on Monday of this week indicated that there is a very substantial possibility that Mr. John Mitchell perjured himself before this committee. Do you think that that is relevant to the kind of investigation that you are now conducting?

Mr. GRAY. Senator, I cannot comment on that. You know, the newspaper writes a story and whether it is relevant or isn't relevant, I am not in a position as Acting Director of the FBI to make that comment.

Senator TUNNEY. Let me read from the story:

In hearings before the Senate Judiciary Committee last April, Mr. Mitchell repeatedly testified that his only discussions of antitrust matters with President Nixon and other high Government officials related to "antitrust policy" and were held "at the beginning of the administration." He also said, "The President has never talked to me about any antitrust case that was in the Department."

* * * * *

Further the summary says, Mr. Nixon "believed that mergers were good, Mitchell apparently said that ITT had not been sued [on the ground that] bigness is bad." (Mr. McLaren was well known for his belief that some huge conglomerates should be attacked simply because of their size—that bigness alone is bad.)

* * * * *

In that same memo attached to the thank-you letter to Mr. Agnew, Mr. Gerrity relates some details of a meeting between Harold Geneen, president of ITT, and

Attorney General Mitchell. "It indicates that Mitchell told Geneen that Nixon was not opposed to the merger" of ITT and Hartford, according to the summary.

Now if you can believe the summary prepared by the SEC of the documents that they had available to them it would appear that Mr. Mitchell had talked to the President about the merger, and that when he came before this committee under oath and said that he had not talked with the President, that he was not telling the truth. I am not saying that the summary is accurate. We do know Mr. Mitchell testified before this committee that he had not had conversation with the President. That much we do know.

It would seem to me that if the FBI is conducting an investigation of possible perjury this article in the Wall Street Journal would give you a road map as to how to proceed.

MR. GRAY. I think it may be that if it is a road map, it may be a road map for the Department of Justice, Senator Tunney, because that is not our function. It is a question we have to resolve, who is doing what for whom, and the Department of Justice in these cases directs us.

It is just an article that I have no comment on.

SENATOR TUNNEY. It is somewhat disturbing to me that a newspaper reporter could in his or in her private investigation be ahead of the FBI in a matter which you had before you since December 5.

What I am trying to get at is what kind of investigation is being done.

Here we had a unanimous vote by the Committee on the Judiciary of the U.S. Senate to refer the hearings on the ITT-Kleindienst matter to the Department of Justice for an investigation of possible perjury. This has been referred to the FBI for the investigation. It appears that a newspaper reporter is ahead of the FBI. I find that quite disturbing, frankly. There are some who could say that it represents a cover-up.

MR. CHAIRMAN. I would like to include the Chicago Sun Times article and the Wall Street Journal article in the record.

THE CHAIRMAN. So ordered.

[The articles referred to follow:]

[From the Wall Street Journal, Mar. 19, 1973]

ITT SAGA (CONT.)—AGNEW, CONNALLY, STANS LINKED TO ITT EFFORT IN THE HARTFORD CASE; SECRET DOCUMENTS DISCLOSE INTERVENTION BY OFFICIALS; PETERSON IS ALSO NAMED—"NIXON NOT OPPOSED" TO PLAN

(By Priscilla S. Meyer, Staff Reporter of the Wall Street Journal)

WASHINGTON.—An internal working paper of the Securities and Exchange Commission indicates that several key Nixon administration officials were instrumental in helping International Telephone & Telegraph Corp. reach its controversial 1971 antitrust settlement with the Justice Department.

The officials include Vice President Spiro Agnew, former Treasury Secretary John Connally, former Commerce Secretary Maurice Stans and former Commerce Secretary Peter Peterson, who was on the White House staff when the settlement was in the works.

The settlement allowed ITT to retain the huge Hartford Fire Insurance Co. in exchange for other divestitures.

In addition, the SEC working paper indicates that former Attorney General John Mitchell discussed the ITT-Hartford Fire relationship with President Nixon, which tends to contradict congressional testimony by Mr. Mitchell that

he had never talked about the ITT case with the President, only about general antitrust policy.

These and other insights into administration-ITT relations were revealed in a confidential SEC staff summary of ITT documents—mainly letters and internal memos—that the SEC had subpoenaed during its two-year investigation of the company. The documents themselves—34 boxes full—are currently in the possession of the Justice Department.

MR. AGNEW'S NAME COMES UP

One thing the summary of the ITT documents makes clear: ITT mounted a major effort, with the help of administration officials, to pressure Richard McLaren, then assistant attorney general in charge of the antitrust division, into backing down. Mr. McLaren had brought three antitrust suits against ITT and had solidly refused to settle out of court unless ITT agreed to divest Hartford Fire.

That ITT effort began, the SEC summary indicates, with the help of Vice President Agnew, whose name hasn't previously been associated with the ITT controversy. The summary refers to a letter dated Aug. 7, 1970, to Mr. Agnew from Edward J. Gerrity, senior vice president of ITT, thanking Mr. Agnew in connection with a memo that was attached to the letter. That memo, again according to the summary, "outlines a meeting that had occurred on the previous Tuesday with McLaren (Agnew)."

It's unclear what's meant by the phrase "McLaren (Agnew)." And neither the summary nor, presumably, the ITT documents answer the obvious questions: Did Mr. Agnew set up the meeting, and did he participate in it? The summary indicates only that Mr. Agnew was thanked for the meeting.

Regarding the meeting itself, Mr. Gerrity's letter, according to the summary, points out to Mr. Agnew "that McLaren seems more responsive to Senator Hart and Congressman Celler rather than to the administration." Sen. Hart (D. Mich.) and Rep. Celler (D. N.Y.) (who was defeated in 1972) have long been persistent critics of the administration.

ROLE OF MR. MITCHELL

In hearings before the Senate Judiciary Committee last April, Mr. Mitchell repeatedly testified that his only discussion of antitrust matters with President Nixon and other high government officials related to "antitrust policy" and were held "at the beginning of the administration." He also said, "The President has never talked to me about any antitrust case that was in the department."

Further, the summary says, Mr. Nixon "believed that mergers were good, Mitchell apparently said that ITT had not been sued (on ground that) bigness is bad." (Mr. McLaren was well known for his belief that some huge conglomerates should be attacked simply because of their size—that bigness is bad.)

In that same memo attached to the thank-you letter to Mr. Agnew, Mr. Gerrity relates some details of a meeting between Harold Geneen, president of ITT, and Attorney General Mitchell. "It indicates that Mitchell told Geneen that Nixon was not opposed to the merger" of ITT and Hartford, according to the summary.

In another apparent instance of high administration involvement in ITT affairs, the SEC summary refers to a meeting between then-Commerce Secretary Stans and John Ryan, a Washington lawyer who was described in congressional testimony as a "listening post" for ITT. The reference is to an Aug. 24, 1970, memo from Mr. Ryan to William R. Merriam, vice president and director of Washington relations for ITT, describing the Ryan-Stans session.

Here's how the SEC sums up that memo: "There is an indication that Kleindienst must 'follow through' and that this 'may be the break' that ITT is looking for. There is a rhetorical question asked, 'How will McLaren react, or how good a Republican is McLaren?' 'Follow through' apparently means to follow through on behalf of ITT and put pressure on Mr. McLaren, although this isn't made clear in the summary."

Richard Kleindienst, who is currently Attorney General, was technically in charge of the Justice Department while the ITT settlement was being negotiated because Mr. Mitchell had disqualified himself. The Senate Judiciary Committee hearings were called to explore this role prior to his confirmation as Attorney General.

Mr. Ryan's memo to ITT tends to conflict with his testimony before the Senate hearings when he was questioned about his role in bringing about the ITT settlement.

He was asked by Sen. Hart: "Did you express your concern about antitrust to anyone in the White House?"

Mr. Ryan: "No sir, not that I recall."

Sen. Hart: "To anyone in the Executive Branch, in addition to the Justice Department?"

Mr. Ryan: "That would be difficult to answer, sir. Over a period of time I would have probably, given the opportunity and the circumstances, made an attempt to talk, but I can think of no specific times or gentlemen that I would have talked to."

Although it isn't clear what the Ryan memo meant by the phrase, "may be the break," a month or so after the Ryan-Stans meeting attorneys for ITT began another round of proposals to Mr. McLaren to settle the antitrust suits. Ultimately, Mr. McLaren agreed to meet with ITT representatives and Mr. Kleindienst on April 29, 1971, eight months after the "McLaren (Agnew)" meeting, to listen to a full presentation of the negative impact divesting Hartford Fire would have on ITT.

Meanwhile, Mr. Kleindienst asked Solicitor General Erwin Griswold if he would seek an extension of a deadline for filing an appeal of the case with the Supreme Court. ITT wanted such an extension very badly. If no extension were granted Mr. McLaren would surely take his case to the high court immediately. But the granting of an extension would give ITT more time to try to dissuade the government from going to the high court. As it turned out, Mr. Griswold did seek and obtain the extension on April 26, though it was nine days past the usual deadline for seeking such delays. And, of course, the case then never did go to the high court.

An April 27 letter to then-Treasury Secretary Connally from Mr. Merriam indicated, according to the SEC summary, that Mr. Merriam and Mr. Geneen were certain that Peter Peterson of the White House staff and Mr. Connally were "instrumental in the delay" (The word "delay" apparently refers to the deadline extension, the summary reports). The letter also advised Mr. Connally of a meeting between Mr. Peterson and Mr. Geneen on April 16.

The SEC summary refers to a letter dated April 30 to Mr. Peterson apparently from ITT. Attached to the letter was a copy of the extension of time application filed by Mr. Griswold. "Indication is that the delay was in part due to action of the administration," the summary says.

The summary of documents was prepared by Stanley Sporkin, the SEC's deputy director for enforcement, and his staff. And it apparently was retained when the SEC suddenly shipped all 34 cartons of files from its ITT investigation over to the Justice Department early last October. In mid-December the SEC supplied a copy of the summary to the House Commerce subcommittee on investigations, chaired by Rep. Harley Staggers, who also heads the House Commerce Committee.

The investigative subcommittee has said it would make the summary public today if the SEC or Justice Department can't give "clear and compelling reasons" why the documents shouldn't be released.

The 34 cartons of documents were shipped to the Justice Department as part of an investigation into perjury and obstruction of justice, according to the SEC. But Mr. Staggers has charged that they were moved by the SEC to avoid congressional requests.

None of the officials and former officials of the government who are named in the summary could be reached for comment by The Wall Street Journal over the weekend, although the Associated Press quoted columnist Jack Anderson as saying that former Attorney General Mitchell repeated the denials he had made under oath. ITT's Mr. Gerrity, who wrote the letter to Vice President Agnew in 1970, yesterday declined to comment on the documents because he hadn't seen the summary. "Those documents are so old," he added.

Mr. Gerrity did say, however, that he and Vice President Agnew had been "personal friends for a long time," ever since they "got to know each other well" while in the Army together.

[From the Chicago Sun-Times, Mar. 22, 1973]

ITT PROBE AVOIDS MITCHELL, NIXON AIDES

(By Morion Kondracke, Sun-Times Bureau)

WASHINGTON.—The FBI's investigation of possible perjury at last year's Senate probe of the International Telephone & Telegraph Corp. is being steered clear of present and former Nixon administration officials. The Sun-Times learned Wednesday.

Orders from the Justice Department to the FBI on whom to interview and what leads to pursue are calculated to insure no administration officials become subjects of investigation, reliable sources said.

The FBI probe appears especially directed to slide past former Atty. Gen. John N. Mitchell, who refused in a telephone interview to say whether he has been contacted by the FBI in connection with the perjury probe.

Acting FBI director L. Patrick Gray III told the Senate Judiciary Committee two weeks ago that only four interviews remained to be conducted before the FBI's investigation was completed, but The Sun-Times has identified six potentially important witnesses who had not been contacted as of Wednesday afternoon.

They are ITT's president, Harold S. Gencen; ITT's general counsel, Howard Aibel; California Lt. Gov. Ed Reinecke; former White House aide and convicted Watergate bugger E. Howard Hunt; Hugh Sloan, Jr., the former treasurer of President Nixon's re-election campaign, and Brit Hume, whose reporting originally sparked the Senate ITT probe.

Hume, a former associate of columnist Jack Anderson, uncovered a memo last year purportedly written by ITT lobbyist Dita D. Beard involving the Justice Department dropped anti-trust action against ITT in return for a \$100,000 pledge to support the Republican National Convention.

The Senate Judiciary Committee conducted intensive hearings on the allegation last March and April as it considered the fitness of Acting Atty. Gen. Richard G. Kleindienst to be attorney general. Almost in exact parallel, the same committee is now inquiring into the Watergate bugging case as part of its consideration of Gray's nomination to be permanent FBI director.

After its ITT probe, the judiciary committee on last June 30 referred its hearing record to the Justice Department for investigation of possible perjury, suborning of perjury and obstruction of justice. Gray has testified that the Justice Department referred the case to the FBI on Dec. 5.

Among the direct conflicts in testimony leading to the referral were these, which a Sun-Times investigation indicates have not been completely probed by the FBI:

(1) Hume's assertion that Mrs. Beard admitted authorship of the original memo, versus Mrs. Beard's denial of authorship and denunciation of the memo as a fraud.

A Judiciary subcommittee began interviewing Mrs. Beard early last year in Denver, but she collapsed with an apparent heart seizure, Hume has not been contacted at all.

(2) Mrs. Beard's delay of more than a month last year before commenting on the memo, versus her eventual strong denunciation of it. The denunciation followed a visit from Hunt, who was wearing a disguise.

Gray has testified Hunt was never questioned about his visit. Reportedly, Hunt was assigned to visit Mrs. Beard by White House aide Charles Colson. It could not be determined whether the FBI has contacted Colson.

(3) Purported assertions by Mrs. Beard that Mitchell was sympathetic to ITT's case during a Kentucky Derby party at Gov. Louie Nunn's mansion in 1971, versus Nunn's and Mitchell's testimony that Mitchell rebuffed Mrs. Beard's attempt to lobby on ITT's behalf, Nunn said in a telephone interview that the FBI has not contacted him.

(4) Mitchell's assertion that, in a meeting with Gencen in August, 1970, the two men discussed only general anti-trust policy, versus the fact ITT was involved in three of the four major antitrust cases then pending in the department.

The possibility of conflict in testimony increased this week with publication of summaries of ITT documents obtained by the Securities and Exchange Commission indicating Mitchell and Gencen did discuss ITT's cases and also President Nixon's opinion about them, which Mitchell also denied discussing.

The fact that the FBI has not contacted Geneen about the meeting was learned Wednesday from Aibel, ITT's top legal officer, who said he too had not been contacted.

Mitchell, in a telephone interview, denied he discussed ITT's case with either Geneen or the President.

However, at last year's hearings, ITT Vice President Edward J. Gerrity said Geneen's plan in seeing Mitchell had been to reverse Justice Department policy on ITT. Gerrity refused to respond to a request for an interview on whether he has been contacted by the FBI.

(5) Mitchell's denial last March—repeated Wednesday—that he had any "re-election responsibilities" or knowledge of campaign finances, versus his later assumption of directorship of the re-election campaign. The Washington Post has reported that Mitchell had control of a secret campaign intelligence fund even before officially taking command of the campaign.

One person who presumably could clarify whether Mitchell did or did not have control of campaign funds or knowledge of campaign activities is Sloan, who was Nixon campaign treasurer. He said in an interview, however, that he has not been contacted by the FBI. He would not say whether Mitchell's testimony was accurate or not.

(6) Mitchell's assertions of ignorance about campaign finance, versus California Lt. Gov. Reinecke's statement that he briefed Mitchell about convention finances as early as May, 1971. When he learned of Mitchell's version of events, Reinecke hastily changed his story and said the briefing took place in September of 1971, but that Mitchell probably forgot about it because details were already public.

Reinecke's press secretary, Phil Jordan, said he asked Reinecke at The Sun-Times' request if the FBI had interviewed him and "the answer is 'no'."

Gray denied before the Senate that the FBI's probe was in any way limited or directed away from "certain individuals." He said his perjury probe could be characterized as a "full court press . . . within the scope of the memoranda and instructions from the Department of Justice."

It was learned from reliable sources the referral memos from Justice to the FBI were designed to direct investigation away from administration officials.

It could not be determined who was telling Justice in what directions to shunt the FBI.

Experienced federal investigators said they had never heard of a case in which it would be possible for an FBI director to say—as Gray did two weeks ago—that only four interviews remained to be completed.

Senator TUNNEY. I have not seen the investigation but it looks as though the major witnesses in the ITT investigation have not been interviewed. One wonders what is going to happen with this investigation. The Senate committee gave 30 days. Perhaps that was too short a period of time to conduct the investigation, but here many months have gone by and still the principals have not been interviewed by the FBI. I find that incredible.

As a result of the articles do you think you can do anything about it now?

Mr. GRAY. I don't think it is my function to do anything about it now. Senator Tunney, I believe sincerely that these questions you are addressing to me should be addressed to the Department of Justice.

Senator TUNNEY. Have you spoken with the Department that you feel they are hamstringing you in your investigation, the FBI investigation?

Mr. GRAY. No, I have not said that in the Department yet. I am trying to stay within my instructions and still trying to be responsive to you, but I cannot discuss the details of this investigation. It is an ongoing investigation. Senator, and it comes under those prohibitions.

Senator TUNNEY. I understand the problem that you are faced with in answering questions of a Senator in this type of a hearing as those questions relate to an ongoing investigation. But what concerns me

is that this investigation has been ongoing for some time and it appears to be quiescent in the extreme. It seems to be getting a little moss around it. We don't have, yet, principals being interviewed, if you can believe allegations that have been made in the Chicago Sun Times. I think that these questions are most relevant to the consideration of your qualifications, quite honestly. I feel if the FBI is asked to conduct an investigation of this kind that it ought to be able to conduct it in an unfettered way, and if it feels the investigation is being too carefully circumscribed in order to protect people, the Director of the FBI ought to say to the men who are responsible for drawing up the game plan—Mr. Shapiro if it is Mr. Shapiro—that you don't like the game plan because it is making it impossible for you to do the job that you have been charged with.

Mr. GRAY. I don't think we have reached that point where it is impossible for me to do the job because this is the building of a logical, factual evidentiary pattern, sir.

Senator TUNNEY. What about the 34 cartons of documents? Is the FBI looking at them as a part of the investigation?

Mr. GRAY. Those are the SEC documents?

Senator TUNNEY. Yes.

Mr. GRAY. No, sir, we do not have those documents.

Senator TUNNEY. Can you explain why you are not looking at them?

Mr. GRAY. Senator, the only thing I can say to you on this is that this matter was referred by the Committee on the Judiciary of the U.S. Senate to the Department of Justice. The Department of Justice has the transcript and the documents and they are the fellows who have to go over this and determine where the probable violations lie, if any, and then tell us to go in and investigate.

Senator TUNNEY. I see. But it is rather interesting that we now have, from the House Commerce Committee, an SEC summary which seems to indicate perjury on the part of some. We don't know when that summary was made available to the Justice Department. Presumably it was made available at the same time that the cartons of material were made available. We don't know. We do know that a reading of the transcript of the Judiciary Committee hearing on Mr. Kleindienst, comparing it with the summary of the SEC, would seem to indicate that Mr. John Mitchell perjured himself. Yet you have not, apparently, been asked to study those SEC documents and compare them with the transcripts of the record.

Mr. GRAY. Senator Tunney, perhaps the only comment I could make is that someone else is making that comparison, maybe lawyers are making that comparison, but I really don't know that to be a fact.

Senator TUNNEY. So we can say that your investigation is only a partial investigation, so far as the SEC documents are concerned? You have not been asked to go into those documents and compare them with the transcripts?

Mr. GRAY. I don't know that I would accept that characterization, Senator. This is a very voluminous transcript and apparently that SEC file is very voluminous. I have to assume that the attorneys in the Criminal Division are working on this, it is building gradually. But beyond that, I would just not have any comment or knowledge.

Senator TUNNEY. Perhaps I am guilty of a degree of committee pride when I say that I believe it to be a very serious matter, when I say that I believe it to be a very grievous matter for a person to come before this committee and perjure himself. When the committee di-

rects attention to a possible charge of perjury it is a very serious matter. If we can believe press accounts, so far the investigation has omitted interviews with the main principals in the hearing that we referred to the Department. If we read the SEC summary and compare it with the statements that Mr. Mitchell made before this committee, it is prima facie evidence of perjury. I think it is a matter of the utmost magnitude and that the investigation should be proceeding faster than it has.

MR. GRAY. Senator Tunney, if I may, the only comment that I could make on that is that the FBI is not in any case making a determination whether in a transcript of a hearing perjury may or may not have occurred. This is a determination that is arrived at by lawyers and then we are told where to go to investigate and what in general to inquire into.

SENATOR TUNNEY. I understand that. But it does seem to me that if the FBI is to conduct an investigation it ought to be able to conduct the kind of investigation it feels is appropriate. So far, if the FBI is not looking at the documents, and—if we can believe the Sun-Times story—many of the principals have not been interviewed, the investigation is incomplete in the extreme.

MR. GRAY. Well, Senator, the only thing, once again, that I can say is that this has been a longstanding policy in both the Department and the FBI.

SENATOR TUNNEY. Mr. Gray, this committee heard from several witnesses in the past 2 weeks and one of them was a reporter, Les Whitten, who has testified that you told this committee a grave untruth. I believe it would be useful for the committee for you to comment on Mr. Whitten's testimony. I would like to read an excerpt from that testimony as follows:

MR. CHAIRMAN, I have only learned this morning of a grave untruth told to this committee by Mr. Gray. Mr. Gray, as I noted above, swore under oath, "We have checked with everyone at the Bureau of Indian Affairs that we could check with, and not one of them said that they had any such appointment with Mr. Adams."

This morning I was able to speak directly with Mr. Creedon with the permission of Mr. C. R. Anderson, who is the regular spokesman for their office.

Despite what Mr. Gray swore—that "not one" had confirmed Mr. Adams' crucial appointment—Mr. Creedon told me that two of Mr. Gray's agents spoke with him the day after our arrest. Mr. Creedon told me that he forthrightly confirmed to the FBI agents that Mr. Adams indeed had an appointment with him at the BIA at 10 a.m. on the morning of the arrest.

This, of course, flatly contradicts what Mr. Gray told you under oath.

Moreover, Mr. Creedon told me—though he did not tell the FBI this detail—that he had cleared Adams through the security guard at BIA for the appointment. This, of course, should show up on the BIA's security records. Didn't the FBI make this fundamental check? Surely, the security records and security personnel at BIA were among "everyone at the Bureau of Indian Affairs that we could check with."

I am reading from the transcript.

MR. GRAY. I recall that, and I recall what I said. I recall the matter of BIA officials. I was addressing myself to Bureau of Indian Affairs officials and I think I mentioned that man Mr. Oxendine. It is true, and I knew at the time, that Mr. Adams was to have an appointment with Mr. Creedon, but Mr. Creedon is not a BIA official. He is an investigator for a congressional committee, and he was to investigate the break-in at the BIA. He had no appointment at all regarding any delivery of any materials.

Senator TUNNEY. Did you know that there had been contact with Mr. Creedon?

Mr. GRAY. Yes, sir. I just said I knew at the time that Mr. Creedon was not a Bureau of Indian Affairs official.

Senator TUNNEY. He was working with the Bureau of Indian Affairs, was he not?

Mr. GRAY. He is an investigator for a congressional committee, and his office down there is temporarily to conduct an investigation into the break-in.

Senator TUNNEY. Was he working with the Bureau, and was his knowledge such knowledge that could be attributed to the Bureau if he had been asked further questions to determine whether or not he had talked to Bureau officials?

Mr. GRAY. No, sir, because it was clearly my understanding that he is there as a House investigator.

Senator TUNNEY. I wonder why you did not, if you knew that Mr. Creedon had been notified, why you did not mention that to the committee?

Mr. GRAY. Because I very carefully checked what his appointment had to do with and it didn't have anything to do with the return of documents, only with his investigation into the sacking of the Bureau of Indian Affairs.

Senator TUNNEY. And your agents spoke to Mr. Creedon?

Mr. GRAY. Yes, sir.

Senator TUNNEY. I don't want to make any big point of it, but in his testimony Mr. Whitten said that:

Mr. Creedon told me—though he did not tell the FBI this detail—that he had cleared Adams with the security guard at BIA for the appointment. This, of course, should show up on the BIA's security records. Didn't the FBI make this fundamental check? Surely, the security records and security personnel at BIA were among "everyone at the Bureau of Indian Affairs that we could check with."

Mr. GRAY. We didn't have to make that check because we knew of the appointment with Mr. Creedon. I didn't consider him a Bureau of Indian Affairs official and I told the committee what we had done and I even mentioned the name of Mr. Oxendine who would be the closest person related to this kind of a thing.

Senator TUNNEY. How about the security guard?

Mr. GRAY. I do not know if we checked with the security guards themselves, sir.

Senator TUNNEY. Mr. Gray, this week's Time magazine continues its account of these confirmation hearings. The article contains some material which I am sure you will want the opportunity to respond to. In all fairness, I feel that in some places it does not present the position that you have taken in these hearings.

Some of the charges implicit in the article are severe ones. I would like to raise some of the points in the article at this time. At the outset I would like you to comment on what I believe to be one very important point made in that article, one I would hope this committee would be able to consider in greater depth. I quote:

The FBI after J. Edgar Hoover is at a crossroads, and the national interest is clear: a balance must be found between a police power that is largely unchecked and one that swings prejudicially with each political shift in the White House.

I believe that we would all agree with that statement and I hope that these sessions will help serve that interest.

At pages 151 and 152 of these hearings, Mr. Gray, you in March testified as to your involvement in the 1968 Presidential campaign, which you claimed was minimal. Your testimony was as follows:

In 1968, I met with Mr. Nixon in New York in his office in January, spoke with him, and just talked about 20 minutes in general terms, and told him that I hoped that he was going to run for the Presidency. Later in 1968, I wrote a letter for the candidate's signature on the Small Business Investment Company industry, setting forth his position in response to questions that that industry had asked him. I was asked to do so because at that time I was a member of the board of governors of the National Association of Small Business Investment Companies. I was not asked to participate in the campaign in 1968, and I did not. I stayed right in my law office and practiced law and wrote this letter.

Senator TUNNEY. The Time article says that when President Nixon ran for the Presidency in 1968, you helped gather information on the strategy and organization of New York Governor Nelson Rockefeller, one of Nixon's opponents for the nomination. Is that true?

Mr. GRAY. No, sir; it is not.

Senator TUNNEY. The article also says that Assistant Attorney General Henry Petersen "persuaded Gray at first not to have the FBI look into the activities of a California lawyer, Donald Segretti, who had been named in news accounts as having been hired to disrupt and spy on the campaign of Nixon's potential Democratic opponents." Is that true?

Mr. GRAY. No.

Senator TUNNEY. One other point, Mr. Gray, especially interested me in the Time article. It is more a matter of policy than of your qualifications but I would be interested in your view on the subject. The article makes this statement:

He [Hoover] was the lone dissenter when representatives of the CIA, the National Security Agency and the Defense Intelligence Agency urged that agents be allowed to expand surveillance to break in or otherwise "surreptitiously" enter the residences of suspects and examine personal papers or other documents. The White House approved the tactic and ordered its use but Hoover continued to protest—and the order was finally abandoned at the suggestion of Attorney General John Mitchell.

Senator HRUSKA. Can we suspend? There is a vote on the Senate floor.

[A recess was taken.]

Senator TUNNEY. The chairman has asked that we continue the hearing until the next vote, which will probably be very soon.

I was reading from Time magazine that Hoover was the lone dissenter when representatives of the CIA, the National Security Agency and the Defense Intelligence Agency urged that agents be allowed to expand surveillance and the practice was finally abandoned. Do you know whether that practice has been suggested again?

Mr. GRAY. No, sir.

Senator TUNNEY. That has not been suggested?

Mr. GRAY. No, sir.

Senator TUNNEY. What is your view as to the advisability of such a practice?

Mr. GRAY. If I understand the practice, that certainly is in my way of thinking, breaking and entering, a trespassing, and I just don't think that people who are law enforcement officials should be engaging in that kind of activity.

Senator TUNNEY. I am glad to hear it put that way.

Mr. Gray, you supplied for the record a statement on March 7, 1972. It appears on page 340. Let me read it:

Mr. GRAY. I have checked, Senator Byrd, and have learned that by memorandum dated 12/5/72, Deputy Attorney General Erickson requested that the FBI interview Mrs. Dita Beard and a number of officials and employees of International Telephone and Telegraph (ITT) to develop facts for the Department's consideration of a possible Perjury violation involving conflicting testimony at the hearings of this Committee which was inquiring into the ITT Hartford Fire Insurance merger. The memorandum from Mr. Erickson also requested that we interview several of the same people concerning a possible Obstruction of Justice growing out of an inquiry between August 1971 and October 1972, conducted by the Securities and Exchange Commission looking into alleged "insider" trading of ITT stock by corporate officials. The Obstruction of Justice primarily involved alleged destruction of ITT files and alleged withholding of other documentary material from the Securities and Exchange Commission which had subpoenaed them. Our investigation is virtually completed and four reports have been furnished to the Department. We have about four more interviews to conduct but two of these people are out of the United States at this time.

Now, just two points there.

Mr. GRAY. Yes, sir.

Senator TUNNEY. One, I am led to believe by this answer that your investigation is almost wrapped up.

Mr. GRAY. At that point in time. As I tried to describe, however—maybe I am not making myself clear, but I am trying to—when these reports go in to the Department they are analyzed and then we get additional requests to do additional things. You know, I am trying to follow my instructions and trying to be helpful to you, but let me just say that it isn't a closed book by any manner of means.

Senator TUNNEY. So it would be fair to say that the investigation is not virtually completed at this point?

Mr. GRAY. It was as of that time, but additional things have happened.

Senator TUNNEY. And I assume you cannot tell us what things have happened?

Mr. GRAY. That is correct, sir, I have to respectfully decline, Senator Tunney.

Senator TUNNEY. I can understand that.

The obstruction of justice charged involved alleged destruction of ITT files and withholding materials from the Securities and Exchange Commission. I don't know how you could be investigating that unless you had the SEC files, the cartons that have been brought down to the Justice Department. Do you?

Mr. GRAY. I would like to refer back, Senator Tunney, to my earlier answer to that. The attorneys there have to analyze these files and they would not just deliver to us, I am sure, the box with whatever is in it in the way of files, but would direct us in what we were to do in connection with that particular box.

Senator TUNNEY. Have you supplied a chronology and a complete list of your conversations with Mr. Dean?

Mr. GRAY. Yes, sir, I did.

If those are the ones either you or Senator Byrd requested, there were two inserts with regard to the Watergate investigation.

Senator TUNNEY. Have you supplied a list of other conversations that you have had with Mr. Dean?

Mr. GRAY. No, sir. I was requested to do that this morning and I respectfully declined to do that, sir.

Senator TUNNEY. I am sorry. I did not know that you had already answered the question.

How about those with Mr. Ehrlichman, has that request been made?

Mr. GRAY. No, sir, and I would respectfully decline on the same grounds.

Senator TUNNEY. Questions have been asked by other Senators with respect to your knowledge of the relationship between Mr. Dean and Mr. Liddy. I have asked Senators and others what they got out of your answers. I think others are confused, as I am, as to when you first became aware of the relationship. Was it on July 24, 1972, or was it subsequent to that?

Mr. GRAY. No. I have tried to make that clear. I have said that there is a teletype summarizing the interview and that teletype was initialed by me—I should say the note affixed to that teletype was initialed by me on the 24th day of July, but that note did not indicate anything at all concerning any relationship between Mr. Dean and Mr. Liddy. It was not until much later on when the 302 came that I saw that there was language in there, as I recall—well, I have already testified to this, I am sure.

Senator TUNNEY. Was that in October?

Mr. GRAY. It was either in September or October.

I think it was probably about the middle of September, between the middle of September and the 1st of October. But once again that is testifying from the file, sir. I must respectfully decline. But I have tried to clear it up and the words that I remember were that Mr. Magruder asked for recommendations regarding the Committee to Re-Elect the President and that he received recommendations from Mr. Dean and Mr. Krogh.

Senator TUNNEY. Are you prevented from testifying as to the information that the FBI acquired from Mr. Dean in the interviews that they had with Mr. Dean?

Mr. GRAY. Yes; because my instructions are now that these files are to be made available to the chairman and the ranking minority member and the chief counsel and a minority counsel, and that I am to adhere to the traditional rules and regulations and policies of the Department.

Senator TUNNEY. Did Mr. Dean at any time indicate to you personally that he had a personal relationship with Mr. Liddy?

Mr. GRAY. No, sir.

Senator TUNNEY. You were, of course, forwarding material to him on a regular basis after July 1. It became apparent that Mr. Liddy was one of the prime suspects in a felony. I would assume you must have discussed this with Mr. Dean, did you not?

Mr. GRAY. No, sir. I made the statement several times in my testimony that we did not discuss the substance of his investigation or the substance of mine, because I wanted us to go on our own theories, to go in our own way and use our own resources.

Senator TUNNEY. Mr. Magruder, when he was testifying in open court on January 24, said:

As I recall, Mr. Liddy came over to the Committee to Re-elect the President with Mr. Dean who was Counsel to the President on a Friday in December somewhere, either the 9th or 10th. At that time we were in the process where we had two serious situations that had to be handled on a full-time basis; one was we were filing in a primary, fairly complicated law in many states, and secondly, the new election law was on its way through the Congress. We need to get ahold of what that legislation meant to our campaign. So I asked that John Dean, if he could find on a full-time basis, that he had been using words on a full-time basis, and John recommended Mr. Liddy on a Friday. Mr. Liddy began on the following Monday.

After Mr. Magruder testified to the above he was asked the following questions and answered as follows:

Do you recall the substance at all as to the conversations involving yourself, Mr. Liddy and Mr. Dean?

It was a typical interview situation. We talked about Mr. Liddy's background, our problems with the committee, what our needs were and the usual things we talked about. I had not met him before that time so we just had a general discussion.

Was there any discussion at all with respect to the investigation?

As I recall, either John, myself, not myself, John, Mr. Liddy talked about his FBI background and we did discuss the potential opportunity if we had an investigation problem, an intelligence-gathering problem, that Mr. Liddy's background would suit that type of work.

What, if anything, did Mr. Liddy say about that?

I can't recall. He was amenable to that type of activity.

You say he came over Monday to the best of your recollection?

To the best of my recollection he started immediately.

I learned of Mr. Magruder's testimony after you left the stand. I called it to the attention of the committee, I believe that several important questions are suggested by it. I have seen the interviews with Mr. Dean by the FBI on June 27, July 7, and 8, and the one on Magruder on July 20. At the time I read those interviews I made it clear to the FBI agents that I would not reveal what I read and I will not.

I do feel, however, that the question of Mr. Dean's relationship to this case is very, very important. I feel that unfortunately for you it is very important to your confirmation. I feel that way because to me it is clear from the record that Mr. Dean got Mr. Liddy his job and at the time he got his job there was talk about Mr. Liddy's ability as an investigator and his ability as an intelligence gatherer. Mr. Dean also was the one who was the conduit at the White House for materials that were supplied by the FBI, confidential materials, and materials that should have been safeguarded. The questions come up: If you didn't know of Mr. Dean's involvement, should you have known? And if you should have known, was it proper to give to Mr. Dean those various files and documents without talking to the President of the United States?

I have a few questions that I would like to ask you about that.

Have you spoken to the President since this committee requested unanimously that John W. Dean appear before the committee?

Mr. GRAY. No, sir; I have not.

Senator TUNNEY. When you learned that Mr. Dean was a friend of Mr. Liddy, did you speak to the President?

Mr. GRAY. No, sir; because when I saw the language you are talking about in the FD-302, it didn't ring that kind of bell and I didn't make

that kind of jump right away in my thinking. I treated this as a recommendation for an attorney and nothing more than that. So I did not go on the alert at all.

Senator TUNNEY. When did you first learn that Mr. Dean had kept Mr. Hunt's effects in his office for a week before he turned them over to the FBI? That was back in June, wasn't it?

Mr. GRAY. I think I testified this morning, and I think I have testified before, that my best recollection of this is that it came up on the morning of June 27.

Senator TUNNEY. That is when you learned about it?

Mr. GRAY. Yes.

Senator TUNNEY. Now, did that give you any kind of a signal at all?

Mr. GRAY. No, sir; it didn't, because, as I testified, our concern was the chain of custody.

Senator TUNNEY. I understand that.

Mr. GRAY. Yes, and it didn't because of the fact, Senator, of the relationship between the Counsel to the President and the President himself; this man is his Counsel. He is, in his official capacity, conducting an inquiry, and, furthermore, you would have Presidential papers involved, so it did not shatter me.

Senator TUNNEY. But you are the President's top cop?

You are the President's chief investigator?

Mr. GRAY. That is correct.

Senator TUNNEY. Don't you feel that as the President's chief investigator that, if you were suspicious, and I am not saying that you were and you have indicated you were not, but wouldn't you have a responsibility, if you were suspicious of the activities of one of the President's counselors, to go directly to the President and tell him?

Mr. GRAY. Yes, if I were suspicious. But those suspicions were not directed, in my mind, to the extent that I said, "Hey, I've got to do something about this."

Senator TUNNEY. And when there were press reports regarding Mr. Segretti?

I put this in context of Dean's holding Hunt's effects for a week, in context of the Magruder interview which you testified that you learned about in October.

When there were press reports that an FBI file which you turned over to Mr. Dean had been used to brief Mr. Segretti, in that context did that not alert you?

Mr. GRAY. No, sir, it didn't. I previously testified as to why not, and the fact of the matter is that it did not. You know, I testified earlier there were some things right on the face of that press report that I knew just couldn't be so.

Senator TUNNEY. Yes, except you also got pretty hot under the collar, you testified.

Mr. GRAY. Oh, yes, I did.

There is no denying that.

Senator TUNNEY. Were you at all worried about Mr. Dean's using your FBI reports to coach witnesses at the White House?

Mr. GRAY. No, sir, I think you asked me this question before, and I don't know that he did do that.

Senator TUNNEY. I don't know that he did either, but I am talking about the FBI conducting an independent investigation. The FBI is

an institution which has grown up to be highly respected by me and I am sure by everybody in this room, and we do not want to see the FBI become an instrumentality that has one form of investigation for some people and another form for White House Staffs, do we?

Mr. GRAY. No, I share your sympathies and I express them with equal vigor, and I have on several occasions, Senator Tunney.

Senator TUNNEY. I am concerned that there would not be any suspicion of the coaching the witnesses when you have these three independent facts which would, it seems to me, or at least should, alert one to the possibility that the White House Counsel was coaching witnesses. I am not saying he was, I don't know. But it is of concern to me. I know that Mr. Dean is a friend of yours. But sometimes one has to be suspicious of one's friends.

Mr. GRAY. That is true, Senator Tunney. But I would like to invite your attention to the fact that this was very, very closely held and we had conducted it with maximum shock effect on witnesses even before the letterhead memorandum of July 21 was sent to the White House.

Senator TUNNEY. Did you ever discuss with the Attorney General the problem that you were running into?

Mr. GRAY. No, sir, I didn't know that I was running into any problem. I take it that you may be relating it to these three matters.

Senator TUNNEY. Well, not only that. I am thinking of things which are unusual, having Mr. Dean sit in when you interviewed witnesses, and ask for information that you were at first apparently reluctant to give. Did you feel that it was not a normal thing to do, and did you have any discussion with the Attorney General?

Mr. GRAY. No, sir, I didn't because I have to try to make those decisions down there, at least as many as I can.

That is why I am there as a Bureau Chief and I did make that first decision, as you will recall, with regard to the June 19 information.

Senator TUNNEY. At any time did you explain to Mr. Dean what security measures should be taken with respect to confidential FBI files?

Mr. GRAY. Oh, yes, and he was well aware of them, too. He has been in the Department of Justice. He is the liaison with the Department of Justice in his capacity as Counsel, but yes, we did.

Senator TUNNEY. Do you ever speak to the President, except at social affairs?

Mr. GRAY. Customarily it is appropriate for the FBI Director to speak to the President, but that kind of a relationship has not developed, and I think maybe the President might have his own good reasons for not having developed that kind of relationship to this point in time. But I do not know that that is so, because I don't know what the President's thinking is on this. But I feel certain that should I eventually be confirmed, this kind of a relationship would be established.

Senator TUNNEY. As I understand your answer, you do not, then, talk to the President except on the occasion of social affairs?

Mr. GRAY. I cannot remember when the last time was I was at the White House on a social occasion. That has been some time ago. I do not know the President's reasons, and the only thing that I can read into it is that until I am eventually confirmed or voted down, which-

ever may be the will of the Senate, that kind of a relationship is not going to be established. This has just been an assumption. I have nothing to base this on. This is just me.

Senator TUNNEY. So, then, as I understand your testimony, the persons that you speak to in the White House are representatives of the President, are the staffers, Mr. Dean, Mr. Ehrlichman, Mr. Haldeman?

Mr. GRAY. That is correct, sir, but I think I have testified here that I have had a meeting with Mr. Fielding and Mr. Sheppard and with two or three of our top executives of the Bureau on command control on terrorism. I did have that meeting.

Senator TUNNEY. I personally think you ought to be allowed to speak to the President.

Mr. GRAY. I am sure that eventually, if I am confirmed, this will occur, that that kind of a relation will develop.

Senator TUNNEY. You indicated to Senator Hart that you were put on the carpet by Mr. Ehrlichman in October regarding presumed FBI leaks. Why didn't you put Mr. Ehrlichman on the carpet regarding White House leaks?

Mr. GRAY. I think on every occasion I had mentioned the possibilities existing in many other areas regarding leaks because of the fact that so many investigators were looking into this matter. I did not just take these criticisms and these remarks lying down and would contend this is not a leak that is coming from the FBI. Some of these stories at that particular time, as well as I remember, just came out and said FBI agents, and, you know, I just know that this isn't so.

Senator TUNNEY. Was your judgment on these matters colored because you were the Acting Director of the FBI?

Mr. GRAY. I don't think so, Senator Tunney. I said throughout all my press—when newsmen would ask me questions along this line—I would say this is a position that seeks the man. I am not conducting a campaign. I refuse to do it. I even refuse to do it today. I have had people offer to help me here and I have said no. I have to sit here in this committee and persuade the U.S. Senators.

Senator TUNNEY. My concept of the job of Director of the FBI is that he reports to the President and to the Attorney General, and that he does not report to political appointees of the White House, and particularly so when those political appointees are the subject of an investigation for wrong-doing. I can recognize how your position is considerably compromised, in a way if you did not talk to the President. You were talking to these political appointees. I think that that is an important problem.

Mr. GRAY. Senator, may I say that I did not feel compromised.

Senator TUNNEY. Well, maybe you didn't feel compromised, and I am glad to hear that, but it is awfully tough to have a person that is the embodiment of the President, insofar as you were concerned in your regular transaction with the White House, be the one that you have to make an independent judgment regarding, when his name comes up in an investigation that you are conducting, as a person who might have leaked documents that are confidential FBI documents and as a person who was a friend of one of the architects of the espionage that you investigated. I just think it is a difficult position

for a person to be in. Now maybe it wasn't difficult for you but it would be difficult for me.

Are you suspicious of the relationship that Mr. Dean had with Mr. Liddy and with Mr. Segretti now?

Mr. GRAY. Well, sir, I think I have testified that in the sum total of this investigation and, in particular, after we sat down around the table in my conference room and went through many skull sessions and took many looks at the things we have done throughout this investigation, that I just have not found things that would generate those suspicions, Senator Tunney.

Senator TUNNEY. One of the central features in this confirmation hearing is Mr. Dean's testimony. Your confirmation may be injured by Mr. Dean's not testifying. Wouldn't you want Mr. Dean to testify?

Mr. GRAY. Senator, that is a decision that has to be made by the President on a level that I think is far above and beyond mine. This goes—I think, anyhow—to the doctrine of the separation of powers among the three great branches of our Government, but I have no contribution to make to that kind of decision because that is peculiarly a decision for the President.

I have pointed out that I serve at the pleasure of the President, that the Federal statute enacted now requires Presidential appointment and the advice and consent of the Senate. I serve at the pleasure of the President and that is peculiarly his decision.

Senator TUNNEY. I would like to say in conclusion that I have seen you before this committee a good many days now, and my judgment as to your confirmation is not going to rest on your integrity. I think that you are a man of integrity. If I should vote against your confirmation, it would not be on that basis. It would be on the basis that I think an FBI Director has got to be independent.

Mr. GRAY. Thank you, Senator Tunney. I appreciate your remarks.

The CHAIRMAN. There is a rollcall.

We will adjourn now at the call of the Chair.

[Whereupon, at 4:15 p.m., the committee adjourned.]

[The nomination of Mr. Gray was subsequently withdrawn by the President.]





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