

**FRIDAY, OCTOBER 24, 1975**

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

The committee met, pursuant to notice, at 10:08 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Mondale, Huddleston, Hart of Colorado, Baker, Mathias, and Schweiker.

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

The CHAIRMAN. The hearing will please come to order.

Our first witness this morning is former Attorney General John Mitchell. Mr. Mitchell, will you please stand and take the oath. Do you solemnly swear that all of 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. MITCHELL. I do, Mr. Chairman.

The CHAIRMAN. Mr. Schwarz will commence the questioning.

**TESTIMONY OF JOHN MITCHELL, FORMER ATTORNEY GENERAL,  
ACCOMPANIED BY WILLIAM G. HUNDLEY, COUNSEL**

Mr. SCHWARZ. Mr. Mitchell, are you accompanied by counsel?

Mr. MITCHELL. Yes; I have Mr. William Hundley with me.

Mr. SCHWARZ. Have you had your attention called to the testimony the other day of Mr. Helms on the subject of the CIA's mail opening program and his testimony about a meeting with you?

Mr. MITCHELL. I saw this morning two pages that had reference to it, yes, sir.

Mr. SCHWARZ. All right. Have you had an opportunity to check your office calendar to determine whether you did meet with Mr. Helms in June of 1971?

Mr. MITCHELL. As I previously told this committee, my log shows a meeting of 22 minutes with Mr. Helms on June 1, 1971.

Mr. SCHWARZ. All right. What is your best recollection of what transpired in that meeting?

Mr. MITCHELL. Mr. Helms came in to see me, I believe, primarily about another subject matter, and during the discussions of that subject matter Mr. Helms referred to the activities of the CIA in connection with the U.S. mails. My understanding of it was that he had reference to mail covers. It was a very short conversation on the subject matter, according to my recollection, and that is about the substance of what I can recall at this late date.

Mr. SCHWARZ. When you say mail covers, what do you mean by mail covers?

Mr. MITCHELL. Well, there is a practice of law enforcement agencies to obtain information to look at mail in envelopes going between parties in which law enforcement agencies have an interest to find out who is the sender, if possible, and, of course, who is the recipient of the mail.

Mr. SCHWARZ. You said this practice involves looking at mail in envelopes, and by that do you mean looking at the contents of the letter?

Mr. MITCHELL. No. It does not. Mail cover, as the term is used, and as I understand it, does not entail the opening of the envelopes.

Mr. SCHWARZ. Did Mr. Helms in that conversation tell you that the CIA had been and was opening mail?

Mr. MITCHELL. I have no recollection of any such discussion at that time or any other time with Mr. Helms.

Mr. SCHWARZ. Is it your testimony, then, that you believe he did not tell you the CIA was opening mail?

Mr. MITCHELL. It is my testimony that the best recollection I have of the meeting with Mr. Helms on June 1, 1971, was that I understood what he was talking about was a mail cover operation, that is correct.

Mr. SCHWARZ. Did the subject of legality arise in your conversation with Mr. Helms?

Mr. MITCHELL. I have no recollection of it whatsoever. I would not believe it would arise in connection with a mail cover which, as I said before, is used by most law enforcement agencies in the proper circumstances, and I do not believe that the question of legality would arise during such a conversation.

Mr. SCHWARZ. If it was all such a routine matter, why then is it your understanding that Mr. Helms came to see you?

Mr. MITCHELL. About another subject matter.

Mr. SCHWARZ. Why did he mention, to the best of your understanding and your testimony, the subject of mail at all?

Mr. MITCHELL. Because of the fact that it related to the other subject matter in an indirect, peripheral way, as I recall the other subject matter that we discussed.

Mr. SCHWARZ. And by that, are you saying that the other subject matter related to the gathering of intelligence, and he then informed you that one method of gathering intelligence was mail covers?

Mr. MITCHELL. Well, I agree with everything up to the last aspect of it. He put it more in the context that it was not unsimilar with the primary subject matter of our discussion.

Mr. SCHWARZ. What was the primary subject matter of your discussion?

Mr. MITCHELL. I do not believe that I am permitted to testify on that subject matter here at this time.

Mr. SCHWARZ. Mr. Chairman, I don't know the appropriate procedure on that. Mr. Mitchell, what is the basis for that statement?

Senator BAKER. Before you go on, Mr. Schwarz, is this the same matter that was covered in the executive session when Senator Tower was present?

Mr. SCHWARZ. I assume that it is, and I think we should get on the record here the nature of Mr. Helms' reasoning, and then the committee can rule—excuse me, Mr. Mitchell's reasoning.

Mr. MITCHELL. You mean Mr. Helms' reasoning?

Mr. SCHWARZ. I mean Mr. Mitchell's reasoning.

Senator BAKER. Before you go on, as you understand it, this is going to deal generally with material that Senator Tower ruled on in the executive session?

Mr. SCHWARZ. I would assume so, Senator Baker.

Senator BAKER. All right. Thank you.

The CHAIRMAN. Mr. Mitchell, can you state the basis for declining to reveal to the committee what the principal subject of conversation was that day between you and Mr. Helms?

Mr. MITCHELL. I do not believe, so far as I know, that the subject matter has been in the public domain, and I don't believe that I should be the one to disclose it here. I understand that your committee and the executive branch is having certain discussions on hearings in some areas, and it may very well be that this would fall within it.

The CHAIRMAN. And are you referring now to the same subject matter that you referred to in the course of the deposition that was taken of you earlier when this general question arose and you took the same position then that you are taking now?

Mr. MITCHELL. Yes, Mr. Chairman, except that I would like to point out that it wasn't discussed during the taking of my deposition. It was discussed with the vice chairman of your committee on his representation that you had an understanding with the executive branch that when such matter arose, that either you or he or both of you might inquire into the subject.

The CHAIRMAN. Very well. I believe that we have identified the subject sufficiently well so that I understand the reason for your declining to respond to that particular question.

The subject does not really relate to the question of mail opening that we are now asking you about. Is that correct?

Mr. MITCHELL. That is correct, Mr. Chairman. But you can see that there was a collateral circumstance there under which the mail cover aspect might have arisen.

The CHAIRMAN. Yes. Very well, Mr. Mitchell.

Counsel, I wouldn't pursue that any further.

Mr. SCHWARZ. In any event, Mr. Mitchell, your testimony about that meeting is that you discussed mail cover and not mail opening. Is that correct?

Mr. MITCHELL. That was my understanding of the basis of the short discussion we had on the subject matter.

Mr. SCHWARZ. Now, one final question. First, did Mr. Angleton of the CIA show you material obtained from CIA opening of mail, and second, did he show you material relating to a Cathy Boudin?

Mr. MITCHELL. To the best of my recollection I have never met Mr. Angleton in my life. I may have in some group or circumstances. I have no recollection. I feel quite certain that Mr. Angleton never showed me anything relating to Cathy Boudin, and certainly not under the circumstances that it was a product of a mail opening.

Mr. SCHWARZ. Did any other person in the CIA show you material relating to Cathy Boudin?

Mr. MITCHELL. I have no recollection of it. I am quite sure they would not.

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

The CHAIRMAN. Do you have any questions, Mr. Kirbow?

Mr. KIRBOW. I have no questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. Mitchell, you are acquainted, are you not, with what has come to be known as the Huston plan?

Mr. MITCHELL. Generally, Mr. Chairman, yes. It has been a long time since I examined it, but I understand the subject matter.

The CHAIRMAN. Is it true that you were not involved in any way in the meetings between the various intelligence agencies which led up to the submission of the Huston plan?

Mr. MITCHELL. That is true, sir. Yes, sir.

The CHAIRMAN. Is it also true you knew nothing about these meetings or the Huston plan until after it had been submitted to President Nixon?

Mr. MITCHELL. That is correct.

The CHAIRMAN. Who first told you about the existence of such a plan?

Mr. MITCHELL. I believe it was Director Hoover, but it could have been Mr. De Loach, one of his associates.

The CHAIRMAN. Did you subsequently meet with Mr. Hoover to talk about the plan?

Mr. MITCHELL. I believe I met with Mr. Hoover to talk about the plan. It again could have been Mr. De Loach who brought the plan to me at Mr. Hoover's direction.

The CHAIRMAN. Did you ever speak to Mr. Helms about the plan once you had learned of it?

Mr. MITCHELL. I do not have a recollection of talking to Mr. Helms about the plan, although I have been shown memorandums where Mr. Helms says that such a meeting and discussion took place.

The CHAIRMAN. Well, when you talked either to Mr. Hoover or to his deputy, Mr. De Loach, do you have any recollection that either of them told you that mail was being opened?

Mr. MITCHELL. Well, no, not that mail was being opened. The discussion I had with them was to go over the salient point of the recommendation of the so-called Huston plan. The plan, of course, contained a recommendation with respect to that, and I believe, based on some homework that I have done here recently, that the materials had a reference to the fact that there was no covert operation, which I understand in that document meant the opening of mail. There was a reference to mail covers; in other words, the examination of the outside of envelopes.

The CHAIRMAN. Well, the Huston plan did contain, as you correctly say, the statement that mail openings had been terminated, and it included a request that the President authorize mail openings.

Now, my question is, after you learned of the plan, do you recall being told that mail openings were then going on, even though the plan itself stipulated that they had been terminated?

Mr. MITCHELL. No, sir. To the best of my recollection I was never told anyone was carrying on a mail opening operation.

The CHAIRMAN. Now, as Attorney General of the United States and the chief law enforcement officer of the Government at the time, doesn't it strike you as being extraordinary that you should not have been told about a mail-opening program that was contrary to the laws of the country?

Mr. MITCHELL. Well, I would believe, Mr. Chairman, that that would depend entirely upon what had become the established practice with the CIA, or whatever other agency was opening mail, vis-a-vis the executive branch of the Government, particularly the Attorneys General. It would surprise me only to the extent that they did not brief me on such a subject matter as they did on many other types of intelligence-gathering operations that were in place when I became Attorney General.

The CHAIRMAN. Although they briefed you on other intelligence operations, according to your testimony, they never briefed you on the mail opening?

Mr. MITCHELL. Not on the mail openings; no, sir.

The CHAIRMAN. When you learned of the Huston plan, what action did you take? You proceeded, did you not, to take the matter up with the White House? Did you take it up directly with the President? Did you take it up with someone else in the White House?

Mr. MITCHELL. As I testified this morning, Mr. Chairman, I made known to the President my disagreement with the concept of the plan and recommended that it be turned down. Whether that was in a direct conversation with the President, which I believe it was, but it could have been in a conversation that I might have had with Mr. Haldeman that was transmitted to the President.

The CHAIRMAN. What were your reasons for recommending that the plan be turned down?

Mr. MITCHELL. The proposals contained in the plan *in toto* were inimical to the best interests of the country and certainly should not be something that the President of the United States should be approving.

The CHAIRMAN. Do you mean by that that the proposals for undertaking illegal action formed the basis for your objection to the plan?

Mr. MITCHELL. That is correct, sir. There had been, of course, individual items of that plan suggested to me that would be undertaken by parts of the Justice Department, which had been turned down, and the aggregate was worse than the individual parts that had been suggested.

The CHAIRMAN. Was it your understanding, following your conversations at the White House, that President Nixon then rescinded his approval of the plan?

Mr. MITCHELL. I was so told.

The CHAIRMAN. By whom?

Mr. MITCHELL. I believe either the President himself or Mr. Haldeman, I am not certain which.

The CHAIRMAN. At any time afterwards, were you ever told that the mail openings continued, despite the President's rescission of his earlier approval of the plan?

Mr. MITCHELL. No, sir, as I have previously testified.

The CHAIRMAN. Given the fact that, as Attorney General, you were not told in the first place of the meetings between the various intelligence agencies and the FBI, which was directly under your jurisdiction, and which led to the formulation of the plan, and in view of the fact that the plan itself contained recommendations that were illegal, and you were not informed of the plan until after it had been submitted to the President, and in view of the fact that you then asked

the President to rescind his approval of the plan, why didn't you follow up afterwards to make certain that none of these practices were, in fact, going on? Did you just accept the statement that the matter had been reconsidered and the President's approval had been withdrawn and take no further action?

Mr. MITCHELL. Mr. Chairman, when the President of the United States makes known his determinations with respect to a subject matter, one would believe that the branches of the executive departments underneath him would follow through on his determinations, and needless to say, some of the agencies that were involved in the preparation of the Huston plan, such as the CIA, were not under my jurisdiction.

I know that from time to time I had further discussions with Director Hoover on some of the subjects contained in the Huston plan and the Bureau continued to abide by the determinations of the President.

The CHAIRMAN. And beyond that, you felt that the other agencies who had signed the plan were really beyond the jurisdiction of the Justice Department, so that your followup was confined to the FBI—is that your testimony?

Mr. MITCHELL. That is the substance of it; yes, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator BAKER. Mr. Chairman, thank you very much.

I think counsel and the chairman have covered the matters that you were invited to testify about, Mr. Mitchell. I have one or two brief questions on a tangential or related matter.

As you testified, the situation was such that you were not advised that the Huston plan was being formulated; in fact, on the first opportunity, you recommended to the President that it be disapproved, and it was disapproved or withdrawn. What would you suggest, as a former Attorney General of the United States, to make sure that the Attorneys General in the future have a better understanding of what sort of plans are being proposed to your successors or to future Presidents? Do you think there is some way we can guard against this sort of thing happening in the future?

Mr. MITCHELL. Well, apropos of these answers I gave to the chairman in that area, I believe that so far as the executive branch is structured now, the Attorney General's responsibility rests with the Federal Bureau of Investigation, and the other constituent parts of the Justice Department. With respect to that, I am fully convinced, after many experiences, that the only way the Attorney General will ever get control of the Federal Bureau of Investigation is through the Director. There is no way that an Attorney General can carry on all of the functions that he has to do, with all of his divisions, with all of his bureaus, and be able to monitor what goes on in the FBI.

Senator BAKER. How is one to ensure that? How is one to ensure that future Attorneys General have control of the Director of the FBI?

Mr. MITCHELL. How are you going to ensure it?

Senator BAKER. Yes.

Mr. MITCHELL. Only by the appointment of the proper Director; that's the only way.

Senator BAKER. Would it be helpful to appoint a Director for a term of years?

Mr. MITCHELL. Yes. I think that, Senator, we can go to the same concept that I understand you and I hold about the Presidency, that if you had a long enough term and a single term, I think that would be one way of perhaps putting some rein on it.

Senator BAKER. You mentioned that the scope of your jurisdiction and concern extended only to the FBI and not to the CIA, as it was related to the Huston plan. Do you think that is a defect? Do you think that in terms of the total intelligence apparatus of the U.S. Government that there ought to be some sort of central authority that coordinates both domestic and foreign intelligence? Should there be a better relationship between, say, the FBI and the CIA, in terms of intelligence gathering?

Mr. MITCHELL. Yes. I think there certainly was, and I presume there still is, great room for improvement in that area. But to get to your specific point of domestic and foreign intelligence, there has got to be a better understanding, because in many areas, you just cannot make a demarcation of which is which, and it is about time that this Government and the courts and a few other people began to realize that. There should be a better control of the total operation, and preferably a greater unification of it.

Senator BAKER. Would you agree that the present situation, in terms of law enforcement and intelligence, probably indicates the need for better congressional oversight of those functions, and that some sort of committee structure having the jurisdiction to legislate and oversee both the FBI and the CIA, or any of the other 62 law enforcement and intelligence operations, would be in order? Would you support a proposal for a joint committee of the Congress on intelligence and law enforcement?

Mr. MITCHELL. Yes; I would do that, Senator. But I must hasten to add that I am not quite sure how effective it could ever be. It seems to me that would be awful difficult, for somebody up in the Congress trying to monitor the operations of the intelligence community. When I say monitor, I mean, their actual operations, not their policies or appropriations or things in that area.

Senator BAKER. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Baker.

Senator Mondale.

Senator MONDALE. Thank you, Mr. Chairman.

Mr. Mitchell, while you were Attorney General, you were apparently under the opinion that mail covers alone were in operation. This involves taking pictures of the outside of an envelope, which, I gather, is legal, and it does not involve the actual opening of the mail. In fact, thousands of letters were being opened, mail from every conceivable source, from Richard Nixon to Arthur Burns to Leonard Bernstein, and the rest, which the record now establishes. Is it your testimony that you never saw the contents of the materials being opened?

Mr. MITCHELL. It is my testimony that I never knowingly saw the contents of any letter that was opened. Now, whether or not material from mail that had been opened was provided to me in memorandums or in other form, I cannot say, but I was not cognizant of the fact that it came from the opening of mails.

The CHAIRMAN. So that you cannot testify that you never saw any of it, but if it did come before you, it came before you in a way that

would not have alerted you as to the illegal method by which it was obtained?

Mr. MITCHELL. That is correct, sir.

Senator MONDALE. Similarly, the Huston plan deliberations occurred, among other things, through the active participation of the FBI, without your knowledge until the very last moment, when either Mr. Hoover or Mr. De Loach came to you, and you then went to the President and had the plan killed?

Mr. MITCHELL. That is correct, sir.

Senator MONDALE. Senator Baker asked you what to do about the apparent actions within the Department of Justice when one of its bureaus engages in illegal activity without informing the head of the Department. One of your answers seemed to be that we ought to get someone as a Director who is accountable and responsible to the Attorney General. Is that correct?

Mr. MITCHELL. Well, in part. But what I intended to convey, Senator, was that it is practically impossible for an Attorney General to monitor everything that goes on in the Federal Bureau of Investigation and that the success of the Bureau will depend entirely upon the man who is the Director of the Bureau, who should carry out the proper policies.

Now, if I might add also to the first part of your sentence, which I believe was part of the question, Mr. Hoover was over in the White House working on the Huston plan apparently in his belief that it was a directive or a request of the President of the United States. This is a little different than the normal activity where the Director does clear his activities with the Attorney General.

Senator MONDALE. Do I take by that answer that you do not mean to imply that Mr. Hoover was unaccountable and unresponsive to the Attorney General?

Mr. MITCHELL. You say he was then accountable?

Senator MONDALE. In other words, are you saying that while you were Attorney General and Mr. Hoover was the Director of the Bureau, it was your judgment that he was fully accountable and responsive to you as Attorney General?

Mr. MITCHELL. Yes, he was. And I would have to add that if the Chief Executive Officer, the President of the United States, gives him directions, I am sure they would supersede those of the Attorney General or anyone else.

Senator MONDALE. Even when the direction was to conduct an illegal act?

Mr. MITCHELL. Well, I do not believe that the President's direction to Mr. Hoover was to conduct an illegal act. I think the direction to Mr. Hoover and the other gentleman involved was to assemble a program for obtaining the appropriate intelligence.

Senator MONDALE. The Huston plan explicitly stated that while many of these tactics are illegal, we should use them anyway. Is it your testimony that had the President ordered the Houston plan, it should have gone forward, despite its illegality?

Mr. MITCHELL. No; that was not the testimony I was suggesting. The testimony I was suggesting is that the President of the United States has broad powers and I would be sure that it would be necessary for each of the recommendations that were made in connection with the



appropriate circumstances to be examined before you can make that blanket determination.

Senator MONDALE. All right. Now, if a President orders an illegal act, is it the duty of the people in the Justice Department to so inform the Attorney General, and is it the duty of the Attorney General then to act to stop it?

Mr. MITCHELL. Well, assuming your premise is of an illegal act, I would believe the answer would be yes.

Senator MONDALE. Now, the opening of mail was clearly illegal, wasn't it?

Mr. MITCHELL. I'm not going to formulate that opinion here and now, because I don't know what the mail was, under what circumstances, who might have given the directions that the mail be opened, and under what authorization, because I cannot give you a blanket answer on that.

Senator MONDALE. How can you say that the Bureau was fully accountable if the Director never told you that the FBI was getting mail illegally obtained by the CIA?

Mr. MITCHELL. I am at a loss, Senator, to know how to answer your question. I didn't say—I don't believe I said the Bureau was fully accountable. I said it should have been fully accountable.

Senator MONDALE. Is it your testimony that the FBI was not accountable?

Mr. MITCHELL. With respect to the circumstances that you are talking about, I would have to know the specifics of it before I could answer your question as to the individual items.

Senator MONDALE. But you were not told at all that they were opening mail, were you?

Mr. MITCHELL. That is correct.

Senator MONDALE. Then how can you say that the FBI was accountable?

Mr. MITCHELL. I haven't said they were accountable. I suggested that they be accountable.

Senator MONDALE. Then are you saying they were not accountable?

Mr. MITCHELL. I believe I could go back over my experiences in the Justice Department and find some areas in which the Bureau was not fully accountable to me; yes, Senator.

Senator MONDALE. And would this be one of them?

Mr. MITCHELL. I would have to get to the specifics of it before I could answer your question.

Senator MONDALE. Can you give us some examples upon which you based your answer that in some instances they were unaccountable?

Mr. MITCHELL. Counsel, I don't think that is part of this hearing, and I don't see any reason for getting into that subject matter.

Mr. HUNDLEY. Mr. Chairman, I think we have an agreement that we would confine the questioning of Mr. Mitchell to the three areas that the committee voted on yesterday. If we are going to delve into such a broad area as where Mr. Mitchell might think that the FBI was unaccountable, I can see that we could stray into areas that I know the committee doesn't want to get into, for the reasons I stated in executive session.

Senator MONDALE. I will withdraw the question.

Senator Baker pursued what I think is a very valuable line of inquiry, in terms of how to make agencies of the Federal Government ac-

countable to the law. You were Attorney General of the United States at that time. It would seem logical, according to the structure of the Federal Government, that the key official who should be held responsible for seeing that the law is observed is the Attorney General. Those questions asked by Senator Baker are very important, and I think we have to find an answer to them. But there is also another question that I think has to be answered; namely, whether it is the judgment of the Federal Government that through its leaders and under the guise of counterintelligence, our Government is permitted to pursue illegal acts against the American people in order to gather such intelligence. Do you feel that there is such authority to go beyond the law for that purpose?

Mr. MITCHELL. Well, it depends on, Senator, what you decide to determine the law is, and how it is interpreted.

Senator MONDALE. That is true.

Mr. MITCHELL. And I think that there has been a tendency to assume that certain acts are illegal and that the powers of the President of the United States don't extend to some of those activities and functions. Obviously, the warrantless wiretapping is one that is a perfect illustration of it, and I think you can carry the question of mail openings into the same field. The same constitutional principle is involved, and you do have the question as to the powers of the President of the United States in the areas of national security and foreign intelligence.

I do not believe that the subject matters have been fully examined. Certainly the courts—our highest court of jurisdiction has not seen its way clear, because cases have not been presented to them, to make these determinations. I think it would be very constructive, in the interest of the American people, that we get on with the determination of what these powers are, and how they should be exercised.

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Mathias.

Senator MATHIAS. Mr. Mitchell, a few minutes ago you testified that after the Huston plan had been discarded by the President, you had several discussions with Director Hoover covering topics that were individual portions of the Huston plan. Is that right?

Mr. MITCHELL. Yes, sir.

Senator MATHIAS. Do you recall if any of these included questions of mail openings?

Mr. MITCHELL. To the best of my recollection, Senator, they did not.

Senator MATHIAS. Were you aware that the FBI was, in fact, forwarding requests to the CIA to open specific mail?

Mr. MITCHELL. I was not.

Senator MATHIAS. I believe the testimony before the committee is that it continued to within 2 months of Mr. Hoover's death. Is that so?

Mr. MITCHELL. I was not so aware.

Senator MATHIAS. So that, in fact, although the general area of mail opening had been brought to your attention through the Huston plan, it was concealed from you that this activity was going forward, and that requests were actually being made to the CIA by the FBI to open mail?

Mr. MITCHELL. Well, Senator, I think we ought to again take a minute to find out that the Huston plan said that there was no covert

opening program of the mails, that there was a mail cover program. They opted for the opening of mails. So that my determinations and interest in the subject matter, of course, was responsive to what had been laid out in that document in July of 1970.

Senator MATHIAS. I am interested in the kind of circumstance which is unfolding here, in which the President gives an order which you discuss with Mr. Hoover in the light of the President's action, and we now find a very important part of that order was being disregarded on a regular basis by a number of requests from the FBI to the CIA to survey certain particular mail. This brings up the whole question of executive oversight, in addition to the question of congressional oversight, the latter of which Senator Baker has suggested we consider as part of our hearings.

Mr. MITCHELL. Well, Senator, my response to a comparable question a few minutes ago was that, in my opinion, the only way we are going to have the proper functioning of the FBI is to have a Director who will carry out his responsibilities in his oversight of the Bureau. It is impossible for the Attorney General to do it.

Senator MATHIAS. Perhaps we cannot depend on individuals, on human beings. Maybe we have to think in terms of institutions. And one of our jobs here is to try to understand how we can apply the fourth amendment in the context of the 20th century and in the context of a highly technological society. From your experience as Attorney General, and particularly from your experience in this matter, do you think that any exceptions should be made to the fourth amendment with respect to foreign espionage and intelligence? Do you think that, dealing in this area, a requirement of judicial warrant should be waived?

Mr. MITCHELL. Yes. I can visualize circumstances under which it would be in the interest of the country to do so. I am not accepting all of your language, but as I testified before, the primary responsibility of the President of the United States is to protect this country. And I can understand circumstances which arise where he might have to take certain acts or direct certain acts which, in the light of the discussions that are being held today and through this committee, you might think were illegal and unwarranted.

But in the light of the circumstances, such as Abraham Lincoln dispensing with the writ of *habeas corpus* and a few other things, it might be well justified that an Executive take those actions. But referring to the first part of your question, if you want to have an oversight of the FBI or the CIA, or any of the rest of them, the best way to do it from the Hill is to get your list of things you do not want them to do or do want them to do. Get them up here under oath, swear them in, and ask them if they are doing it or not. And then you will find out.

Senator MATHIAS. Is opening mail among those exceptions that you would consider justifiable? Would surreptitious entry be included?

Mr. MITCHELL. It could very well be, Senator. We will have to examine that in the light of particular circumstances.

Let me give you a hard one. We know that the Embassy of X has got an atomic bomb in its basement that it can put off in Washington, right down here, any time they want to. Now, would you have the protective forces, or whoever is going to handle the job, run down and try

to get a warrant to go in there? You know, you get to some of these questions where there are hard ends on both parts of the spectrum. So I think we ought to try and talk to the principles that you and I have been discussing.

Senator MATHIAS. No atomic bombs have been developed that you can put into an envelope. We are talking about mail here.

Mr. MITCHELL. Apparently somebody has put a few bombs in an envelope, or you would not be having these hearings.

Senator MATHIAS. There are many kinds of bombs.

Mr. MITCHELL. Yes, sir.

Senator MATHIAS. Your illustration was atomic. But is this not the very question? When you decide that you are going to do away with the protection of the fourth amendment, whether it is surreptitious entry or mail opening, that participation of another impartial authority is the heart and soul of the fourth amendment. If the fellow who thinks there is an atomic bomb in the basement, who is convinced of it, who is about to rend the protection of the fourth amendment, is able to go forward on the basis of his own information and caught up with the emotion of his own feeling about the thing, he can go in there and do a tremendous amount of damage.

Should there not be the participation, the institutionalized participation, of another branch of Government—a judge, for instance?

Mr. MITCHELL. Well, I can give you about an hour's dissertation on that, if you want, and I would try to answer you briefly by saying that in the areas of national security and foreign policy, it is my opinion that the Chief Executive of the country is much more qualified to make a determination than somebody sitting over on a bench who has nothing to do with foreign policy, nothing to do with national security, and will be making a judgment in a very restrictive legal light.

Now, I want to get back again to what I said before; and that is, I am hoping that some of the ground rules can be laid out in these areas and established either through judicial proceedings or by determinations of national policy by whomever may, so that you will have a better and clearer understanding as to what functions should be carried out.

Senator MATHIAS. Mr. Mitchell, just to pursue this one step further, isn't the problem with your solution that the Chief Executive, or even the Attorney General, is not always going to give his personal attention to the problem. Here we know, at least from testimony before the committee, that the FBI was actually requesting the CIA to open mail after the President had ordered that it not be done, and after you were at least under the impression that it was not being done.

In the absence of institutions, and depending completely upon individual human beings who happen to occupy a particular office for a particular space of time, we do lose the protections of the fourth amendment.

Mr. MITCHELL. There is great possibility for it, and there is a great history of it. We are dealing again with human beings and human nature, and I do not believe that the fact that there is somebody, a judge, sitting on the bench is going to be any different from the guy who I recommend is going to have to be the one in the FBI to make the proper determinations, and that is the Director. And it will depend

on who the Director is, and under what circumstances he is accountable.

Senator MATHIAS. Justice Powell wrote, I thought, a remarkable decision in which he dealt with this subject. He said:

The fourth amendment contemplates a prior judicial judgment, not the risk that Executive discretion may be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of government.

It seems to me that this institutional approach, with all due respect, is a preferable one that reliance on the individual who holds the job. Thank you, Mr. Chairman.

Mr. MITCHELL. May I comment on that?

Senator MATHIAS. Certainly.

Mr. MITCHELL. I quite agree with what Justice Powell wrote in the circumstances under which he wrote them. But I would hate to have this colloquy left without pointing out that judges can be just as fallible or infallible as Directors of the FBI.

Senator MATHIAS. But they are generally more disinterested in a given case.

Mr. MITCHELL. Hopefully so.

The CHAIRMAN. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Mitchell, just a couple of clarifications. Is it your testimony that when you assumed the office of Attorney General, you were not told of the FBI's or the CIA's mail-opening program in the briefings that you received by your predecessor or by others within the Agency itself?

Mr. MITCHELL. That is correct, Senator.

Senator HUDDLESTON. Were you told by the FBI of their COINTEL Program?

Mr. MITCHELL. No, sir. My first information about that program came from the press.

Senator HUDDLESTON. Would that be one instance where you would agree that the FBI was not accountable?

Mr. MITCHELL. From what I have read in the press and heard from other parties, I would say that that was the case. I do not know the full parameters of their program. From what I know about it, yes, sir.

Senator HUDDLESTON. That would be an area where they certainly should have checked with the chief legal officer to determine its advisability, its legality, its propriety.

Mr. MITCHELL. Yes, sir, and I hope that Senator Mondale understands that this was one of the subject matters that Mr. Hundley referred to that the committee brought to our attention.

Senator HUDDLESTON. You also stated you were never aware of any information that came to you in the way of evidence that had been secured from the mail-opening program.

Mr. MITCHELL. That is correct, sir.

Senator HUDDLESTON. Are you aware of any instance where any testimony had to be excluded from any potential case, or any case had to be dropped or altered because the evidence might have been tainted through improper or illegal gathering?

Mr. MITCHELL. Of mail?

Senator HUDDLESTON. Yes; through the mail-opening program.

Mr. MITCHELL. No, sir, I have not; or at least, I have no recollection of it. As you can well imagine, many of the mechanics of trying cases do not come to the attention of the Attorney General. In fact, it is the exception rather than the rule.

Senator HUDDLESTON. So you have no knowledge of this having occurred?

Mr. MITCHELL. I have no knowledge. It may have happened, but I do not recall it ever having come to my attention.

Senator HUDDLESTON. Mr. Mitchell, there is one thread that has run through all of this inquiry that this committee has undertaken that bothers me, and other Senators have expressed problems that they see in trying to develop the kind of regulation or guideline or law that may be necessary to prevent such abuses from happening again, and that is in the matter of communications.

For instance, we have Mr. Helms' testimony that he did, in fact, brief you on the project, indicating that your approval was given. This assurance was then handed down to those below him who were charged with the responsibility of carrying out the program, and presumably everybody thought that they were cleared to do it.

This same type of thing has occurred in nearly every incident that we have investigated involving the CIA or the FBI in questionable operations. And I find it is as if you were drawing an imaginary line, say, at the level of the Director of the Central Intelligence Agency. Everybody in government above that line has one perception of what they are talking about, and what the instructions are and what the policy is. And everybody below that line has quite a different perception, and they all act, apparently, in accordance with their own conception of what the instructions and the policy are.

Either the U.S. Government and its agencies were operating in very serious matters in a very loose fashion, where there was no clear understanding going all the way from the President down to the person who is carrying out the responsibility, or they were operating in such a way, and probably deliberately, that the record would show that if anything happened that was not supposed to happen, there would be no way to place any responsibility on anybody.

Can you comment for me and this committee, first of all, on the question of understanding and communication? I presume that all persons were using the English language, and I presume that they were using phrases that were common and understood by all. Yet, the perceptions were vastly different. What guidance can you give us on developing procedures that will make absolutely certain that the orders of the President of the United States and the policy of the President of the United States would be understood by those who are going to carry them out?

Mr. MITCHELL. Well, first, Senator, if I may. I presume that I read the same testimony of Mr. Helms that you did, and I don't think it came out quite the way you phrased it here with respect to the difference between Mr. Helms and myself—not as strong as you put it.

Senator HUDDLESTON. You indicate he did not mention the mail opening, but you understood him to talk about covers.

Mr. MITCHELL. I am talking about his testimony which seems to me wasn't quite as strong as you placed it. Second, I think that the one problem, right on the nose, that I can discuss relating to your observations, is the practice that I learned at a later date, sometimes to my chagrin, that when you are dealing with some of these people, they

write what are known as memorandums for the files, and they become the most self-serving documents that you can find. I am not speaking of anything here, but I do say there is great potential for it, and it has happened, and it has happened to me in a number of circumstances.

With respect to the more general aspects of your observation, I think that a lot of government goes on without appropriate consideration of the subject matter, and I think a very good example that is before this committee that can be discussed is the so-called Huston plan. I know from my conversations with the President that he saw that he had a problem of failure of liaison among intelligence agencies, and the proper intelligence to deal with certain problems. He went ahead with the program that he thought was going to carry it out, and the report came in. He said, "fine, go ahead and implement it."

When the contents of the report was called to his attention, it was over and done with. Obviously, with all of his other duties, he had not focused on the natures of that report or its consequences.

Senator HUDDLESTON. That is a good point. It was over and done with as far as the President of the United States is concerned. But many of the things suggested in the Huston plan were, in fact, already going on, and others were initiated after it had ceased to be the policy of the President.

Mr. MITCHELL. That was the last point that you made, and the last one I was going to comment on. I think that it is a very difficult area. It always has been in government, and it always will be. We do not always deal with such high-level matters as the first and fourth amendments, and national security and national intelligence. But you can go into any one of these departments or bureaus in this Government, and you find somebody down in those lower levels that are trying to structure a policy of their own that is contrary to what the Secretary or the Director is trying to put in operation. It has been going on since government was founded.

Now, they may not do it as blatantly as has been done here, in connection with a direct statement that such and such did not exist when, in fact, it was being carried out. But there are always those in these bureaucratic positions in this Government who are going to try and structure their own policies, and most of the time it is done with good intent.

I believe that, as I testified before with respect to the FBI—about which I know a little bit more than some of the other agencies—that our salvation is a proper Director who is serving for an appropriate period of time. The second aspect of it is the oversight of somebody. If you want to, in the area we are talking about, create a foreign and domestic intelligence board that will sit and monitor this, that is one thing. If you want to do it through congressional committees, that is another. But I am sure that there can't be too much oversight, if that is a proper word, with respect to sensitive areas.

Senator HUDDLESTON. What about the question of establishing a record within an agency, for instance, to determine precisely who did what, and why? You mentioned a memorandum. In some instances, we do find the very kind of memorandum to which you referred. Somebody would apparently put it in writing very quickly so that there would at least be a record of his or her view of what went on

at a particular meeting. But often, we do not find memorandums from other people that might either substantiate that or differ from it. In some cases, we find nothing on paper at all, where all the instructions and orders went down verbally. Then at each level, there is a little different understanding of what they actually were.

Is it feasible to develop some sort of policy where it would be a requirement that from the very top to the bottom, that there be on record written instructions indicating the policy, indicating how that policy was going to be implemented, and whether or not it was implemented?

Mr. MITCHELL. Yes, Senator, I would subscribe to that, at the level of the subject matter that you are talking about; in other words, matters of policy and directions for implementation. But, as I'm sure you are well aware, you can bog down government to the point where it will only function if all you do is write memorandums, and there are too many of them written——

Senator HUDDLESTON. I recognize that.

Mr. MITCHELL [continuing]. On inconsequential subject matters now.

Senator HUDDLESTON. You can also get into a situation that we have discovered as part of our inquiry, in which programs are implemented at the lower levels in a way quite different from what was intended a few echelons upward. Those who were responsible had no way of knowing whether their orders had been carried out, and some had been surprised to learn here, as you have been, that some of their understandings at that time were totally wrong.

Mr. MITCHELL. Yes; as I testified in response to your last question with respect to what the policy is, and how it is to be implemented, there is no doubt but what there should be a memorandum, a writing order, whatever it might be, on the subject matter. Otherwise, the individual is given somewhat of a free pass at what he thinks it might be.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Mitchell, when you served as Attorney General, did you approve FBI requests for warrantless wiretaps?

Mr. MITCHELL. Yes, sir.

Senator SCHWEIKER. In your judgment, what is the difference, if any, between warrantless wiretaps and warrantless mail openings? Do you see any legal difference here, aside from the specifics of the situation?

Mr. MITCHELL. Senator, I haven't examined the question of mail openings. I believe I indicated before that there could be similarities in certain cases. I indicated that perhaps the same constitutional and legal principles applied. But I don't want to give you a definitive legal opinion on the subject matter without getting further into it. I think I would like to leave my answer as saying that there is a distinct possibility that there are similarities.

Senator SCHWEIKER. According to my opinion—and of course, yours may differ from this—I think the statutes prohibit warrantless mail openings. Now, if they did, and that is a presumption with which you may or may not agree, would you favor amending the law to allow warrantless mail opening for national security cases?



Mr. MITCHELL. I would like to examine the question a lot more in depth than I have, but I think it is a subject matter that should very well be considered. And I would point out that in connection with mail openings, you may have a little different time frame, and you should consider the desirability or the potential of using warrants in connection with it, based on the probable cause question that we have in wiretaps where we do seek court approvals.

Perhaps the thing here would be to show probable cause in connection with parties to the mailing, which would be helpful, rather than to give an indiscriminate right of somebody to make a determination that A and B were involved in some sort of a conspiracy and then, therefore, you can open their mails. Because this can hold the mail in the Post Office for a day while you go to the court with an affidavit showing a probable cause.

Senator SCHWEIKER. On Wednesday, Mr. Blount said that Mr. Helms told him that Helms had asked you for a legal opinion concerning mail opening. I believe you testified that this was not the case. Is that correct?

Mr. MITCHELL. I testified that, to the best of my recollection, there was no such discussion, and as you are probably aware, Senator, legal opinions out of the Justice Department are a very lengthy, involved process. It goes through the Office of Legal Counsel. They are not given by the Attorney General sitting at his desk.

Senator SCHWEIKER. I gather from your previous answer that you would probably favor some statutory authority that would require some written legal opinions in these sensitive areas, so that there is no question what the positions of a future Attorney General or the Justice Department would be in some of these areas. Is that a fair assumption, based upon your other answers, or not?

Mr. MITCHELL. If I could paraphrase it just a bit, I think it is a subject matter that needs a great deal of consideration to determine where we go from here, to make sure that actions with regard to opening mails or whatever it may be receives full exploration, perhaps judicial determination in constitutional areas, and a full recognition, however, that there are many aspects of this that have now been downgraded for various reasons that may turn out to be, in the future, very much in the interest of this country.

Senator SCHWEIKER. The records of the FBI indicate that until 1966, the Bureau had programs in which mail was opened, but the Attorney General was not advised of such programs and such openings. Do you agree that all Bureau programs of questionable legality or marginal areas such as this should be cleared in advance by the Attorney General? Is that your concept of the role of the Attorney General?

Mr. MITCHELL. Well, it is certainly a very important role of the Attorney General with respect to the Federal Bureau of Investigation. If they are even on the borderline with respect to these practices, it certainly should be called to the attention of the Attorney General and his determination made with respect to it.

Senator SCHWEIKER. You said earlier in your answers that you would favor greater control and greater unification of the intelligence services, which I think is a feeling that many of us on this committee would share. One of the proposals that has been put before us for

consideration calls for a stronger role for the Inspector General, who would have authority to go into certain of these areas and to report either to the President or to the Chairman of the Foreign Intelligence Advisory Board. Did you have this concept in mind when you mentioned greater control or unification? If not, exactly what were you referring to?

Mr. MITCHELL. There are two subject matters. One of them is unification or liaison, or whatever basis upon which you discuss it. And the other is the oversight question. If you had an Inspector General on top of the Director of the FBI or the CIA, why that is just another layer of individuals. I think that probably won't hurt anything. It may help things. It may also cause another bureaucratic foul-up.

My thoughts in connection with what Senator Baker and I had to say more in the line of a high-level oversight commission, plus congressional oversight, and I think, out of all that has been going on and kicking around, if some of your congressional committees, whoever they are, a special committee, were to put some good people together, we have learned what the bad points are. We have learned what some of the good points are. And if they just got a checklist, and as I said before, got the Director of the FBI and the CIA up here under oath and said, "Now, are you doing this, are you not doing this, down the line," you could have a little bit better oversight than some of the colloquies that are carried on when you get up before committees on the Hill.

Senator SCHWEIKER. That is all the questions I have, Mr. Chairman.

The CHAIRMAN. Yesterday, as you know, Mr. Mitchell, Mr. Helms was here. He testified on the very question of whether or not he did, in fact, inform you that the mail was being opened when he spoke to you about the general plan, and I would like to read to you Mr. Helms' response when he was asked that question. If you would like to follow me, it is on page 1090 of the transcript of yesterday's proceedings.

Mr. MITCHELL. Yes, sir. I think we have it.

The CHAIRMAN. All right. Mr. Schwarz had asked—

Now, is it your testimony that you told him about a mail-opening operation?

And we had a long, rambling answer from Mr. Helms that went this way:

Well, I can only say, Mr. Schwarz, to be fair to everybody concerned, that I am not sure that everybody in Washington is as nearly familiar about the distinction between these two things then as they are now. I mean, everybody in this room knows exactly what the two things are, but in those times, I am not sure that necessarily the Attorney General would have known the difference. I do not recall, therefore, being in a battle of terminology with him. I thought I had gone down to explain something that was going on and the usefulness of the information we had, and in fact, we would like to preserve the operation, that we were going to have a problem.

Then Mr. Schwarz said—

That just is an unsatisfactory answer. Did you tell him you were opening the mail or not?

To which Mr. Helms replied,

I am sorry you find it unsatisfactory because I don't recall whether I said specifically we are opening x number of letters, but the burden of my discussion

with him—I don't see how it could have left any alternative in his mind, because how do you find out what somebody is saying to another correspondent unless you have opened a letter.

Mr. Schwarz then said—

All right, so you did tell him?

Mr. Helms said,

That is my recollection.

Mr. Schwarz then said—

Did you tell him information about what could only have come from the contents of the letters?

Mr. Helms said,

I thought so, sir.

Now, that being Mr. Helms' testimony, he left this committee with the clear impression that he had told you enough about this operation that in his judgment, you must have known that letters were being opened. Now, are you telling us today that that was not so?

Mr. MITCHELL. I am telling you today that that was not so, and I wish the staff would call your attention to some of the other parts of Mr. Helms' testimony, where he said he came to talk to me about another subject matter, and other parts that relate to this. I also wish that your counsel had asked Mr. Helms what it was that he showed me out of the letters, because there is no reference to it, or anything else in here.

But I am affirming again, that to my recollection, he did not either show me any material—nor did anybody else from the CIA—that came out of any letter, that his conversation was such that it led me to believe—and I guess it could have been based on the Huston plan and the references there—that he was relating to mail covers and not mail openings.

The CHAIRMAN. Since mail covers are legal, why would he come to talk to you about something that was legal and ongoing? The FBI was doing it. The CIA was doing it. Why would he make such a special thing about a matter that was so well known and routine and legal?

Mr. MITCHELL. Senator, as my testimony has stated, and Mr. Helms has referred to in his testimony, he came to me to talk about another subject matter. The other subject matter, which is the one we had dialog about what I wouldn't testify to, was in a similar area, and it is my recollection that he made a reference to this matter as being comparable to it.

The CHAIRMAN. And since that reference took such a form as to lead you to believe that he was simply talking about mail covers, then what you are really telling us today is that Mr. Helms misled you?

Mr. MITCHELL. I'm not saying that at all. I'm telling you of what my recollection and understanding was of the subject matter, and the last thing I would do is characterize anybody's testimony up here, that I did not hear, nor have not read.

The CHAIRMAN. I have read you the answer to this particular question. Mr. Helms clearly conveyed to this committee that he believed that he told you about opening the mail. You have said that your recollection is that he told you only about mail covers.

Mr. MITCHELL. That is correct. We go back to Senator Huddleston's observations with respect to the dialog between individuals.

The CHAIRMAN. Therefore, you are saying he misled you, because what was going on was something far beyond mail covers; it was the opening of the mail.

Mr. MITCHELL. Senator, you are implying an intention on the part of Mr. Helms to mislead me. That may not have been the case at all. I don't know. I'm telling you what I understood was the basis of his conversation.

The CHAIRMAN. All right. What you understood was quite different from what was, in fact, going on, and he did not convey to you the mail-opening operation, isn't that true?

Mr. MITCHELL. That is my understanding of the conversation that we had, that I have testified to on any number of occasions.

The CHAIRMAN. Do you know whether President Nixon had knowledge of the mail-opening program?

Mr. MITCHELL. I would believe not, because of the—or at least not as of the time we discussed the Huston plan. I would believe he did not.

The CHAIRMAN. You have suggested that, without having further details concerning the program, you cannot give us a judgment on whether or not it was legal. Now, we have read into the record several times what we understand the law to be, the statutes that relate to this matter, and the Supreme Court decisions over the years that relate to this matter. The Agency itself has acknowledged the illegality. And so, the illegality of opening mail is really unarguable, but then you say you believe that the President may open mail for reasons of national security, even though the laws prohibit it.

Mr. MITCHELL. I didn't say that, Senator.

The CHAIRMAN. What did you say?

Mr. MITCHELL. Well, if your stenographer can go back and get the record, we can get the question and answer specifically.

The CHAIRMAN. Mr. Mitchell, you did say you could not give your opinion as to legality?

Mr. MITCHELL. That is correct.

The CHAIRMAN. And you did say that there is an area in which the President has special responsibilities in national security affairs?

Mr. MITCHELL. That is correct.

The CHAIRMAN. And the implication was that this may be one of those places where the President has power to disregard the law. What other implication can you draw?

Mr. MITCHELL. Senator, you're getting in the same situation with me as Mr. Helms and I apparently got into. The implication was that I went on to say further that I would recommend that a detailed account be made of the total picture, and I think it was in response to that general type of question that I gave that answer, not with respect to the statutory provisions and all of the rest of it having to do with a particular mail cover.

The CHAIRMAN. So, this committee is involved in just such an investigation with the hopes that we can come forward with recommendations in this area, and in many other areas. But even if one were to accept the need to clarify this area, and to draw the lines more clearly, and even if one were to agree that under some circumstances, the national security interests might be so great as to entitle certain

kinds of operations to go on under proper guidelines and controls, here was a situation of which the President was not even aware. How in the world can the President exercise meaningful control when the agencies of the Government are conducting dubious operations and the President has no knowledge of them, the Attorney General has no knowledge of them, until after the fact? Recommendations go to the President, first he approves them, then he turns them down, and the same practice is continued, just as though he weren't there. Now, that is the record that is before this committee.

Mr. MITCHELL. Well, is that a question, Senator? Do you want a comment?

The CHAIRMAN. That being the state of the record, I would like such comment as you would like to make.

Mr. MITCHELL. My comment is to the effect that I think you are doing a very fine job with respect to a determination as to what the facts are, so that somewhere along the line, the proper body, whether it be this committee, whether it wants to undertake it, or you may have to go further, to the Congress, or up to the courts, will define the powers of the President, and hopefully proscribe guidelines under which they should be exercised and in what cases.

The CHAIRMAN. That is what we propose to do, Mr. Mitchell.

Mr. MITCHELL. I wish you well.

The CHAIRMAN. Any further questions?

Senator MONDALE, would you take charge of the hearing at this point?

Senator MONDALE [presiding]. Senator Baker, do you have any questions?

Senator BAKER. I have no questions at this time.

Senator MONDALE. Mr. Mitchell, suppose we were holding hearings while you were Attorney General, while the Counterintelligence Program (COINTELPRO) and these mail openings were going on, and they were going on without your knowledge. Suppose the committee called you up to find out what was going on in the Department and asked you questions about whether there were current mail openings or COINTELPRO activities? How would you answer that question?

Mr. MITCHELL. As to whether I would come or not?

Senator MONDALE. We used to have that problem, too. Let us put that behind us.

Mr. MITCHELL. What is the question that you would like me to answer?

Senator MONDALE. I will try to ask it again. Suppose we have set up this joint committee on intelligence that has been recommended.

Mr. MITCHELL. Yes.

Senator MONDALE. The committee wants to know what has been going on in the FBI that might be illegal. So they call the Attorney General before it and they ask him questions that concern mail openings and so on. How would you answer the committee under that circumstance?

Mr. MITCHELL. Well, we are dealing, I guess, in an academic field.

Senator MONDALE. In one sense, but that would have been the predicament then, would it not?

Mr. MITCHELL. No; it would not have been the predicament, because I would have pursued it on the basis—and it is still academic, because we do not have the subject matters before us as to what the subject

matters of the inquiry were, and what effect the public disclosures of them might have with respect to the national security and the foreign intelligence of the Government.

And then I believe I would have followed what has always been my understanding of the law, that executive privilege, which is what you are asserting, can only be asserted by the President, so you would have to, as Attorney General, go to the President and have him determine whether executive privilege was to be exercised or not.

Senator MONDALE. Let us suppose we asked you if they were opening mail at Kennedy Airport in New York, and you said, "I cannot answer that on the basis of executive privilege," and the President said, "yes, you can." What would you have answered?

Mr. MITCHELL. Well, just on that basis, if they were opening mail, period?

Senator MONDALE. Yes.

Mr. MITCHELL. I would have had no problem of coming up and testifying to what I know under the circumstances and on the basis of the question you asked. A mere physical act of opening the mail does not seem to me to affect our national security or foreign policy, the fact that mail was being opened. What mail might be opened and so forth is a different subject matter.

Senator MONDALE. How would you have answered the question if you did not know? In other words, there were two massive programs going on about which you were unfamiliar: one, opening thousands of letters in New York; and another, called COINTELPRO, which was investigating, even intimidating and harassing American citizens all over the country, and sometimes using the IRS in one way or another to achieve those aims.

Now, my question is, how would a CIA oversight committee or an FBI oversight committee be able to know it was getting the truth if the Attorney General of the United States did not know it himself?

Mr. MITCHELL. Well, Senator, if that is the thrust of your question, I think it is the point, if you ask me as Attorney General, "are you opening the mail through the Federal Bureau of Investigation." I would say "I do not know but I will damn well find out."

Senator MONDALE. That is right. And the reason you would want to know is because it is your duty to know.

Mr. MITCHELL. It is the duty to the point of view that the Attorney General has the FBI and the Justice Department and is responsible to the extent that he can control them for the policies of the FBI.

Senator MONDALE. Do you think such an oversight committee would have the right to assume that the Attorney General knows what is going on in his Department on matters like these?

Mr. MITCHELL. I would hope not. I would hope they would never assume anything, based on what we all know about what goes on in government.

Senator MONDALE. You see, that is what scares me, because unless we clearly define what the limits of these agencies are—and I think the limit has to be defined by law—then all we have left, if we want real oversight, is to set up an oversight committee which spies on the spies. And we will have to have a one-for-one relationship around this country. Since we cannot even be sure that the Attorney General and, we now know, the Postmaster General, know what is going on. We will

have to have another parallel system where we follow the investigators and the spies. Then, based on our outside investigations of the investigators, we will decide whether what they are doing is appropriate.

Mr. MITCHELL. You are making a very eloquent argument for my contention that it all has to rest with the Director of the Federal Bureau of Investigation to control the activities of his men within the Bureau.

Senator MONDALE. And would you agree that the limits of his activities are defined by the law? In other words, he cannot conduct illegal acts?

Mr. MITCHELL. I think we can state that without equivocation, yes, sir.

Senator MONDALE. That is right. And you would agree that when the CIA, the FBI, the IRS, or any other investigative agency acts in the United States, it does not have the authority to go beyond the law?

Mr. MITCHELL. It does not.

Senator MONDALE. We will now turn to Senator Schweiker.

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

Mr. Attorney General, you said a minute ago that it was your belief that President Nixon had no knowledge of mail opening. You say as Attorney General and chief law enforcement official, that you had no knowledge of mail opening. Two days ago we heard from Postmaster General Blount, and he testified, to the best of his knowledge, that he did not know the mail was being opened.

My question is very simple. Mr. Mitchell, who was running the Government?

Mr. MITCHELL. Are you talking about the mail opening part of the Government, or the rest of it?

Senator SCHWEIKER. I think after hearing the answers I may be talking about all of it, but right now I am talking about mail opening.

Mr. MITCHELL. Apparently, from what I have read in the newspapers—and that is where my knowledge comes from—the old school tie boys who had been doing it for 20 years just decided they were going to continue to do it.

Senator SCHWEIKER. We certainly have a situation that seems to be out of control, whereby some people were deceived by a lot of other people. This situation, I think, is something the committee has to deal with in the future.

That is all I have, Mr. Chairman.

Senator MONDALE. Senator Huddleston?

Senator HUDDLESTON. Mr. Mitchell, in whatever briefings did occur between you or Mr. Helms or any other person relating to this matter, were you ever informed that the Postmaster General was not being told the true nature and extent of this project?

Mr. MITCHELL. I am puzzling with your question, "of the true extent and nature of the project," since I did not know the true extent and nature of the project. Obviously I was not told that the Postmaster General was not informed.

Senator HUDDLESTON. Was there any suggestion that this was a project of which the Postmaster General was not fully aware?

Mr. MITCHELL. Well, when you talk about project, if you are talking about mail opening—

Senator HUDDLESTON. Were you given specific knowledge, or even an impression, that the Postmaster General was being deprived of

knowledge, the total nature of any project that the FBI or the CIA conducted involving the mails?

Mr. MITCHELL. No. I recall no circumstances where I ever became aware of the Postmaster General being apprised of the nature of the project, as you have described it.

Senator HUDDLESTON. You are surprised to learn now that those Postmasters General who were here yesterday or the day before testified that they did not know that mail was actually being opened?

Mr. MITCHELL. No; I am not surprised at that at all.

Senator HUDDLESTON. Was this a commonly accepted practice, then, within Government as you know it, that one agency would become involved in another agency's responsibility without advising the head of the other agency what it was doing?

Mr. MITCHELL. I am speculating, because I do not know, and I only know what I have read in the papers. But I would speculate to the point that this was something that—whenever it got started and by whom and under what circumstances, I do not know. Knowing the cautious nature of so many of these people. I would believe that somebody in the Post Office at a pretty good altitude knew about it, whether it was the Postmaster General or a lesser degree; and that once the practice got operating, I can see how Postmasters could come and go and they would never find out about it, because the mechanics for it was established.

Senator HUDDLESTON. Suppose there were a strict prohibition against the FBI, the CIA, or anybody else operating within another agency without fully and regularly informing the head of that agency. Would this not be one way to then assure more accountability?

Mr. MITCHELL. I would certainly subscribe to that.

Senator HUDDLESTON. The head of such an agency would be informed on some kind of a regular, continuing basis.

Mr. MITCHELL. I would subscribe to that most wholeheartedly.

Senator HUDDLESTON. I am sure that you, as Attorney General, would not appreciate the CIA or any other entity coming over and utilizing your personnel for questionable purposes without your being aware of it.

Mr. MITCHELL. You are absolutely right. It was not the CIA, but I did have a few of those problems which were soon put to rest.

Senator HUDDLESTON. I am certain that occurs.

Thank you, Mr. Chairman.

Senator MONDALE. Mr. Kirbow?

Mr. KIRBOW. Thank you, Mr. Chairman.

Mr. Mitchell, you first took the oath as Attorney General on January 22, 1969. Would you tell the committee again the first time you knew for sure that the FBI or the CIA was involved in mail opening projects?

Mr. MITCHELL. I presume when I read it in the newspapers whenever it got out of wherever it got out of.

Mr. KIRBOW. Would that have been before you saw the so-called Huston plan in January of 1970, or after that?

Mr. MITCHELL. No. It would have been long after I saw the Huston plan. The Huston plan, in effect, states that they were not involved in mail openings.



Mr. KIRBOW. I would like to pursue that with you just a moment. Would you or your attorney please turn to exhibit 11<sup>1</sup>, which is entitled "Special Report."

Mr. MITCHELL. "Special Report of the Interagency Committee"?

Mr. KIRBOW. Yes, dated June 1970. Please turn to page 29 where mail coverage is discussed, sir.

Mr. MITCHELL. Yes, sir.

Mr. KIRBOW. I would like to draw your attention to the last two sentences of the first full paragraph by reading them for the record at this point.

Under preliminary discussion the following—

Covert mail coverage, also known as "sophisticated mail coverage" or "flaps and seals." Entails surreptitious screening and may include opening and examination of domestic or foreign mail. This technique is based on high level cooperation of top echelon postal officials.

And in the next paragraph under the nature of restrictions, this sentence—

Covert coverage has been discontinued, while routine coverage has been reduced, primarily as an outgrowth of publicity arising from disclosure of routine mail coverage during legal proceedings and publicity afforded this matter in congressional hearings involving accusations of governmental invasions of privacy.

Looking at those words, Mr. Mitchell, is it fair to say that almost any reasonable man, be he an attorney or not, including you and the President, should have been on notice that this had been an ongoing program which had been phased out for some reason?

Mr. MITCHELL. No; I think it is just to the contrary.

It says—

"Covert coverage has been discontinued, while routine coverage has been reduced, primarily. . ." and so forth. As I understand covert, that is the openings, and routine is the mail cover aspect of it.

Mr. KIRBOW. It says it has been discontinued. That did not indicate to you that there had been an ongoing program at some time in the past where the mail was actually opened?

Mr. MITCHELL. It might have in the deep, dark past, but—

Mr. KIRBOW. Does it indicate that to you now, Mr. Mitchell, reading those same words?

Mr. MITCHELL. Well, I think the important part is when it had been discontinued. Since they were opting in the Huston plan to use that as one of the tools in their intelligence-gathering operation, I assume that it might have been any time in the deep, dark past, but certainly not in the immediately preceding time frame.

Mr. KIRBOW. If I could then direct your attention to page 30 under "Covert coverage, point 1," where it states:

High level postal authorities have in the past provided complete cooperation and have maintained full security of this program.

Speaking of the covert coverage that we just discussed, did that indicate to you, or does it now indicate to you, that this had been a program involving the high level postal officials and either the FBI or the CIA in the past?

<sup>1</sup> See p. 211.

Mr. MITCHELL. Well, I think that the language you have read refers to the postal authorities. The statement is quite clear, I would think, as to the fact that they had been knowledgeable and cooperated in the past; how far in the past, I could not guess.

Mr. KIRBOW. From reading the cover sheets and other parts of this report, it had to be obvious to you that Mr. Hoover and Mr. Helms took part in preparing a report that went forward, because it bore both their signatures.

I would like to ask you, at that time when you and the President were discussing the so-called Huston plan, did you have any discussion about making absolutely certain that this was not still going on or being sure that the laws of the land were being obeyed, as far as covert mail opening was concerned?

Mr. MITCHELL. Let me see if I can answer your question in two parts.

My testimony has been that the President got word to me, either told me directly or got word to me, that he had called off the implementation of the Huston plan. That would carry with it, without any detailed discussion—which I have no recollection would follow up—but would carry with it a Presidential determination that the authorizations contained in the Huston plan would not be carried out.

Mr. KIRBOW. At that time Mr. Hoover was still the Director of the FBI and worked directly for you; did he not, Mr. Mitchell?

Mr. MITCHELL. Yes, he did. He worked directly under me. I am not sure he worked directly for me.

Mr. KIRBOW. I appreciate your position.

Did you at that time or any time thereafter discuss with Mr. Hoover any aspects of the covert mail program to insure that it was not continuing in the Department?

Mr. MITCHELL. No, sir.

Mr. KIRBOW. Did you not have the duty to do so?

Mr. MITCHELL. I do not believe so, because of the fact that I had no knowledge that the Department, meaning the FBI and Justice, was doing anything at all with respect to covert mail activities.

Mr. KIRBOW. How do you reconcile that answer really, Mr. Mitchell, with the answer that you gave Senator Mondale a moment ago where you said, "I would certainly have a duty to know if I were the Attorney General"?

Mr. MITCHELL. I forget what the subject matter of the question was.

Mr. KIRBOW. The same general premise, that you should know what is going on in the FBI.

Mr. MITCHELL. As the Attorney General, you have a duty to know whatever is going on in the FBI; your ability to obtain the information is an entirely different matter.

Mr. KIRBOW. You did not, though, at any time, inquire into this matter to carry out your duty to know and to prevent abuses of the law of the land in the covert mail-opening program?

Mr. MITCHELL. I think I have testified, and will again, that it was my assumption that based on the Presidential directive to not implement the Huston plan, that it would be unnecessary for me to go over and find out if the Director of the FBI was carrying out a policy contrary to one that had just been laid down by the President of the United States.

Mr. KIRBOW. Thank you, Mr. Chairman.

Senator MONDALE. Senator Hart?

Senator HART of Colorado. I have no questions on this subject.

Senator MONDALE. Mr. Schwarz?

Mr. SCHWARZ. Following further Mr. Kirbow's line of questioning, you do agree, do you not, that the document dated June 1970 does reveal that in the past at least, mail had been opened?

Mr. MITCHELL. I believe that is the implication, yes.

Mr. SCHWARZ. And it does state in the document that the opening of mail is illegal; does it not?

Mr. MITCHELL. I believe that with reference to a number of subjects were illegal and I think opening mail was one of them.

Mr. SCHWARZ. All right. Then based upon your knowledge from an examination of the document, which shows that in the past at least, illegal actions involving the opening of mail had taken place, did you convene a grand jury to look into the admitted acts of illegality on behalf of some intelligence services?

Mr. MITCHELL. I did not.

Mr. SCHWARZ. And why not?

Mr. MITCHELL. I had no consideration of that subject matter at the time. I did not focus on it and I was very happy that the plan was thrown out the window, without pursuing any of its provisions further.

Mr. SCHWARZ. Are you now of the opinion that if you had had time to focus on the matter then, it would have been wise to convene some investigation within the Department to determine what had happened in the past?

Mr. MITCHELL. I believe that that would be one of the normal processes where you would give it initial consideration and see where it led to, what the statute of limitations might have been and all of the other factors you consider before you jump into a grand jury investigation.

Mr. SCHWARZ. Excepting those factors, do you agree that you should have at least considered the matter?

Mr. MITCHELL. I think if I had focused on it I might have considered it more than I did.

Mr. SCHWARZ. I have nothing further.

Senator BAKER. Mr. Chairman, I have a question.

Senator MONDALE. Senator Baker?

Senator BAKER. I have no quarrel with Mr. Schwarz's questions. They are valid questions, but it seems to me we ought to keep things in perspective here. You know we have a whole interagency report that proposes a whole lot of bad things, or at least I think they are bad things, and many of them were illegal. They wanted the President of the United States to approve it. He signed off on it and this is the man who said, "No, change your mind and withdraw it."

It is entirely possible that perhaps Attorney General Mitchell should have thought a little further and said, "Look, let us check into that business." Maybe you did these things in the past and that is the basis for this recommendation, maybe so. But I think the record clearly ought to carry the notation of the fact that John Mitchell is the man who withdrew Huston plan, or convinced the President to do so. And let us not detract at least that credit.

Mr. SCHWARZ. If I gave any implication that I was seeking to detract from that point, Senator Baker, I did not intend to.

Mr. MITCHELL. Senator, if I might just make a comment?

Senator MONDALE. At this point, I think we also ought to put this memorandum [exhibit 15<sup>1</sup>] from Mr. Dean to Mr. Mitchell in the record, which says that, "I believe we agreed that it would be inappropriate to have any blanket removal of restrictions". . . This excerpt from the memo refers to the Huston plan. . .

rather, the most appropriate procedure would be to decide on the type of intelligence we need, based on the assessment of the recommendations of this unit, and then to proceed to remove the restraints as necessary to obtain such intelligence.

Mr. MITCHELL. Well, Senator, restraints are not the same as referred to in the Huston plan. As you know, Mr. Dean—

Senator MONDALE. As a matter of fact, that is exactly what that referred to, because it was immediately after the denial of the Huston plan that you and Mr. Dean got together, prepared this memo and said, "Well, what the Huston plan—

Mr. MITCHELL. You are wrong on that, Senator. Mr. Dean and I didn't get together. Mr. Dean brought the memorandum over to my office from the White House.

Senator MONDALE. "Pursuant to our conversation yesterday," it says. Did you not have such a conversation?

Mr. MITCHELL. We had a conversation about Mr. Dean—

Senator MONDALE. On September 17, 19—

Mr. MITCHELL. I don't recall the date—about Mr. Dean coming over to see me about the subject matter. And I would like the record to show that Mr. Dean's recommendations were not implemented.

Senator MONDALE. Is there some record that you disapproved of this memo?

Mr. MITCHELL. Yes; there is testimony in volumes and volumes and volumes.

Senator MONDALE. Can you refer me to it?

Mr. MITCHELL. We will be glad to provide it for you. It is in the Senate Select Committee of which Mr. Baker was present. It is in, I believe, the House Judiciary Committee testimony and a few other places.

Senator MONDALE. I look forward with great anticipation to seeing it.

Mr. MITCHELL. And let me call your attention to the fact that the outgrowth of this was the establishment of a liaison intelligence function to try and get at the problem where the CIA couldn't talk to the FBI and the Bureau of Alcohol, Tobacco, and Firearms didn't provide the information to the FBI. And we tried to cure this hiatus that existed among the intelligence communities. And it wasn't too bad a job at that. We at least knew when they were trying to tear down Washington.

Senator MONDALE. And one of the things that happened after this was that all of the things recommended in the Huston plan went forward.

Mr. MITCHELL. You will have to document that for me some time.

Senator MONDALE. You were the Attorney General. Can you say whether it was true or not?

<sup>1</sup> See p. 225.

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

Senator MONDALE. What part did not?

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

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

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

Senator MONDALE. Any other questions?

Thank you, Mr. Mitchell.

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

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

Mr. WANNALL. I do.

Mr. MOORE. I do.

Mr. BRANIGAN. I do.

Mr. MINTZ. I do.

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

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

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

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

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

Senator MONDALE. All right.

Would you begin the questioning, Mr. Schwarz?

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

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

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

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

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

Mr. SCHWARZ. Mr. Branigan?

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