

INTELLIGENCE ACTIVITIES—HUSTON PLAN

TUESDAY, SEPTEMBER 23, 1975

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

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

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

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

The CHAIRMAN. The hearing will please come to order.

The end of our involvement in Vietnam brought to a close a tragic and turbulent chapter in American history. In Southeast Asia, well over 50,000 American soldiers lost their lives.

Here at home, massive antiwar demonstrations filled the streets. At Kent State and Jackson State, college students were shot down as they protested the policies of their Government.

Just as the country was obsessed by Vietnam, so too the White House became transfixed by the wave of domestic protest that swept the country. On June 5, 1970, President Nixon called in J. Edgar Hoover of the FBI, Richard Helms of the CIA, and others from the military intelligence agencies. He charged them with getting better information on domestic dissenters, and directed them to determine whether they were subject to foreign influence.

After a series of meetings throughout June 1970, a special report was prepared for the President. It set forth several options which ranged from the innocuous to the extreme, from doing nothing to violating the civil liberties of American citizens. In a memorandum, White House aide Tom Charles Huston recommended the extreme options to the President. These recommendations have become known as the Huston plan. The President approved the plan, and it was sent to the FBI, the CIA, and the military intelligence agencies for implementation.

Some provisions of the plan were clearly unconstitutional; others violated Federal statutes. As the distinguished American journalist Theodore White has observed, the Huston plan would have permitted Federal authorities to reach "all the way to every mailbox, every college campus, every telephone, every home."

Five days after the President approved the plan, he revoked it at the insistence of the FBI Director and the Attorney General—to the

dismay of those CIA, NSA, and FBI representatives who had helped Huston develop it.

All this is a part of the public record, thanks to Senator Sam Ervin's hearings on Watergate. Yet, the matter does not rest here. Our investigations have revealed that the Huston plan itself was only an episode in the lawlessness which preceded and followed its brief existence.

First, we have discovered that unlawful mail openings were being conducted long before the President was asked to authorize them in June 1970. The President and Mr. Huston, it appears, were deceived by the intelligence officials.

Second, even though the President revoked his approval of the Huston plan, the intelligence agencies paid no heed to the revocation. Instead, they continued the very practices for which they had sought presidential authority, expanding some of them and reinstating others which had been abolished years before. As in the case of the shellfish toxin, the decision of the President seemed to matter little.

Finally, the Huston plan, as we now know, must be viewed as but one episode in a continuous effort by the intelligence agencies to secure the sanction of higher authority for expanded surveillance at home and abroad.

As these hearings will reveal, the leaders of the CIA and individuals within the FBI continued to seek official blessing for the very wrongs envisaged in the Huston plan.

We open this public inquiry to reveal these dangers, and to begin the task of countering the erosion of our freedoms as American citizens.

Senator Tower?

Senator TOWER. Thank you, Mr. Chairman.

Mr. Chairman, I think the hearings that we are about to undertake raise some of the fundamental issues that exist in an open society governed by the Constitution which guarantees certain basic rights to its citizenry.

We get to the point where we have to determine the extent to which the individual liberties and the rights of individuals must be protected by Government, rather than infringed on by Government. We also explore the question of the extent to which Government is able to protect its citizens from those who would jeopardize their lives, their safety, or threaten their property.

The question is whether or not our system provides the climate in which too much surveillance of individual citizens can occur, or whether, in given situations, perhaps the proscriptions of the law are an inhibition on effective law enforcement, and the restraint of those who would engage in violence against the peace and security of our society.

I think this is brought sharply into focus by the fact that there have been two attempts made on the life of the President of the United States in the last 17 days. There is no question that Government, or agencies thereof, in the instances we are going to investigate, has infringed on the rights of its citizens.

I am wondering, however, that if laws that are set up for the general governance of the citizenry in terms of the preservation of law and order might not, from time to time, carry some exceptions so that we can afford reasonable protection to the President of the United States and others who are set in governance over our people. I think these

hearings could be very useful and productive. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tower.

I might say that with reference to this second attempt on the life of the President, I have been asked what this committee intends in connection with its mandate to investigate, not only the CIA and the FBI, but also, the Secret Service, and all other Federal agencies connected with law enforcement or intelligence activities.

It is my view, as chairman of the committee, that while the committee itself will have to consider its proper role, it should certainly look very carefully at the way that the CIA, the FBI, and the Secret Service coordinates. Any intelligence information that might constitute a possible threat to the President, or any other high official of the Government, should be passed between them, and procedures then should be followed to carry out the responsibility to protect the President. This is a matter that clearly falls within the mandate of this committee, and I would hope that the committee would want to look very carefully into that aspect of the general question of protecting the President.

Now, our first witness this morning is Mr. Huston. I wonder if you will stand and take the oath. Do you solemnly swear that all of the testimony you give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUSTON. I do.

The CHAIRMAN. Mr. Schwarz will commence the questioning.

TESTIMONY OF TOM CHARLES HUSTON, FORMER ASSOCIATE COUNSEL AND STAFF ASSISTANT TO PRESIDENT RICHARD M. NIXON

Mr. SCHWARZ. Mr. Huston, were you employed in the White House as of 1970?

Mr. HUSTON. Yes, sir.

Mr. SCHWARZ. Prior to that time, had you been employed in the White House and had you worked on intelligence matters?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Prior to June 1970, had you had numerous conversations with Mr. William Sullivan of the FBI?

Mr. HUSTON. Yes.

Mr. SCHWARZ. In the course of those conversations had you discussed inhibitions upon intelligence collections?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And did he take the position that the FBI was being unduly inhibited in its efforts to collect intelligence on domestic radicals and other groups in this country?

Mr. HUSTON. I think it was his opinion that the Bureau was operating under restraints; yes.

Mr. SCHWARZ. And by operating under restraints, what do you mean?

Mr. HUSTON. That they did not have available for use the tools that they felt were necessary to do the job.

Mr. SCHWARZ. Did President Nixon call a meeting in his office on June 5, 1970, to discuss with the heads of the intelligence agencies the subject of restraints upon intelligence collection?

Mr. HUSTON. The President did not really touch on any detail on restraints. He was more concerned with making sure that the intelligence community was aware of the seriousness with which he viewed the escalating level of revolutionary violence.

Mr. SCHWARZ. And what did he ask the intelligence community to do about that subject?

Mr. HUSTON. He directed that each of the agencies should join under a committee, and a committee to be chaired by Mr. Hoover, which would prepare a report for him which would cover three areas. First, it should have a threat assessment; second, it should specify the various restraints under which the agencies thought they were operating that hindered them; and, third, it should contain a series of options of how to deal with these various restraints which would enable him to make a decision.

Mr. SCHWARZ. Who was present at that meeting?

Mr. HUSTON. Mr. Hoover, Mr. Helms, Admiral Gayler, General Bennett, Mr. Haldeman, Mr. Erlichman, Mr. Finch, and myself.

Mr. SCHWARZ. Mr. Hoover was head of the FBI; Mr. Helms was head of the CIA. What position did Admiral Gayler hold?

Mr. HUSTON. Director of the National Security Agency.

Mr. SCHWARZ. And what position did General Bennett hold?

Mr. HUSTON. Director of the Defense Intelligence Agency.

Mr. SCHWARZ. All right. Following the meeting in the President's office, did you and the agencies proceed to hold a number of meetings on the subjects which the President had directed you to discuss?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Did you meet with the heads of the agencies, or with second-level people in the agencies?

Mr. HUSTON. There were two meetings among the heads of the agencies in addition to the meeting with the President. But the bulk of the activity was undertaken by a working group consisting of second-level people.

Mr. SCHWARZ. All right. The first meeting that took place with the heads of the agencies was in Mr. Hoover's office?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And did Mr. Hoover, in the first instance, ask the other agency heads to do what the President had asked them to do, or did he seek to go down another course?

Mr. HUSTON. It was my opinion that he was heading down a course different from that that the President had outlined.

Mr. SCHWARZ. And how did Mr. Hoover's first proposal differ from that which the President had asked the representatives to do?

Mr. HUSTON. Mr. Hoover indicated that he was under the impression that what the President wanted was a historical overview of the problem of revolutionary violence.

Mr. SCHWARZ. And instead, what did the President want?

Mr. HUSTON. Well, as I said to Mr. Hoover, it was my understanding the President was less interested in the past than in the future, and that he was concerned about the problems that may come up, and what could be done to deal with them.

Mr. SCHWARZ. And he was also concerned in knowing what restraints were being applied to the power of the agencies to collect information on Americans, is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Did the working group proceed to investigate that question of what restraints were being placed upon the intelligence community in their efforts to collect information on American citizens?

Mr. HUSTON. That was my impression, yes.

Mr. SCHWARZ. Who chaired the working group?

Mr. HUSTON. Mr. Sullivan.

Mr. SCHWARZ. Mr. Sullivan of the FBI?

Mr. HUSTON. Yes.

Mr. SCHWARZ. There were representatives, also, from the CIA?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And those persons were Mr. Angleton and Mr. Ober, is that correct?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And then there were representatives from the NSA?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And the DIA?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And the Army, Navy, and Air Force intelligence community, is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And in addition to Mr. Sullivan from the FBI, there were other FBI personnel such as Mr. Brennan, is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. How many meetings did the working group have?

Mr. HUSTON. I am unclear. It seems to me there were three, maybe four.

Mr. SCHWARZ. Stemming from those three or four meetings, did you come up with a report?

Mr. HUSTON. Yes. A draft report was prepared by the committee.

Mr. SCHWARZ. Was it prepared by the committee and approved by the entire working group?

Mr. HUSTON. Yes.

Mr. SCHWARZ. What happened then? Was it submitted to the Directors for their signatures?

Mr. HUSTON. Well, it was submitted to three of the four Directors for their approval.

Mr. SCHWARZ. To which three was it submitted in the first instance?

Mr. HUSTON. To Admiral Gayler, General Bennett, and Mr. Helms.

Mr. SCHWARZ. Now, you picked those three out and not Mr. Hoover. Why was it submitted to the three Directors, other than Mr. Hoover, before being submitted to Mr. Hoover?

Mr. HUSTON. Because the Bureau personnel on the committee felt that if they took the report back to Mr. Hoover, that he would go completely—he would refuse to go along with it, and they felt that, tactically, if they went to him and said, the report has already been approved by the other three Directors, that perhaps he would then acquiesce.

Mr. SCHWARZ. Now, in saying Bureau personnel on the committee, do you mean Mr. Sullivan and Mr. Brennan?

Mr. HUSTON. Yes.

Mr. SCHWARZ. What was your understanding of why they believed Mr. Hoover might resist the proposals?

Mr. HUSTON. I think they were concerned that Mr. Hoover would not appreciate anyone outside the Bureau commenting upon the way in which the Bureau conducted its domestic intelligence operations.

Mr. SCHWARZ. So your understanding was that Mr. Hoover's subordinates themselves felt that the restraints which were being placed upon the intelligence agencies were excessive on the one hand, but felt that Mr. Hoover, for bureaucratic or personal pride reasons, would not agree with any proposals to change or eliminate those restraints. Is that right?

Mr. HUSTON. Well, I think it went beyond restraints. I think it went to the entire purpose of the report, particularly to the recommendation for a continuing, permanent, interagency committee.

Mr. SCHWARZ. Did you have a view as to what they thought Mr. Hoover's attitude would be toward that part of the report dealing with restraints?

Mr. HUSTON. Well, I think their attitude was that he would be opposed to any change whatsoever in the way in which the Bureau was operating.

Mr. SCHWARZ. Whereas they favored changing the restraints which they thought were inhibiting the Bureau's ability to collect intelligence on American citizens?

Mr. HUSTON. That was certainly my impression; yes.

Mr. SCHWARZ. That was clearly your impression?

Mr. HUSTON. Yes; it was.

Mr. SCHWARZ. The document which is exhibit 1¹ is entitled "Special Report, Interagency Committee on Intelligence, (Ad Hoc), Chairman, J. Edgar Hoover, June 1970." Was this document signed by the four intelligence community directors?

Mr. HUSTON. I do not have exhibit 1, but I will assume that it is.

The CHAIRMAN. Well, let us get you the exhibit.

Mr. SCHWARZ. In any event, are you aware that certain footnotes were affixed reflecting Mr. Hoover's disagreement with certain language in the reports?

Mr. HUSTON. Yes.

Mr. SCHWARZ. When were Mr. Hoover's footnotes affixed? Were they affixed before the three other Directors approved, or were they affixed after the three other Directors approved?

Mr. HUSTON. After.

Mr. SCHWARZ. So Admiral Gayler, Director Helms and General Bennett approved the report prior to any footnotes that Mr. Hoover inserted; is that correct?

Mr. HUSTON. Yes.

Mr. SCHWARZ. All right. Now, have you seen exhibit 1?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Is that the document which was approved by the four Directors?

Mr. HUSTON. Yes, with the deletions that are—

¹ See p. 141.

Mr. SCHWARZ. The deletions which are for—

Mr. HUSTON [continuing]. For security reasons.

Mr. SCHWARZ [continuing]. For security reasons which are disclosed?

Mr. HUSTON. Yes.

Mr. SCHWARZ. What was the attitude of Messrs. Helms, Gayler, and Bennett when they discovered that Director Hoover was affixing footnotes to the report which the entire intelligence community had, prior to then, agreed to?

Mr. HUSTON. I do not recall Mr. Helms having any comment. Admiral Gayler called me and was very upset. General Bennett called me and was very upset. They wanted to either have another meeting among the Directors and demand that the footnotes be withdrawn, or else they wanted to insert their own footnotes saying that they favored certain things.

I was very much interested in not creating any difficulties with Mr. Hoover that could at all be avoided, and I told both General Bennett and Admiral Gayler that I thought it was unnecessary for them to take such action; that in my cover memorandum to the President, I would set forth their views as they had expressed them to me, and that I would appreciate it if they would not raise this question with the Director.

Mr. SCHWARZ. So their position, in summary, was that either the Hoover footnotes should be eliminated, or they would like to insert footnotes indicating that they approved the changes which Mr. Hoover was indicating he disapproved. Is that correct?

Mr. HUSTON. Yes.

Mr. SCHWARZ. After the signing of the document which we have identified as exhibit 1, did you submit to the President certain recommendations with respect to the restraints on intelligence collection?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And have you got in front of you the document which is exhibit 2¹?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And is that the document which you did submit to the President?

Mr. HUSTON. Which I submitted to Mr. Haldeman for transmittal to the President.

Mr. SCHWARZ. You submitted it to Mr. Haldeman for transmission to the President? Is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. And now, in that document, you make certain recommendations with respect to changing restraints which you felt had been placed upon intelligence collection; is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. In making those recommendations, did you believe you were representing the consensus of the entire working group that had worked on the study for yourself and for the President?

Mr. HUSTON. Yes.

Mr. SCHWARZ. So that whatever recommendations you made with respect to illegal opening of the mail, or burglary, or surreptitious entry, were ones which you believe represented the views of the entire

¹ See p. 189.

intelligence community with the exception of the footnotes of Mr. Hoover himself; is that right?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Now you did recommend, did you not, that the United States should commence—in your view, commence—as you understood it, commence or recommence, the illegal opening of mail. Is that correct?

Mr. HUSTON. Yes. My understanding, from my contacts with the Bureau and through the working committee, was that in the past, this had been a technique that had been employed, particularly on matters relating to espionage, and that the professional intelligence community indicated that they thought it was a necessary technique to be undertaken under extreme circumstances, and that they felt that they should be authorized to do so.

Mr. SCHWARZ. Basing your views on the recommendations of the entire intelligence community, except for Mr. Hoover's footnotes, you also advocated that the United States should commence, or recommence, to commit burglaries, to acquire valuable intelligence information. Is that right?

Mr. HUSTON. Yes. I was told that the Bureau had undertaken "black bag" jobs for a number of years—up until 1966. That it had been successful and valuable, again, particularly in matters involving espionage. And that they felt this, again, was something that, given the revolutionary climate, they thought they needed to have the authority to do.

Mr. SCHWARZ. And in both cases, your position and their position was, in effect, that the end justifies the means?

Mr. HUSTON. No. I'm not going to speak for what their position is, but I do not think that fairly summarizes what my position was.

Mr. SCHWARZ. Well, I'm sure some of the other persons here are going to question you on that issue.

Did President Nixon, through Mr. Haldeman, approve the recommendations for change which you had made on behalf of the entire intelligence community?

Mr. HUSTON. Yes.

Mr. SCHWARZ. What happened after that?

Mr. HUSTON. The question then arose as to how the decisions were to be implemented. I had recommended to Mr. Haldeman that I felt that the President ought to call the Directors back into his office and inform them personally of his decisions. It seemed to me that that was a proper course to take, particularly in view of the sensitivity of the decisions relative to Mr. Hoover.

However, the President and Mr. Haldeman did not think that that was necessary, so then the question became how should a decision memorandum go out. Mr. Haldeman seemed to think that it was not necessary for either he or the President to do that, so I was nominated.

Mr. SCHWARZ. And you sent it out?

Mr. HUSTON. Yes, I did. Over my signature.

Mr. SCHWARZ. You sent a memorandum indicating that the President had approved, and that the restraints that the intelligence community wished to have removed could now be removed, and they should proceed with their business. Is that right?

Mr. HUSTON. Well, really that they should proceed to come back for a subsequent meeting of what would then become a permanent interagency committee. And at that point, the methods of implementation would be discussed.

Mr. SCHWARZ. At that point, the methods of implementation would be implemented?

Mr. HUSTON. Yes.

Mr. SCHWARZ. Now I just have two more questions, Mr. Huston, having to do with the attitudes of the intelligence community in the meetings that you attended with them.

First, I would like to read to you from exhibit 9¹, a document prepared for Mr. Sullivan, for Mr. Hoover's first address to the Directors after the President's meeting on June 5. And Mr. Sullivan proposed this language:

Individually, those of us in the intelligence community are relatively small and limited. Unified, our own combined potential is magnified and limitless. It is through unity of action that we can tremendously increase our intelligence-gathering potential, and, I am certain, obtain the answers the President wants.

Was that, in substance, the view of the intelligence community with which you met?

Mr. HUSTON. Well, I do not know quite how to answer that. It seemed to me the people at the working-group level felt that it was important that there be a greater degree of community coordination than there had been in the past, particularly, as you know, at that time, the CIA and the FBI liaison had been terminated. So I think there was a high degree of sensitivity at working-group level with respect to interagency coordination.

Mr. SCHWARZ. In connection with your answer that that liaison had been terminated, at the June 5 meeting, was the President told that, or was he told something inconsistent with that?

Mr. HUSTON. Well, I think he was told—well, the trouble with dealing with these people is that what they say is not often so untrue as it is misleading.

But, the President—I had told the President the problem that existed as a result of Mr. Hoover terminating the liaison. When the President asked Mr. Hoover and Mr. Helms, "Are you people getting along, working well together?", and they both said, "Well yes, we're doing very well", and I think both of them probably thought that was an honest answer, because I think both of them felt that they didn't need to have any formal method of liaison.

Mr. SCHWARZ. One final question, Mr. Huston. Throughout the meetings you had on this subject, did any person, other than Mr. Hoover in the footnotes, suggest or argue that the activities being proposed ought not to be done because they were either unconstitutional or illegal?

Mr. HUSTON. No.

Mr. SCHWARZ. I have nothing further.

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

Mr. SMOTHERS. Yes, Mr. Chairman, just as a matter of brief inquiry. Mr. Huston, I think we have so far the impression of your functioning as the vehicle for transmission of the intelligence community's views

¹ See p. 209.

to the President. I think it might be useful to inquire whether your functions indeed went beyond that point.

Mr. HUSTON, during the time of this effort on the development of the Huston plan, for whom did you work? Who was your immediate superior?

Mr. HUSTON. Until August of 1970, it would have been Jim Keogh. I was assigned to the speechwriting staff.

Mr. SMOTHERS. Did you also work for Mr. Haldeman?

Mr. HUSTON. Well, anyone who was on the White House staff worked for Mr. Haldeman.

Mr. SMOTHERS. Did you, from time to time, receive guidance from Mr. Haldeman regarding the intelligence or investigative capabilities desired by the President?

Mr. HUSTON. No, not really. I don't think I received any guidance from Mr. Haldeman on that until we got into this period on April or June of 1970.

Mr. SMOTHERS. Until you got into the period April and June 1970?

Mr. HUSTON. Yes.

Mr. SMOTHERS. What kind of guidance did you receive during the April-June 1970 period?

Mr. HUSTON. We had discussions on the staff with Mr. Haldeman as to who should have staff responsibility for coordination of intelligence matters, which Mr. Haldeman regarded simply as a housekeeping detail.

Mr. SMOTHERS. Did you also receive from Mr. Haldeman a communication regarding the desires of the President on the nature and extent of surveillance that ought to be accomplished?

Mr. HUSTON. No.

Mr. SMOTHERS. Did you undertake, at Mr. Haldeman's direction, an effort to use the Internal Revenue Service as a surveillance mechanism?

Mr. HUSTON. No.

Mr. SMOTHERS. Let me read to you from a memorandum which you sent to Mr. Haldeman on September 21, 1970 [exhibit 62¹]. You do not have a copy of this memorandum. It is short, though, and I believe you will be able to follow it.

Memorandum for Mr. Haldeman, from you. First paragraph begins, "I am attaching a copy of a report from the IRS on the activities of its 'Special Service group' which is supposed to monitor the activities of ideological organizations (for example, Jerry Rubin Fund, Black Panthers, et cetera) and take appropriate action when violations of IRS regulations turn up. You will note that the report is long on words and short on substance."

Second paragraph, "Nearly 18 months ago, the President indicated a desire for IRS to move against leftist organizations taking advantage of tax shelters. I have been pressing IRS since that time to no avail."

Did this pressing of IRS, Mr. Huston, represent Presidential guidance communicated to you?

Mr. HUSTON. The extent of the pressing—we talked before to the fact that a meeting was held with the Commissioner of Internal Revenue, Dr. Burns, and I in June of 1969, at which meeting Dr. Burns expressed to the Commissioner the President's concern that as a result

¹ See p. 395.

of testimony that had come out, both before the House Ways and Means Committee and the Senate Government Operations Committee, that it appeared that there were organizations, ideological organizations, that were in violation of the tax laws. And we were talking in that context about 501(c)(3) organizations.

Subsequent to that, I had sent a memorandum to Mr. Barth who was the Assistant to the Commissioner, asking him specifically a question with regard to why the Sierra Club had had its exemption revoked when two REMC's (Rural Electrification Membership Corporations) had been brought to my attention who seemed to be similarly involved in advocating environmental legislation had not. I received a memorandum back indicating to me the reason was the two groups fell into different tax classifications.

I also, in July 1969, received from the IRS copies of the minutes of two meetings that were held by what then I think was called the Activist Organizations Committee, or something like that; all of which I received in July 1969. From July 1969 to August 1970, to the best of my recollection, there was no further written communication. And if there were any telephonic communication, I do not recall it and Mr. Barth does not have any recollection of it. So in August 1970 I sent the memorandum to the IRS, having read the story in the newspaper that Mr. Rubin was now channeling all of his lecture fees to a tax-exempt foundation, and asked what was going on and what had happened to this committee that had been established a year prior.

At that point I then received from the Commissioner a copy of a report that indicated what the committee had been doing. I then sent a copy of that report to Mr. Haldeman with the memorandum you just read. Neither Mr. Haldeman nor anyone else in the White House responded to that memorandum and I had no subsequent contact with the IRS.

Mr. SMOTHERS. Is it not true that since this investigation, which IRS was ordered to initiate, had been going for some 18 months, and for some 15 months even at the time your Huston plan was completed, that you and your supervisors had some very clear ideas regarding the kinds of surveillance you wanted conducted?

Mr. HUSTON. By whom?

Mr. SMOTHERS. By any governmental agencies.

Mr. HUSTON. Well, as I say, I never talked with any of my superiors about the type of surveillance activities they wanted undertaken.

Mr. SMOTHERS. But you were aware, were you not, Mr. Huston, of the intention of these various surveillance efforts? Is it not clear from your memorandum that you are intending to identify people who are in conflict or believed to be in conflict with the administration's ideas?

Mr. HUSTON. I am sorry, in what memorandum?

Mr. SMOTHERS. Concerning the purpose of your investigative effort with IRS.

Mr. HUSTON. I did not have any investigative effort with IRS. That is the point I am trying to make.

Mr. SMOTHERS. What was the intent of the administration, as you understood it, in asking IRS to look closely at these leftist organizations?

Mr. HUSTON. As far as I know, if by the administration you mean the White House, the White House never asked the IRS to look at these

leftist organizations. Dr. Burns conveyed to the Commissioner the President's concern about 501(c)(3) organizations.

Mr. SMOTHERS. Let me ask you then two questions about that memorandum. First, the words, "nearly 18 months ago the President indicated a desire for IRS to move against leftist organizations." Those are your words; how do you interpret them?

Mr. HUSTON. Well, the President frankly did express that concern. However, Dr. Burns did not express his concern to the Commissioner in the same way.

Mr. SMOTHERS. Just one other statement then from that same memorandum. In the last paragraph you indicate in communicating to Mr. Haldeman:

What we cannot do in a courtroom via criminal prosecution to curtail the activities of some of these groups, IRS could do by administrative action. Moreover, valuable intelligence type information could be turned up by IRS as a result of their field audits.

Is this not a move against these organizations? Is this not an indication of the philosophy you were asked to communicate to the intelligence groups when you sat down with them?

Mr. HUSTON. No. First of all, after the time that that memorandum was written I never sat down with any intelligence community people.

Second, what that concept denoted at that point in time was essentially the strike force concept that had been successful in organized crime. Going back to the Johnson administration, the White House had been concerned about the sources of funding of many of these groups. And the point that was being made there was that through the audit process undertaken in connection with alleged violation of tax laws, it was entirely likely to uncover the source of funds. However, that was an opinion that I expressed to Mr. Haldeman. Mr. Haldeman never responded to it. I never talked to anyone at the IRS about it. And so far as I know, no one at the White House asked the IRS to do anything. In fact, I might add, that each of the people in the Special Service Staff have testified—an affidavit indicated that the White House had absolutely no influence whatsoever in the creation of the Special Service Staff. That includes Mr. Thrower, Mr. Barth, Mr. Green, Mr. Bacon. Each one of these people, by affidavit, have indicated that the Special Service Staff was set up at the initiative of the IRS personnel and not at the request of the White House and that the White House had made no effort to influence the work undertaken by that committee. And I know in my own case, I did not even know about the committee until after it was established.

Mr. SMOTHERS. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. I might say that this committee is looking into the question of the Special Service Staff and the ways that the Internal Revenue Service has been used to harass citizens and organizations for purposes other than determining their tax liability. And we will get to that in the course of our hearings.

Coming back now to the Huston plan, I would like to call your attention to exhibit 1.¹ You have it now, do you not, Mr. Huston?

Mr. HUSTON. Yes, sir.

The CHAIRMAN. I would ask you to turn to exhibit 2², and turn to

¹ See p. 141.
² See p. 189.

page 2, please, of your recommendations to the President. Now first of all, as I understand it, this document represented your proposals to the President for lifting or relaxing certain restraints on the intelligence community with respect to gathering information on what you call the revolutionary climate. I would suppose that had reference to the antiwar demonstrations and antiwar protest groups.

Mr. HUSTON. Senator, I really was peripherally interested in the antiwar demonstrations. What I was concerned about was the 40,000 bombings that took place in 1 year. What I was concerned about was the 39 police officers who were killed in sniping incidents.

The CHAIRMAN. Yes, and everything connected with that.

Mr. HUSTON. Well, that is what I am talking about when I am talking about revolutionary violence as opposed to antiwar demonstrations.

The CHAIRMAN. Well, whatever your purpose, the document you sent to the President contained your recommendations for lifting or relaxing certain restraints.

Mr. HUSTON. Or keeping restraints as in the case of the military.

The CHAIRMAN. And in some cases, keeping restraints.

Mr. HUSTON. Yes.

The CHAIRMAN. Now, was it your understanding, when you submitted that document to the President, that his authority was being requested for lifting or relaxing restraints if he chose to accept your recommendation?

Mr. HUSTON. Yes.

The CHAIRMAN. Now, turning to the question of mail coverage, on page 2 of your recommendations I read, "recommendation: restrictions on legal coverage should be removed." And I take it by legal coverage you had reference to the procedure that enables intelligence agencies, law enforcement agencies, to look at the envelopes. If the procedure is followed, there is a legal way for doing that.

Mr. HUSTON. Yes, sir.

The CHAIRMAN. Then you recommended, "also, present restrictions on covert coverage should be relaxed on selected targets of priority, foreign intelligence and internal security interests." Now here you were referring to opening the mail, were you not?

Mr. HUSTON. Yes.

The CHAIRMAN. And that was against the law, was it not?

Mr. HUSTON. Yes.

The CHAIRMAN. So you were making a very serious recommendation to Mr. Nixon. You were recommending that he authorize mail openings, even though such openings were in violation of the law.

Mr. HUSTON. Well, I think what was being recommended was that they be employed in spite of the fact that there was a Federal law that prohibited it but, as in relationship both to mail and to surreptitious entry, and of course electronic surveillance, there was the whole question as to whether in essence the fourth amendment applied to the President in the exercise of his internal security power. And I think that is where—that is why I earlier said, when you asked me about our thinking, I think this is where the question arose. In my mind, what we were talking about is something that I had been told had been done for 25 years. It had been done with the knowledge

of the professional intelligence community, the people who had been here long before we got in town, and would be here long after we left town.

The question really was a question of whether inherent in the Executive power, in matters involving internal security or the security of the state, the President could act contrary to the dictates of a statute. And I think that was the kind of dilemma that we had ourselves in.

The CHAIRMAN. You were recommending that the President, in this case, authorize mail openings, even though such action was contrary to the Federal statute.

Mr. HUSTON. Yes, sir.

The CHAIRMAN. And you have suggested that there might be some inherent right that circumvents the fourth amendment to the Constitution of the United States guaranteeing citizens against unreasonable searches and seizures without a warrant, bearing upon the national security responsibilities of the President.

Mr. HUSTON. Senator, I think this really goes to the heart of the matter, as you well know. And I think if you recall in the Safe Streets Act, there was a proviso clause in there that said to the effect that nothing in this act is to be deemed to limit whatever power the President might have with respect to national security matters. I think it was that kind of approach to this whole area of fourth amendment rights as they evolved, in terms of national security, internal security, that opened the door to men, who in good conscience thought they could go ahead and do it.

The CHAIRMAN. Now, you yourself have suggested this was a very serious question.

Mr. HUSTON. Yes.

The CHAIRMAN. And you were asking the President to take action that violated the Federal statute, upon the theory that he had some inherent right to do this. Now since that is such a central question, since it does go to the protection offered American citizens in the fourth amendment to the Constitution, did you take the matter up with the Attorney General of the United States to secure his opinion?

Mr. HUSTON. No.

The CHAIRMAN. No?

Mr. HUSTON. No.

The CHAIRMAN. Was the Attorney General of the United States advised of the recommendations that were being made to the President or of all of the activity by the CIA, the NSA, the FBI that preceded your submitting recommendations to the President?

Mr. HUSTON. In terms of activity, do you mean in connection with the preparation of a report, or whatever they had done for the last 25 years?

The CHAIRMAN. My question relates to those particular meetings that you have described.

Mr. HUSTON. No, the Attorney General was not aware of the appointment of the committee or the fact that the committee was being—

The CHAIRMAN. He did not know of the appointment of the committee, the purpose of the committee?

Mr. HUSTON. No.

The CHAIRMAN. The fact that it had met, the fact that recommendations had been made to you, and that you were making recommenda-

tions to the President involving actions that constituted a violation of Federal statutes. Why was the Attorney General never informed?

Mr. HUSTON. Well, I think there are two answers to that; well, there are really three answers. The first answer is that when the decision was made for the President to hold this meeting, the context in which the discussion occurred related to intelligence collection matters. It was viewed as an intelligence matter and not a law enforcement or criminal matter. And in that case, we simply brought in the people who were the professional intelligence people and they are the ones who had the responsibility for handling the problem, and as to whom the President would turn.

Now, the second aspect of it is that after all, theoretically at least, the FBI is the division of the Justice Department and it would have seemed to be incumbent upon the Director before he signed the report to have cleared it with his superior just as Admiral Gayler and General Bennett, before they signed the report, got clearance from the Deputy Director of the Department of Defense.

The third problem or third answer probably is that I was the one who was responsible for—or at least initially responsible for—suggesting who would be appropriate to be involved in these proceedings. I, at that time, did not have any clear preconception of where the committee was going to end up, in terms of what it specifically would recommend. Many of these things, particularly as they related to the NSA for example, or the CIA, I did not know anything about.

And finally, I frankly did not have a whole lot of confidence in the Justice Department, and its sensitivity with respect to distinguishing between types of protest activity.

The CHAIRMAN. And it never occurred to you, as the President's representative, in making recommendations to him that violated the law, that you or the White House should confer with the Attorney General before making those recommendations.

Mr. HUSTON. No, it didn't. It should have, but it didn't.

The CHAIRMAN. Well, now, you have described this report to the President, which has become known as the Huston plan, as a report in which you were requesting the President to authorize certain actions, some of which were illegal. And one of those illegal actions had to do with the subject about which I am now inquiring, mail opening.

Mr. HUSTON. Yes.

The CHAIRMAN. When you testified earlier in executive session, you were asked the following question: "You were not aware of the fact, I take it, that at this time, the time you were submitting your recommendations to the President, the CIA was opening mail?"

You replied, "No. In fact, I think one of the more interesting things in this whole thing is why I didn't know half the things I didn't know, when the President of the United States sat across the table from the Directors of the intelligence agencies, and said, 'I want a complete report on what is going on.' I did not know about the CIA mail openings. I didn't know about the COINTEL Program. These people were conducting all of these things on their own that the President of the United States did not know about."

Do you still stand by that testimony?

Mr. HUSTON. With the exception, I assume—I guess I can't be positive that the President didn't know, if he had learned from other sources, but I can say I certainly didn't know about it, and it was my responsibility to see that the President knew what was going on.

The CHAIRMAN. And to your knowledge, he did not know.

Mr. HUSTON. No. To my knowledge, he did not know.

The CHAIRMAN. And it would have been a very curious exercise for him, wouldn't it, to look at your recommendations asking for his authority to open the mail, if he already knew that the practice had been going on for a long time before his authority was asked?

Mr. HUSTON. Yes.

The CHAIRMAN. Yes. And he never raised that with you?

Mr. HUSTON. No.

The CHAIRMAN. And 5 days later, upon reconsideration, when he pulled back this report or this directive, did he do that for the purpose of revoking the authority that he had given?

Mr. HUSTON. Yes, because Mr. Hoover and Attorney General Mitchell had prevailed upon him to change his decision, which he did. And there was certainly no doubt in my mind, nor do I think there could have conceivably been any doubt in the minds of any of the other people who had been involved, that the revocation of the—the recall of the decision memoranda meant a reversal of the President's position.

The CHAIRMAN. So the President revoked the authority he had given?

Mr. HUSTON. Yes.

The CHAIRMAN. For such things as mail openings?

Mr. HUSTON. Yes.

The CHAIRMAN. And yet, are you aware that the mail openings continued for a long time after that revocation?

Mr. HUSTON. Well, I have read the Rockefeller Commission report, yes, sir. That is all I know about it.

The CHAIRMAN. So we have a case where the President is asked to authorize mail openings, even though they are illegal, and quite apart from whether he should have done it, and quite apart from whether or not the advice of the Attorney General should have been asked, he acceded to that request. He did so thinking that he was authorizing these openings, not knowing that his authority was an idle gesture, since these practices had been going on for a long time prior to the request for his authority. And after he revoked that authority, the practices continued, even though he had revoked it. That is the state of the record, based on your testimony?

Mr. HUSTON. Yes; I think it is.

The CHAIRMAN. Senator Tower.

Senator TOWER. A fundamental question is whether the intelligence community itself provided the inspiration to the Huston plan, or whether you went to them with either the clear guidance of the White House or with your own ideas. Can you enlighten us on that?

Mr. HUSTON. Well, I had been involved peripherally in the intelligence area since June of 1969, when I was first asked to undertake the assignment of preparing a report on foreign financing of revolutionary protest activity. And in October and November of 1969, I

was responsible for the coordination of intelligence relating to the antiwar demonstrations in Washington.

During this period I became, I think, close to Mr. Sullivan and Mr. Brennan. I think I had their confidence, in that I think they thought I understood a little bit about who the players were and what was going on in the country in internal security matters. And they certainly had my confidence. In fact, I do not think there was anyone in the Government who I respected more than Mr. Sullivan.

So that by the time of April when Mr. Haldeman held a meeting at which it was decided that the President would call the Directors together, I had had many discussions with the Bureau about what their problems were. And by the time the committee met, I had a clear view of what they thought they needed.

Now, the question becomes, who was the inspiration. No one, Mr. Haldeman or the President, ever said to me—who were the only two who were directly involved—“Here is what we want,” except that Mr. Haldeman did say to me that the President leaned toward the use of the military in domestic intelligence. As a matter of fact, I was strongly opposed to that, if for no other reason than being a former Army intelligence officer, I had seen first hand who was doing that work, and accordingly, I thought they ought to stay in the military business. The military services wanted to stay in the military business; the FBI wanted them to stay. So that was the only guidance I ever received from Mr. Haldeman or indirectly through the President as to what might be preconceived. And in that instance, we came in with a recommendation that was contrary to what their initial reaction had been.

So, in summary, the impression, Senator, of course, is that I kind of sat down here and created out of whole cloth an entire array of new techniques to exploit and infringe upon the civil liberties of the American people, and that I forced it down Dick Helms' throat, and I blackjacked Admiral Gayler, and I really used my heavy weight on all of these poor little professional intelligence people and forced them into coming up with all of this.

Now, I think the fact of the matter is that the entire intelligence community, in the summer of 1970, thought we had a serious crisis in this country. I thought we had a serious crisis in this country. My attitude was that we have got to do something about it. Who knows what to do about it? The professional intelligence community.

The professional intelligence community tells me, this is what—you give us these tools; we can solve the problem. I recommended those tools.

The thing that is interesting to me about the fact that I did not know about the mail openings, I did not know about the COINTEL Program, is that if we had known that many of these tools that they were asking for permission to use were already being used and we still were not getting any results, it conceivably would have changed our entire attitude toward the confidence we were willing to place in the hands of the intelligence community in dealing with this problem.

So, since I have been out in front, as you know, Senator, since the first time we talked, back in May, in the Armed Services Committee,

I have been out front in this thing, that the Huston plan—I never wrote this report that everyone calls the Huston plan. I did not write that report.

But all I want to say for the record is, I thought we had a serious problem. I was not concerned about people who didn't like the war. I wasn't concerned about people who thought Nixon was a louse. I was not concerned about who was going to be the Democratic nominee. I am talking about—we were talking about bombers; we were talking about assassins; we were talking about snipers. And I felt something had to be done. These people said, here are the tools we need. I take full responsibility. I recommended it.

Senator TOWER. So what you are saying is that the inspiration for the report, in most of its aspects, in the absence of anything but the scantiest guidelines by the White House, actually came from the agencies involved?

Mr. HUSTON. Yes, Senator. As a matter of fact, I never heard of NSCID 6. In fact, I never saw NSCID 6. For all I know, NSCID 6 says you get a free lunch in the White House mess. And you know, it's in here as a recommendation.

Senator TOWER. You got no guidance from anybody, in addition to the President, Mr. Haldeman, or any of the Presidential staffers? In other words, all that was contributed by the White House was what you attested to here?

Mr. HUSTON. Yes. After the meeting with the President, I was then responsible for giving the committee a guideline as to what the President wanted, which was the three areas we discussed—threat assessment, restraints, and options. The committee then prepared the report, and it came back to me.

In the meantime, I think I sent Mr. Haldeman a memo some time in mid-June, saying the committee is coming along fine; we hope to have a report by the end of the month. At no time from June 5 until July 23 or after July 23, when Mr. Haldeman called me to recall the decision memoranda, did I talk either to him or to the President about anything relating to this report.

Senator TOWER. After completion of the report, who took the initiative in seeking the President's approval of it?

Mr. HUSTON. Of the recommendations?

Senator TOWER. Yes; of the recommendations.

Mr. HUSTON. It was my responsibility, when the committee prepared its report and submitted it to the President, to prepare a summary of the report and, if deemed appropriate, to prepare recommendations, which I then did. I prepared the cover memorandum, which is exhibit 2¹ and sent it forward to the President, trying to set forth all of the strongest arguments pro and con in a summarized form, with respect to the various options.

And in that connection, I made the recommendations which I felt, in my judgment, represented the consensus of the professional intelligence community as to what we ought to do.

Senator TOWER. Are you saying in the report that the recommendations, then, are yours?

Mr. HUSTON. Yes: they are my recommendations, because in the formal report—and I insisted on that with the working group that

¹ See p. 189.

the President wanted options. He did not want someone to say—the committee people themselves—to say, “this is what you should do.” However, there was simply never any doubt in my mind as to who wanted what.

And, in fact, in my cover memorandum to Mr. Haldeman, I tried to outline who was in favor of what. I pointed out, for example, that the CIA was not in favor of a permanent interagency committee. They only wanted an ad hoc committee. I said Mr. Helms cooperated. I would not have said Mr. Helms cooperated, if he didn't. For all I knew, the President would pick up the phone and say, “Dick, what did you think of this committee?” So I had tried to tell the President, through Mr. Haldeman, what I had felt was the result and the attitude of the committee.

Senator TOWER. What was your attitude toward the President's reversal of the decision that resulted in revoking the plan?

Mr. HUSTON. I thought it was a mistake for several reasons. The first reason I thought it was a mistake, is it put us back to ground zero, which is not merely back to ground zero in terms of operational techniques, but back to ground zero in terms of lack of any coordination among the intelligence agencies.

Second, I felt in my own mind that Mr. Hoover's objections were not based—I do not want to phrase it—I felt that not all of Mr. Hoover's objections had been meritoriously submitted to the President as to what he was really concerned about.

And third, frankly, I was concerned about what effects this would have on the intelligence community other than the FBI, if they could put their back into this project which was supposed to have been a joint effort, they all reached a consensus and then one person, the Director of the FBI, could succeed in reversing it.

Senator TOWER. While you did not prepare this plan, you were in fact its advocate.

Mr. HUSTON. Yes, sir.

Senator TOWER. Thank you.

The CHAIRMAN. Senator Mondale?

Senator MONDALE. Mr. Huston, in the preparation of the options presented to the President, several recommendations were presented to the President which were described as being illegal.

Mr. HUSTON. Yes, sir.

Senator MONDALE. And I gather that you were not raising any questions except that it was understood by all concerned that they were illegal but they were recommended nonetheless.

Mr. HUSTON. Well, as I indicated earlier, Senator, I think that in the case of surreptitious entry, for example, based upon the fact that this had been occurring for many, many years, that there were obviously in line with numbers of who had been involved, that there had to be some justification, legal justification. But I think that in the terms of the use of the word, for example, “burglary,” frankly, I think, I am sure what this committee will find out if it talks to enough intelligence community people, that the final bottom line on that is what happens to the guy who gets caught. And that is where clearly he is going to take the heat, under the local or State statute that he violates, because Mr. Hoover is not going to come and bail him out.

Senator MONDALE. Let me return to my question. There was no doubt in your mind that opening people's mail and reading it, tapping conversations by U.S. citizens, burglarizing embassies and the rest was illegal. That is why you said it was illegal in your memo to the President, is that correct?

Mr. HUSTON. Two areas—I do not think the tapping falls into that area.

Senator MONDALE. Let us pick one area.

Mr. HUSTON. Yes, certainly. We said it was illegal. Mr. Hoover said it was illegal. I put it in the memorandum to the President. In fact, I escalated the rhetoric from, I think, breaking and entering to burglary, so that the President would have no doubt whatsoever what the worst case was on that question.

Senator MONDALE. All right. So it is agreed that recommendations and actions were presented to the President which called for a response by which the President would approve illegal acts by the Government. What legal justification or other justification do you have, as an attorney and an officer of the court and as a public officer sworn to uphold the Constitution and the laws of the land, to entertain and recommend illegal acts by the Government?

Mr. HUSTON. Well, as I said, Senator, it was my opinion at the time that simply the fourth amendment did not apply to the President in the exercise of matters relating to the internal security or national security. It was an argument that Mr. Justice Douglas, for example, anticipated in the U.S. District Court case that ruled unconstitutional the domestic wiretaps because up until 1972 every President, and with the possible exception of Attorney General Clark, every Attorney General, argued that the President had inherent authority under Executive power to engage in warrantless wiretaps, although the Court in criminal matters had clearly held that a warrantless wiretap violated the fourth amendment. Yet, the Justice Department even took the case to the Supreme Court because they felt there was that inherent power.

Now you and I both know as lawyers that if there is an exception to the fourth amendment for electronic surveillance, which is a trespass in common law, then it does not take a lot of imagination to extend that from the trespass via the telephone to trespass via surreptitious entry or mail opening. That is frankly the kind of dangerous road we were hustling down at this point.

Senator MONDALE. All right. If that is your justification, why did you call it illegal then? What you are arguing, then, is that it is legal for the President to violate rights, constitutional and legal rights of citizens, if he is the President and if he invokes national security as a justification. But you did not say that in your memo. You said these things are illegal. Now, which is it?

Mr. HUSTON. Well, I think that for the purposes that seem to me to be most relevant at the time—that is, that the operative action—the operation was going to be the undertaken by an individual, who, if he is caught, is going to go to jail, it is clearly illegal.

Senator MONDALE. Yes. So that it would be fair to say that you understood and told the President it was illegal, but to justify it now, you invoke a national security defense which would make it legal.

Mr. HUSTON. No; I am not—

Senator MONDALE. Which position is it?

Mr. HUSTON. Senator, I am not invoking any defense now because you asked me what my opinion was at the time and not what my opinion is now.

Senator MONDALE. All right.

Mr. HUSTON. What I am saying to you is that the consideration that was given by not only me, but by the other people who signed this report and discussed these things, was that frankly it was within the power of the President to do it.

Senator MONDALE. All right. Why did you not say in your memo that this would appear to be illegal, but that in fact it is legal because, the President has powers not mentioned in the Constitution, but powers which we feel every President possesses. These powers are such that the law does not apply to the President and the constitutional rights of the citizens do not apply where the President decides that the national security dictates. Why did you not say that? Instead of that, you said it was illegal.

Mr. HUSTON. I said that because that is what the report had said.

Senator MONDALE. All right. Now, do you recall, at the time you were discussing these various options to be recommended to the President, what the position was of the principals representing the various agencies? You had a representative from the NSA, one from the CIA, one from the DIA, and one from the FBI. During the course of making up these options, which of them objected to these recommendations which involved illegal acts?

Mr. HUSTON. At the working-group level, I do not recall any objection.

Senator MONDALE. Do you recall any of them ever saying, "We cannot do this because it is illegal"?

Mr. HUSTON. No.

Senator MONDALE. Can you recall any discussion whatsoever concerning the illegality of these recommendations?

Mr. HUSTON. No.

Senator MONDALE. Does it strike you as peculiar that top public officers in the most high-level and sensitive positions of Government would discuss recommending to the President actions which are clearly illegal, and possibly unconstitutional, without ever asking themselves whether that was a proper thing for them to be doing?

Mr. HUSTON. Yes; I think it is, except for the fact that I think that for many of those people we were talking about something that they had been aware of, had been undertaking for a long period of time.

Senator MONDALE. Is that an adequate justification?

Mr. HUSTON. Sir, I am not trying to justify, I am just trying to tell you what my impression is of what happened at the time.

Senator MONDALE. Because if criminals could be excused on the grounds that someone had done it before, there would not be much of a population in any of the prisons today, would there?

Mr. HUSTON. No.

Senator MONDALE. Second, I gather it is your testimony that although these agencies were asked to supply information on what they were doing, in fact, none of them offered evidence that they were opening mail or intercepting private communications and performing other acts which it was requested that the President authorize. Is that correct?

Mr. HUSTON. The reports indicated that there were no mail openings, there were no surreptitious entries.

Senator MONDALE. And in fact there were?

Mr. HUSTON. Well, apparently there were, but that was the information I had.

Senator MONDALE. Now, not only did they not tell the President that those acts and actions were underway, but they did not talk about it with each other. Is that correct? When they met and discussed this, the CIA did not tell the others that they were already engaging in illegal mail openings.

Mr. HUSTON. Yes, I think that was part of the problem of not telling us.

Senator MONDALE. Then after these options were turned down by the President, they continued and, in fact, increased in scope in some respects, did they not?

Mr. HUSTON. I do not know, Senator, any more than what is in the Rockefeller Commission report.

Senator MONDALE. All right. Now suppose you were a President who wanted the law obeyed in this field. In the light of this record, what on earth would you do to gain accountability to the law?

Mr. HUSTON. The first thing I would do is move the Domestic Intelligence Division out of the FBI.

Senator MONDALE. First of all, what would you do to get the truth?

Mr. HUSTON. To get the truth?

Senator MONDALE. Yes.

Mr. HUSTON. Well, I think that if—I have to think that if President Nixon had sat Mr. Helms across his desk, and said, “Are you opening any mail?”, Mr. Helms would have said yes.

Senator MONDALE. Why would it occur to the President to ask that question?

Mr. HUSTON. It would not occur to him and that is the whole problem.

Senator MONDALE. You see, time and time again we come to this point. The only way the President can control these agencies is to get them over to the White House for dinner and spend hour after hour to find out what is going on, and then get on his knees and plead that they might do as he wished.

Mr. HUSTON. I do not know how you find out except that I think we are at a threshold period in which the entire attitude toward the means of collecting intelligence is dramatically changed. I think that 25 years ago that people would not have been at all surprised, nearly as surprised, as people are or as people are today. It is interesting to me, Senator, that in October 1971, on the Sunday edition of the New York Times, there was a front page article which was obviously planted to attack J. Edgar Hoover, which criticized Mr. Hoover for the fact that he had refused to engage in “black bag” jobs that were necessary in dealing with espionage. Now this was on the front page of the New York Times. There was not any editorial in that paper saying what in the world kind of criticism is that of J. Edgar Hoover, that he is not helping you guys out with black bag jobs. But this is the attitude that existed at that time and it was nothing that was unknown to any sophisticated person. I think that—

Senator MONDALE. Yes, but what I do not understand is that as a lawyer and one trained to uphold the law, and as an officer of the

court and one who is sworn to uphold the law, why on earth you felt that mood was a justification for violating the law. You know better than that. That is not the basis for law in this country. The law is a law and we are to uphold it and if it is not popular, then we should change it. You do not take the law into your hand and play God and interfere with the rights of the American people just because there is something you do not like.

Mr. HUSTON. Senator, I agree with that.

Senator MONDALE. But that is not what you did.

Mr. HUSTON. Well, Senator, I understand that is not what I did.

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Baker?

Senator BAKER. Thank you, Mr. Chairman.

Mr. HUSTON, there have been references from time to time in your testimony and that of other witnesses to the effect that J. Edgar Hoover put the kibosh on the Huston plan. Do you know why he did? Did he ever tell you why?

Mr. HUSTON. No, sir, he never talked to me about it.

Senator BAKER. Do you have any information that would indicate why he disagreed with the recommendation of the plan?

Mr. HUSTON. I did not think his objections were principled, Senator, because in many instances he says, not that this is illegal, it should not be done, he says, "I do not want to do it, but I do not care if somebody else does it," which does not strike me as being a principled objection.

Senator BAKER. Did he say that?

Mr. HUSTON. Yes, I think you will find, particularly with regard to the National Security Agency, indicated that he did not want to do it but if NSA wanted to do it themselves they had no objection.

Senator BAKER. Are there documents that indicate that Mr. Hoover said that while he did not want the FBI to do certain things, it was all right with him if the NSA did it?

Mr. HUSTON. It was in the report in the footnote, Senator.

Senator BAKER. What techniques was Mr. Hoover referring to at that time?

Mr. HUSTON. Of course he was opposed to everything, from the NSA requests for surreptitious entry down to allowing the FBI to increase its campus coverage by employing informers who were less than 21 years old. He had established a policy that to qualify as a campus informant for the FBI you had to be 21 years old. The Bureau operations people thought that imposed a difficult restraint on them since the most likely people to cooperate with the FBI were the younger freshmen and sophomores who had not yet become involved in a lot of these things. And so they wanted, in essence, to get the age where you could qualify as an FBI informant reduced to 18.

Mr. Hoover did not want to do that because apparently he felt that the risk of exposure was too great. So in order simply to get the age reduced from 21 to 18, we couched—the FBI people couched—this recommendation in terms that campus informant coverage shall be expanded because they did not want to zero in on the specific problem because it would make Mr. Hoover mad.

Senator BAKER. Why were you worried about making Mr. Hoover mad? This is the second or third time in your testimony that I have

either heard you say or gotten the impression that you were scared to death of J. Edgar Hoover.

Mr. HUSTON. Well, Mr. Hoover was a very influential man in the Government and it seemed to me that it was unlikely that any sort of successful intelligence—domestic intelligence capability—could be developed without the cooperation of the Director of the FBI, since the FBI is the primary agency in this area. And it has always been my view to try—if you can get a fellow to go along without ruffling his feathers too much by trying to be—that is why I wanted the President to invite him in and give him the decision because it seemed to me it would be easier maybe to get him to accept it. But as it turns out, that did not work.

And finally, on the 18-year-old thing, after Congress said 18-year-olds could vote—

Senator BAKER. You mean it did not work because the President did not call Mr. Hoover in or because the President did not convince him?

Mr. HUSTON. I do not know that even if the President would have called him in it would have made any difference, but that was the kind of approach that I would have taken.

Senator BAKER. Did you broach the idea to the President?

Mr. HUSTON. Yes, I did.

Senator BAKER. What did the President say about that?

Mr. HUSTON. Well, Mr. Haldeman said—as you know, Senator, there was not much of a disposition in the West Wing to take up valuable time with dealing with individuals, in a word, just to convince him.

Senator BAKER. Did you receive word through Mr. Haldeman that the President was not about to ask J. Edgar Hoover to the White House?

Mr. HUSTON. That is right.

Senator BAKER. Was the President also apprehensive about J. Edgar Hoover's approval of this?

Mr. HUSTON. I do not have any idea. I do not know.

Senator BAKER. Did you talk to Attorney General Mitchell about the plan?

Mr. HUSTON. No.

Senator BAKER. But you received word that he disapproved of it?

Mr. HUSTON. Yes.

Senator BAKER. How did you receive that word?

Mr. HUSTON. Mr. Sullivan told me that Mr. Hoover had gone to the Attorney General after the decision memorandum had gone out, and Haldeman called me and indicated to me that either the Attorney General had talked to him or to the President, and it was at that point that the decision memorandum was to be recalled.

Senator BAKER. As I recall the testimony of Mitchell in the Watergate hearings, he indicated that he was considerably distressed, if not in fact irate, about these proposals, and as quick as he could he got in touch with the President to put a stop to it. Is that in accord with your recollection?

Mr. HUSTON. That is my understanding, yes, sir.

Senator BAKER. Did he give the reasons for his indignity over the report, according to your information?

Mr. HUSTON. No. I do not know. I assume his arguments were that it is not the kind of thing we ought to be doing.

Senator BAKER. There is a fine difference here that may or may not be important depending on how things develop later. But is it your impression, if you have any impression, that Mr. Mitchell was putting the kibosh on the plan to support Hoover for the sake of supporting Hoover, or because he was indignant that it proposed certain illegal activities, or for some other reason?

I was intrigued with your statement a minute ago, which was, I believe, that Hoover did not really state his concerns about the plan. What was your impression of the Mitchell objection?

Mr. HUSTON. I only got second hand from Haldeman, and Bob did not spend a lot of time explaining to a junior staff member why he was doing things. So I did not know what it was. I assumed that probably the Attorney General did not see any reason for a bunch of people in the White House to be rocking the boat with the Justice Department and getting Mr. Hoover all upset. And I also would give the Attorney General the benefit of the doubt and conclude that he thought this was something that we should not be doing.

Senator BAKER. Mr. Huston, you have indicated that, as far as you know, the President did not know, and you certainly did not know, that at the time you made the recommendation for mail cover, for surreptitious entry, for illegal wiretaps, those activities were already being conducted by those agencies. Is that a correct recollection of your testimony?

Mr. HUSTON. Well, Senator, again on this wiretap thing, everybody has assumed all along that these wiretaps were illegal. Until 1972 it was the position of every President, every Attorney General and many Federal District Courts that they were not illegal.

Senator BAKER. That is sort of like the young lawyer who was arguing the case before the Supreme Court and the Chief Justice stopped him and said, "Young man, that is not the law," and he said, "Well, it was the law until your Honor spoke." So until 1972 the law was different in that respect?

Mr. HUSTON. Yes, sir.

Senator BAKER. And unwarranted, meaning taps without a search warrant for national security purposes?

Mr. HUSTON. Yes, sir.

Senator BAKER. Without that fine distinction.

Mr. HUSTON. On the other two areas, there clearly was no authority.

Senator BAKER. You did not know at the time you made the recommendation that these things were ongoing?

Mr. HUSTON. That is right.

Senator BAKER. And the other two.

Mr. HUSTON. Yes.

Senator BAKER. What other things were being done by the intelligence community, as you later discovered, that may or may not have been recommended in your report that dealt with similar matters?

Mr. HUSTON. I think there were several things that were critically important that we should have known about that we did not and could very easily have influenced our judgment. One, of course, was the CO INTELPRO—Counterintelligence Program which we did not know

about; Operation CHAOS, whatever it was—that the CIA had its own private operation going that we did not know about.

Senator BAKER. Can you tell us, or is there any reason why the witness should not tell us, what COINTELPRO and CHAOS were, the nature of the programs?

The CHAIRMAN. No; there is no reason. The Justice Department has now made disclosures on COINTELPRO and I think the Rockefeller report set out Operation CHAOS.

Senator BAKER. Briefly, for this record, Mr. Huston, what was COINTELPRO and what was CHAOS?

Mr. HUSTON. As I understand, the COINTEL Program was essentially designed to sow discord and I do not know what the correct technical term for it is, but it was an offensive program against designated targets by the FBI in terms of—

Senator BAKER. Well, give us an example.

Mr. HUSTON. For example, Professor Jones is a member of the Socialist Workers Party and he is running for the school board so the friendly neighborhood FBI agent sends a letter to the newspaper saying, "You may not know this, but this bird that is running for the school board is a member of the Socialist Workers Party."

Senator BAKER. You did not know about the COINTEL Program at the time of the filing of the Huston report?

Mr. HUSTON. No.

Senator BAKER. And you later learned of it?

Mr. HUSTON. Yes.

Senator BAKER. How did you later learn of it?

Mr. HUSTON. Well, when the Justice Department released the reports.

Senator BAKER. Do you know whether or not the President of the United States knew of the COINTEL Program?

Mr. HUSTON. I do not believe so. All of the information that has been made public indicates that no one outside of the Bureau was to know about it including anyone in the Justice Department.

Senator BAKER. Including the Attorney General and the President?

Mr. HUSTON. Yes, including the Attorney General.

Senator BAKER. What was the other operation?

Mr. HUSTON. The Operation CHAOS and that is that apparently the CIA had a group set up that was concerned directly with matters affecting domestic intelligence collection or events that were occurring within the continental United States. We did not know about that. In fact, the impression that we had all along was that the CIA had very little interest in or coverage of areas which we thought were important, which was what happened abroad when these people, who were under surveillance by the FBI, left the country. That is where we thought the CIA effort should be.

Senator BAKER. Mr. Huston, let me ask you this. Can you tell me who authorized either COINTELPRO or CHAOS? Was it a Presidential authorization?

Mr. HUSTON. I do not think so. I do not think any President knew about it and I think both of those programs were originated before this administration. I think COINTELPRO went back into the Johnson administration and Operation CHAOS went back to the Johnson administration.

Senator BAKER. I am not trying to establish blame or responsibility. I am just trying to establish in my own mind's eye whether in these projects the agencies were self-starters or whether someone up the scale may have authorized them.

Mr. HUSTON. I do not know except that they were originated in a prior administration and my understanding is that President Johnson did not know about it, and I do not believe President Nixon knew about it.

Senator BAKER. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Do you suppose they were just covenants that ran with the land? They were established in some previous administration. There was no responsibility to let successive Presidents know.

Mr. HUSTON. Senator, I do not know.

The CHAIRMAN. Well, I might say that with respect to both Operation CHAOS and COINTELPRO this committee intends to hold public hearings and explore all of the ramifications of those programs.

Senator Huddleston.

Senator HUDDLESTON. Thank you, Mr. Chairman. Mr. Huston, did you attach any significance to the fact that after your plan was developed, and at least for a few days, because the official policy of the administration, that neither the President nor Mr. Haldeman signed this plan, that went out over your signature, and subsequently became known as the Huston plan?

Mr. HUSTON. Senator, I think that was the intention. I was the person who was given this responsibility. It was my job, and I think that it was supposed to be me sitting here rather than Mr. Haldeman.

Senator HUDDLESTON. But, it was a significant change in policy, and one accepted by an administration that had put great store in its law and order theme during its campaign, and it would seem to me that this was something that might, with all deference to you, have a higher classification of importance in the administration.

Mr. HUSTON. I would think so, too. I was never under any illusions about my influence in the administration.

Senator HUDDLESTON. Were you flattered by the fact that this plan carried your name?

Mr. HUSTON. It was an honor at the time I would have been very happy to do without, particularly since it had been my intention to leave the administration at the end of the second year anyway.

Senator HUDDLESTON. Could it have been that the administration was reluctant to put any higher official title on the plan, knowing that it did include extralegal activity?

Mr. HUSTON. Well, I think there was no doubt that in matters of great sensitivity there is always a conscious policy too, in any agency, to have a cutoff point, but I think more importantly if you understand the attitude in the White House at this time, Mr. Haldeman felt that if he said the President had made a decision and you worked in the Government, you ought to assume that he made the decision, and that if he designated someone else on his staff to tell you that the President made a decision, then you ought to believe that person. So, I think it probably never occurred to him that there is any reason in the world why a low-ranking White House aide could not simply send out a decision, a paper that said the President has made these decisions.

Senator HUDDLESTON. Even though that policy pursued such a lofty objective, as you pointed out a moment ago, of simply quelling the disturbances that were going on in this country restoring peace and tranquility, eliminating the bombings, eliminating the killing of policemen.

Mr. HUSTON. I think that if there had been any mileage in putting out a press release, Senator, I am sure it would not have gone out in my name.

Senator HUDDLESTON. That is what I am curious about, with such a lofty objective as you have described previously.

Mr. HUSTON, are you familiar with the Special Service Staff, or the Special Service groups, of the IRS?

Mr. HUSTON. Yes, sir.

Senator HUDDLESTON. Are you familiar with some of its activities?

Mr. HUSTON. Yes.

Senator HUDDLESTON. Would you say that it is a proper response and a logical response to the interest that you, on behalf of the President, showed in this field?

Mr. HUSTON. No. Well, I never expressed any interest in this field, Senator. The interest that I expressed to the IRS predated by a year my activity in this matter and was related to 501(c)(3) organizations.

Senator HUDDLESTON. Which were ideological organizations on which you were interested in getting information through the IRS?

Mr. HUSTON. No, I never asked for any information on any organization from the IRS.

Senator HUDDLESTON. How would you expect that your memorandum would be interpreted, first of all, when you, after previously meeting with representatives of the IRS, and then nearly 13 months later asking for a progress report on operations of ideological organizations, and going to the pains of putting in that request the fact that you had made your original request back in July of 1969? This memo was dated August 14. It seems to me you are very pointedly indicating to the Director that over a year has passed and you have not received any evidence or any activity.

What impression do you think the IRS would receive from that memorandum?

Mr. HUSTON. Well, I think the impression that they received was that I would like to have a progress report, and Commissioner Thrower sent me a progress report.

Senator HUDDLESTON. And that there was at least keen interest on the part of the White House.

Mr. HUSTON. I do not know how much importance he attached to my inquiry for a progress report. He indicates he did not attach any, but, beyond that, I do not know.

Senator HUDDLESTON. I note, too, that in response to your request that a report was filed, and the cover memorandum to that report from Mr. Randolph Thrower of the IRS says, "I would stress that knowledge of the existence and operation of this group should be carefully limited." From whom did you think the information of this group should be kept?

Mr. HUSTON. Senator, I did not give any thought to that at all. I was getting at that time every day piles of documents that had all sorts of elaborate classifications, restraint, hold-back, don't disclose stuff on it. Whenever something came across my desk like that, I attached no importance to that characterization whatsoever.

Senator HUDDLESTON. You did not wonder whether or not he even wanted the other intelligence-gathering agencies to know about this activity?

Mr. HUSTON. I did not know because there was nothing in that report that was of any interest to an intelligence agency.

Senator HUDDLESTON. But, as a matter of fact, you pointed out as you relayed that report on to Mr. H. R. Haldeman in a subsequent memorandum the next day, the memorandum that Mr. Smothers referred to earlier, in which you indicate that the report had very little substance to it. Is that correct?

Mr. HUSTON. Yes.

Senator HUDDLESTON. And you pointed out to Mr. Haldeman that you had been pressing the IRS for over a year now, to no avail, to get some action, I presume, in this field. What form did this pressing take?

Mr. HUSTON. As I indicated earlier, I told you each instance in which I had a communication with the IRS, and that was primarily in June-July, 1969, and thereafter I have no recollection, nor does anyone at the IRS have any recollection, of any subsequent contact until August of 1970.

Senator HUDDLESTON. What did you mean then to Mr. Haldeman? You said you had been pressing for—

Mr. HUSTON. Well, I had, in fact, on occasions when the initial request that something be done has come down. The Counsel to the President and I had met with the Commissioner, and I had subsequently sent two memoranda to the Commissioner regarding 501(c)(3) organizations, and, as a result of that, we had never gotten—the thing that happened was we had asked a very narrow question relating to the enforcement of the tax laws with respect to tax-exempt organizations. We never got any answer on that. What we got instead was the creation of this Special Service Staff that was out rooting around in a thousand different organizations, and never once did we get any response back specifically, except on the inquiry I raised about why the Sierra Club exemption had been revoked. Never did we get any specific response to the original message that Dr. Burns had conveyed to the Commissioner.

Senator HUDDLESTON. But your memo to Mr. Haldeman [exhibit 62¹], certainly suggests something more than a narrow interest in tax exemption because it points out again, in the sentence that Mr. Smothers read, that “Moreover valuable intelligence-type information could be turned up by IRS as a result of their field audits.” This suggests to me that you are looking beyond the question of whether or not some tax law might be violated.

Mr. HUSTON. A year later my interest in the question of financing these groups had arisen in the context of this report. That was my view, which I conveyed to Mr. Haldeman. However, I never expressed that view to anyone in the IRS. Mr. Haldeman never indicated to me whether he agreed or disagreed with that view. As far as I know and as far as the record shows from the IRS, no one from the White House ever conveyed that view to them.

Senator HUDDLESTON. How did you expect to get a report from the IRS in this area if you had not expressed a view to them that this is what you were looking for?

Mr. HUSTON. The request for a report went to the earlier area of concern which was after the committee had been set up. They sent me the

¹ See p. 395.

minutes of the first two meetings. After a year I sent a memo asking for a progress report of what had happened in the IRS from July 1969 to August of 1970.

Senator HUDDLESTON. Are you suggesting to this committee that at the time of the plan neither you nor anyone else in your group had an interest in intelligence-gathering operations that might be conducted through the IRS?

Mr. HUSTON. Senator, if we had attached any importance to the use of the IRS as an intelligence-collecting agency, we would have included them in the committee that met to discuss this problem. The Bureau was under standing instructions from the President, just as it had been from President Johnson, to provide the White House with information with regard to the sources of financing of many of these activities. Now, where the Bureau got that information, I do not know, but I do know that there was information that came from the Bureau regarding that.

Senator HUDDLESTON. Let me go back then to two statements that you have made today which seem to me somewhat contradictory.

First, you said it was not necessary in your mind to consult with the Attorney General about this proposed plan because you conceived it to be directed chiefly at intelligence gathering, rather than law enforcement. Later this morning you said that you were not concerned about what people thought about who was for or against the war, if I might paraphrase, you were not concerned about who the next President was going to be, or who the candidates were going to be, but you were concerned about bombings and the killing of policemen.

Now, these are law enforcement problems, it seems to me. Now, do you find a basic conflict there in what the objectives were of this?

Mr. HUSTON. Well, there may be a conflict, but it does not seem to be a conflict to me, and it goes to the entire difference of approach to this problem, and that my concern was stopping things before they happened and not having some sort of derivative satisfaction of having the perpetrator in jail, and to me the purpose of intelligence was to collect the information in advance that would allow you to forestall the creation of overt acts, as, for example, the Bureau had been successful in doing in Detroit, where sniping incidents had been planned and was done.

Senator HUDDLESTON. That is intelligence. That is what you were talking about with the IRS, the kind of intelligence they could gather, was it not?

Mr. HUSTON. You mean that was the kind of thing I was talking about by memo to Mr. Haldeman? Yes; that was the kind of thing I was talking about to Mr. Haldeman by memo.

Senator HUDDLESTON. Once the IRS had this capability and had it in place and being used, could they also not use that same intelligence-gathering capability against any citizen that they might want to audit for any purpose?

Mr. HUSTON. Well, yes; I think so, but I think you are leaping one step over from what I indicated to Haldeman in terms of my view that the strike force concept against organized crime was a model for a strike force concept against terrorist activities. You are leaping from that point which ran into a dead end, to some conclusion that Mr.

Smothers tried to make, and perhaps you, that that was translated into some directive to the IRS, and it was not.

Senator HUDDLESTON. It would be very simple, would it not, to make even a logical extension of this IRS capability, to extend it to any other group or any other person that the White House might want some special intelligence information about?

Mr. HUSTON. Well, as I indicated, I do not think the White House, in my knowledge, ever asked for any intelligence raw tax data from the IRS. Any such data would have gone to the Bureau.

Senator HUDDLESTON. Do you know of any case where the White House has ever directed the Internal Revenue Office to conduct any specific audit?

Mr. HUSTON. No.

The CHAIRMAN. Senator Goldwater?

Senator GOLDWATER. Thank you, Mr. Chairman.

I want to speak first about the IRS, and I am very happy that the chairman has mentioned this subject. Somebody on this committee has likened the CIA to a bull elephant running rampant. I liken the IRS to a rattlesnake sliding along in the grass, probably the greatest threat to American freedom and Americans of anything we have. And yet, this morning is the first public indication I have heard that the IRS is going to be investigated, and I think it is time.

I notice a report, or a letter, written by you on September 21 [exhibit 62¹] in which you said, "Nearly 18 months ago the President indicated a desire for IRS to move against leftist organizations taking advantage of tax shelters. I have been pressing IRS since that time to no avail."

In other words, the IRS will protect any organization in this country they feel like protecting. I think it is high time that this committee, or some other committee, expose just what we are up against in this country because the power to tax is the power to destroy.

Mr. Huston, have you ever been a member of the CIA?

Mr. HUSTON. No, sir.

Senator GOLDWATER. FBI?

Mr. HUSTON. No, sir.

Senator GOLDWATER. DIA?

Mr. HUSTON. Yes. I was assigned to the DIA when I was an Army intelligence officer.

Senator GOLDWATER. Were you hired by the White House as a speechwriter at one time?

Mr. HUSTON. Yes, sir.

Senator GOLDWATER. And it was from that that you went into the preparation of the so-called Huston plan?

Mr. HUSTON. Yes, sir.

Senator GOLDWATER. Was the Huston plan ever used?

Mr. HUSTON. No.

Senator GOLDWATER. Never put into effect?

Mr. HUSTON. No.

Senator GOLDWATER. What do you think about the Huston plan as you sit here today?

Mr. HUSTON. Well, Senator, I think that the—I still believe that there is a threat that may be characterized and defined as an internal security threat. I think there are people that want to destroy this

¹ See p. 395.

country; I think there are people who are willing to go to great lengths to do it. I think the two attempts upon the life of the President are symptomatic of that. And so I think there is a necessary place in our society for an effective domestic intelligence-collection effort. And more importantly than collection, for professional analysis of that information.

I think that it is perhaps easy to justify the emphasis that we attached in 1970, but I think it is just as easy to discount it. We were sitting in the White House getting reports day in and day out of what was happening in this country in terms of the violence, the numbers of bombings, the assassination attempts, the sniping incidents—40,000 bombings, for example, in the month of May in a 2-week period were averaging six arsons a day against ROTC facilities.

What happened then, I think is—at least from my perspective—is that we convinced ourselves that this was something that was going to just continue to get worse until we reached the point where all of the people who were predicting police-state repression were going to get what they—it was going to become a self-fulfilling prophecy, because that was the only way it was going to be handled. As for example, I suspect it had been true in the Chicago Black Panther raid, and in the Los Angeles Black Panther shootout. So my view was that we had to do something to stop it.

Mr. White would say that this authorized the extension into every person's mailbox. Theoretically, that may be true, although I do not think that the terms that we used in terms of highly selected targets or top priority targets were a bit looser than the terms that Attorney General Clark used when he got authorization from President Roosevelt, and when President Truman authorized electronic surveillance.

But the fact of the matter is that we were motivated, unjustly perhaps, unreasonably or unconscionably, by a legitimate concern which related to the lives and property of people that were subject to random acts of violence. My view was, I had confidence in the professional intelligence community. These were the professionals, these were the people who had been authorized to solve these problems.

What I did not realize then was that these kinds of programs, although theoretically and conceptually could be narrowly used in the best interests of the country by responsible people, can lead to the type of thing that happened with the Plumbers and with the Watergate. Now everyone tries to link the Huston plan as a precursor of the Plumbers and the Watergate, and in my mind it is totally untrue.

But it is obvious to me that this kind of thing lends itself too easily to the type of corruption that we have seen, and, therefore, I have come to the conclusion that whereas I would traditionally have taken the position that I am willing to run some small risk of infringing upon some small portion of the public's otherwise legitimate rights for the greater good security of all of the people, I now come to the conclusion that we have no practical alternative but to take a far greater risk that there are going to be these kinds of things that we cannot deal effectively against until such time as perhaps our recourse is simply to the ongoing criminal process.

But I do not want to leave the impression that I think there is no problem because I think that we need to deal with this thing in such a way as to maximize the respect for the rights of the citizens; at the

same time, not destroying the capability of the people acting through their Government to protect themselves against those who would destroy this country.

Senator GOLDWATER. I thank you, Mr. Huston, for that statement. I agree with that statement 100 percent, and I have no other questions, so I will just comment that as long as we have Daniel Ellsbergs, some newspapers, journalists, media people, and organizations intent on changing the basic philosophy of this country, by the same kind of subversion that you are now being at least charged with part way, I think we have to be forever on our toes. I think you have expressed your purpose well.

Every time I pick up a morning paper or an evening paper, and I see the disclosure of secrets that I thought were locked up in my brain, or my heart, or my safe, I get worried about my country. And I hope that this committee, through the continued diligence of its chairman and staff members, will disclose everything wrong with this country.

The CHAIRMAN. Thank you, Senator Goldwater.

Senator Hart?

Senator HARR of Colorado. Mr. Huston, you expressed unhappiness that the plan that we are discussing here today has come to be known as the Huston plan. I suppose there is a degree of logic in that dismay on your part. If you had your choice, what do you think this plan should be called, with the benefit of hindsight?

Mr. HUSTON. I think it ought to be called simply what it was: the Report of the Interagency Committee on intelligence. But let me say that after 2 years of having that tagged on me by the enterprising members of the press, I have learned to live with it.

Senator HARR of Colorado. You have indicated that after the fact, you found out that many of the agencies that were on that interagency task force were already using the tools that they were sitting there discussing obtaining White House approval. Why do you think they were going through this charade?

Mr. HUSTON. I wish I knew. I do not know. I think that part of the problem was that if the other agencies knew they were doing it there would have been all sorts of problems, because, for example, the FBI greatly resented President Johnson ordering the military intelligence into the domestic collection area in 1967 because that was their charter. But the President directly ordered it, and they had to live with it, although they certainly were anxious and happy that the Ervin committee hearings blew that out of the water and got those people out of the business.

I think, for example, the FBI—Mr. Hoover would have had an absolute stroke if he had known that the CIA had an Operation CHAOS going on. So I think the last thing in the world the CIA would have done was to disclose to the Bureau that they were working on their turf. So I think interagency jealousies and rivalries had part to do with it.

I think the second thing is that if you have got a program going and you are perfectly happy with its results, why take the risks that it might be turned off if the President of the United States decides he does not want to do it; because they had no way of knowing in advance what decision the President might make. So, why should the CIA—

that the President may say, "hell no, I don't want you guys opening any mail." Then if they had admitted it, they would have had to close the thing down.

The COINTEL Program—apparently even the Justice Department did not know about that. If they had told me, it was obvious that the word would have been out. So it seems to me that many of these agencies just kind of operated in their own world, and had their own programs going. They did not want anyone else to know it. And the thing that intrigues me is that I always was under the illusion that the purpose of intelligence was to provide policymakers with information upon which to make policies. But if the policymaker does not even know that there are sources of information available, I do not know what in the world good it does anybody except the people who are operating it for their own gratification.

Senator HARR of Colorado. You were complaining that there were no available results. Can you account for the fact that they were using the tools that they, at the same time, were seeking to obtain, and weren't achieving better results?

Mr. HUSTON. I think that is what would have been the key show-down in my mind, because my idea was that what these people were saying, "if we had the tools we could get the job done." Well, if they already had the tools and they weren't getting the job done, then you have to look at some other reason why we weren't getting information that we wanted.

Senator HARR of Colorado. What do you think that reason is?

Mr. HUSTON. Well, I think there needs to be some shakeups myself, and some changes made in the intelligence community. You know, each of these agencies has great strengths. I think the FBI is the greatest law enforcement agency in the world. I think the CIA is perhaps the best foreign intelligence-collection agency in the world. But they have weaknesses.

The FBI, for example, does not have any effective analytical capability. I mean, they are very good at collecting raw intelligence data, but what needs to be done to make it useful to a policymaker is to put that data into context and to analyze it. Now this is a strength that the CIA is very good at in many respects.

So I think that—plus, the intelligence community is always on the short end of personnel and budget. The FBI's Intelligence Division is always the last in line for new people, always the last in line for money. There are shortages of people and personnel, and I am, for example, convinced that there are vastly inadequate resources available in the Bureau to deal with the espionage threat in this country, simply because they do not have the manpower for it.

So I am hopeful that that is what this committee is going to do, in addition to merely exposing things that went on that should not have gone on. I am hopeful that this committee is going to come up and propose some specific changes, if you operate on the assumption that there is a need for some sort of intelligence-collection capability, both domestically and in foreign areas.

Senator HARR of Colorado. I am not sure the record accurately reflects why J. Edgar Hoover objected to this report. We have touched on that several times this morning. In your judgment, was he afraid of encroachment by the other agencies, or did he genuinely feel that some of these activities were illegal?

Mr. HUSTON. Well, I think that Mr. Hoover, since he cannot defend himself, ought to be entitled to the benefit of the doubt, and his stated objection was that he did not feel that these things were permissible, although, as the record will clearly indicate, at one time or another, for a substantial period of time, he had authorized each of those things. But I assume, giving him the benefit of the doubt, he had a change of heart and that was the basis on which he objected.

I think, however, that the record will also show that he was very much concerned about any attempt of any other agency to be involved in programs of which he was ultimately responsible.

Senator HART of Colorado. Would you tell the committee what President Nixon's and Mr. Haldeman's views were on the use of the military in domestic intelligence and internal security matters?

Mr. HUSTON. The President never expressed any opinion to me on that subject, but it is my recollection that Mr. Haldeman had indicated to me that the President felt that perhaps the problem was one of manpower, and that we could use the military intelligence services for that purpose. I did not say anything to Haldeman about that, but it struck me as being a silly thing to say because at that very time we had approved, at the White House, the request from the Secretary of the Army to dismantle the CONUS intelligence operation, and Senator Ervin was getting ready to start his hearings. The FBI had never wanted to have the military involved.

Senator HART of Colorado. Did Mr. Sullivan say that?

Mr. HUSTON. Yes; he told me that.

Senator HART of Colorado. Did he say this in the interagency group?

Mr. HUSTON. I don't recall what he said. I certainly recall Colonel Downey and the other military people saying that they simply did not want anything. And I said, look, I can understand that, but let us put down—you know, this is something that the President wants to consider, we've got to give him an option, so let us put it down. But if you read those options—I mean, there are absolutely no even remotely convincing arguments in the paper for using the military. So it was quite obvious that the committee did not want to do that, and I recommended that we not use the military.

Senator HART of Colorado. What did the military people say in the committee?

Mr. HUSTON. They said they simply did not want to be involved; that they had limited manpower, that they had problems with Congress as a result of this, that they had their own problems—service-related problems—to deal with and that they did not think it was appropriate for the military to be involved in the collection of intelligence relating to civilians.

Senator HART of Colorado. In your judgment, did the other members of that interagency group share what you profess to be your concern about bombings and snipings? Or were they more interested in lifting some of the restraints so that they could perhaps use some other devices? Were they using the bombings and the snipings as a device to broaden their capabilities?

Mr. HUSTON. Well, it certainly was my impression, and Mr. Sullivan, in many talks that we had, certainly indicated to me that he was as concerned about this problem as I was. The other agencies really

didn't discuss it. And of course, the intelligence community's concern was a lot broader than my concern.

They were talking about a lot of groups that I had never heard of before, and didn't interest me at all. But I think their concern was as great as ours because in 1970—up to that May of 1970, you would have been hard pressed not to be concerned. I do not think there is any problem about who was concerned. Everybody was concerned. The only question was what the results of that concern would be.

Senator HART of Colorado. Mr. Helms has indicated that the structuring of Operation CHAOS was in response to a Presidential request. I think you have indicated the President didn't know anything about Operation CHAOS. Do you know which of those statements is accurate?

Mr. HUSTON. Again, all I know about Operation CHAOS is what I've read in the Rockefeller Report, and it was my recollection that the Rockefeller Report indicated that operation was set up either in 1967 or 1968. And I have no way of knowing for sure if the President knew about it. But I cannot think that he knew about it. And he certainly didn't know about it through me or through that report.

Senator HART of Colorado. Finally, Mr. Huston, there was a famous statement made by a military officer during the Vietnam conflict to the effect that a village had to be destroyed in order to save it. Has it ever occurred to you that that same danger exists with regard to freedoms and democracy in this country?

Mr. HUSTON. That freedom has to be destroyed to save it? No, that certainly never occurred to me.

Senator HART of Colorado. Do you think that possibility ever existed in recent years?

Mr. HUSTON. No; I don't.

The CHAIRMAN. I might say it will be necessary for the committee to examine the Nixon papers as they relate to the so-called Huston plan. The committee has subpoenaed those papers, and an arrangement has been worked out which is intended to yield those papers to the committee.

When we examine those papers, they may or may not tell us how much the President may have known at any given time. But I am told by Counsel that the papers have been turned over to the White House by Mr. Herbert Miller, Nixon's attorney.

Our understanding is that they are to come to us. Maybe it is just a stopover at the White House. I do not know. But we are going to try to determine that, and we hope to have, and expect to have, those papers very soon.

I think, Senator Mathias, you are next.

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Huston, when you received this assignment and when you evaluated it in the serious way that you described to the committee very eloquently, did it ever occur to you to consult with Senator Eastland, the chairman, or Senator Hruska, for example, the ranking minority member of the Judiciary Committee, on such a serious threat to the Nation?

Mr. HUSTON. Senator, because of my position on the White House staff, I would not have been in a position to do that.

Senator MATHIAS. Did you ever recommend it to anybody else?

Mr. HUSTON. At one point, I had recommended that consultation be undertaken with the ranking members of the Judiciary Committee of the House, of the Internal Security Subcommittee of the Judiciary Committee, and the Internal Security Committee of the House. However, nothing ever came of that.

Senator MATHIAS. The concept of coordination with the Congress, which I conceive to be the constitutional plan for dealing with serious national problems, that never emerged in your consultations, other than that once?

Mr. HUSTON. No, sir.

Senator MATHIAS. Mr. Chairman, I am driven by that response to a retrospective comment. Senator Goldwater and I and several other Members of the Senate went down to the White House one day, to have what we called in those days a "candor meeting" with President Nixon, and at that time, I suggested that the problems that we now generally call Watergate would not be resolved unless the President was willing to discuss questions like the Huston plan.

And he said that night, "You will get the answer. You will get the full disclosure." And I have to think what a tragedy it is that we did not try to work these problems out in a coordinated way, rather than come through all of the tragedy that we have been through since that night, to learn about the Huston plan in this setting and in this way today.

I must say that I am perhaps more concerned since Mr. Huston's testimony this morning than I was before, because of what he has told us about the origins of the plan, and the way in which it was formulated and adopted. Senior officials of the Government advocated it, and as he describes it, formulated it. He himself, as the task force director, advocated it, and the President of the United States approved it.

Now, through all of these steps—and I would gather from your testimony that there were a number of steps, and a number of meetings and consultations—was the word Constitution ever used by anybody?

Mr. HUSTON. Senator, I do not recall the details of any conversation, except within the context that I had earlier described of this inherent Executive power, a belief that I think permeated the entire intelligence community in these areas.

Senator MATHIAS. Although, of course, Mr. Hoover, for example, in referring to implementing mail coverage, did raise the question of illegality.

Mr. HUSTON. Yes, he did.

Senator MATHIAS. He did use the word illegal.

Mr. HUSTON. Yes; yes, he did.

Senator MATHIAS. I think the problem before this committee is a very real one. And I hope that as we make recommendations to the Congress on how to deal with the problems that have been presented to us, we would have in mind the role of Government in the lives of the people.

The role of Government, it seems to me, is not just the use of force. It is the use of example, and I call to mind Justice Brandeis' opinion, *Olmstead v. The United States*, in which he said that,

Decency, security, and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a

Government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher, for good or for ill. It teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law. It invites every man to become a law unto himself. It invites anarchy.

To declare that in the administration of the criminal law, the end justifies the means, to declare that the Government may commit crimes in order to secure the conviction of a private citizen, would bring terrible retribution. Against that pernicious doctrine, this Court should resolutely set its face.

It seems to me, Mr. Chairman, that that is a philosophy that should guide our Government in dealing with even the most serious problems. Now, that opinion was written about 1928.

Mr. HUSTON, you said you thought there had been a change in attitude, perhaps more consciousness of, the rights of privacy today than 25 or 30 years ago. That opinion would not, I think, support that view. But let me ask you this question. Is it not true that it is not so much a change in attitude, but the development of techniques that has made us very conscious of our dependence on the fourth amendment, that years ago—in fact, when the fourth amendment itself was written, the only ways to survey the citizen was through a window, or at his keyhole, or listening down his chimney? Today, you have taps, and bugs, and telescopic lenses on cameras. You have all kinds of sensing devices beyond the imagination of the citizens a generation ago.

Do you not feel that the protection of the fourth amendment should be more resolutely adhered to today than ever before, because of that very fact?

Mr. HUSTON. Yes. I think that there are numbers of threats today that weren't perceived. I think that a large number of those threats are not in the intelligence community, or even in the enforcement areas of the Government.

Senator MATHIAS. Which places, as Justice Brandeis suggested, an even greater burden on Government to lead.

Mr. HUSTON. On Government in all respects, Senator, from the use of the social security numbers as a national identifier, on down to credit reports, and that sort of thing. And I think that—let me say, for example, that I have absolutely no disagreement whatsoever with the opinion of the court in the U.S. district court case which struck down warrantless wiretaps. I agree with the conclusion of the court entirely in that case, and I have no hesitation in my mind of feeling that the Government has to run—that free people have to run certain risks that are inherent in a society where there are people who aren't going to play by the same rules.

And when I talked about attitude, Senator, I am not trying to justify anything. I am simply trying to explain my impression of what the attitude was that I was exposed to by those people who were my seniors.

Senator MATHIAS. I understand that, and I think you have done this committee a great service in the way you presented it this morning. We are going to need the benefit of all the advice we can get in making our recommendations.

Earlier this morning, you said that you thought that domestic intelligence should be removed from the FBI, and you did not follow that up. I wonder if you would like to amplify that statement?

Mr. HUSTON. Well, I think that the biggest problem this committee has to grapple with, if I may presume to suggest to the committee, is

the problem that on the one hand, you run the risk that the tools of the intelligence community, the law enforcement community, the taxing authority to the extent that it is immediately accountable and subject to the direction of the President or the White House, is subject to political abuse. So that it is important, in my mind, to have these authorities independent enough that they have the strength to withstand or resist use of the agencies for partisan or political purposes, which I think most of the agencies, most of the time have been successful at, but not all of the time. And I'm sure you are aware of many instances going back way beyond the Nixon administration, and in many respects, in my judgment, much more so in prior administrations where agencies were used for political purposes. And that is a real risk and a great threat that needs to be dealt with.

On the other hand, to the extent that these agencies are so independent that they feel immunity, that they do not even have to tell the President of the United States what they are doing, that they do not feel any accountability to him whatsoever, that they are not directly accountable to the Congress, they are not directly accountable to the Executive, and accordingly, they are accountable to no one. And, of all the power that is dangerous, unaccountable power is the most dangerous in my judgment, so that the dilemma it seems to me that the Nation faces today is how do you establish these things that are necessary to protect liberties with enough independence and integrity to resist any perversions by the politicians, and yet make them sufficiently accountable to those people who are elected, and responsible to the American people that they can be on target with the objectives that have been established by an elected Government. And I think that is the crux of the dilemma that is faced by those who want to deal honestly with the intelligence community today.

Senator MATHIAS. This really brings us back to Senator Mondale's question: how can a President feel that the law is being obeyed, and that Presidential policy is being adhered to? Does that not bring us in full circle back to the Constitution, and to the assurance, to the extent that we can be sure of any human undertaking, that the Constitution is understood, that loyalty to the Constitution is being given by every public service?

Mr. HUSTON. Yes; I think it comes back to an assumption by all officers of what an agreement among all people in Government, as to exactly what are the limits and responsibilities and obligations imposed by the Constitution. But I think that the problem we have had—and it is not just in this area, Senator. I think it is in many areas that over the past 30 years, you have had an accretion of little steps to increase the claim of Executive power, and that pretty soon, after a 30-year period, all of a sudden, you woke up one morning, and here was this creature that had been created that no one along the line had ever really contemplated.

Each of these steps, I think, initially were innocent and honest steps. I think most of these—it is my belief that these people in the intelligence community were honest people, dedicated people, wanting to do an honest job, for what they thought was best for the country. And I do not think that they were out to destroy the liberties of the American people for any perverse political purpose.

But what happened, in my judgment, in this area, where I got sucked in, when I should have known better, and where many other more intelligent, sophisticated people got sucked in in other areas, is the whole concept of some inherent Executive power that really extends beyond anything contemplated by those who made the incremental claims, as we went through the years. And I think that position has been reached, and now there are some hard looks at this, and some knocks, and perhaps we're even swinging, in my judgment, a little bit too much the other way. But I think that is healthy, and I think we are on the right track.

Senator MATHIAS. But you agree if it had not come to a screeching halt, there would have been a national—

Mr. HUSTON. I think that—what I know, and as you know, Senator, I left the White House in June 1971. But based on what I know, from what happened subsequently, and other things that had happened in prior administrations, there is no doubt in my mind that it was necessary that this thing come to a screeching halt, and some heads be knocked down, and some people have their names attached to things that they would rather not be attached to, and that honest men look at some tough questions in the search for honest answers. And I hope that is where we are headed today, not trying to put the blame on who was the worst guy in the lot, but what in the world got you guys into this thing, what was your thinking, how can you avoid it? And here are some honest solutions.

Senator MATHIAS. And where do we go from here?

Mr. HUSTON. Well, it looks to me like you are on the right track, and my only hope is that this committee and the committee on the other side will start on the assumption that here exists a need, an honest need, for intelligence-collection capability, and the analysis capability and the question is, how do we structure it, how do we keep it under control, how do we make its exercise of its powers compatible with the constitutionally protected rights.

In a final analysis, it is my view, Senator, whether you are a judge who sits on the court, whether you are a Senator who has to cast a vote, whether you are the Director of the FBI, when you have power, in the final analysis, you have discretion, and that discretion and how you use it is a matter of the extent of your integrity, so the bottom line, in many respects, is going to be integrity. But where I think I made my mistake, the biggest mistake I made was, I assumed that the integrity of the people who would be involved in this intelligence-collection operation was such that, although conceptually you could argue that these recommendations were so broad that they could have encompassed—you know, we could have been breaking into 250 million homes in 1970—my judgment was that those types of extraordinary powers would be used only under the narrowest, most limited circumstances, and for that check, I rely upon the integrity of the person who has the authority.

What I have learned subsequently is what happens when the person who has that discretion is not Dick Helms, but he is Howard Hunt, and that seems to me to be the risk. So there has to be some institutional restraint, in my judgment.

Senator MATHIAS. Thank you very much, Mr. Huston. You have been very helpful.

The CHAIRMAN. The Constitution, when it was written, I think, recognized this frailty in people who were to be entrusted with power, and for that very reason, laid down certain prohibitions, certain restrictions upon the power of Government. As you know, the first amendment simply denies to the Government the power to interfere with free speech and freedom of religion, freedom of assembly, and the fourth amendment undertakes to deny to the Government the power to conduct unreasonable searches and seizures.

The men who wrote the Constitution did not want to entrust our civil liberties to the good judgment and discretion of men in government who may overreach themselves, and that is why these protections were written into the supreme law of the land.

Now, I go back to Senator Mathias' question. He asked you that when the intelligence leaders were dealing with you to eliminate these restrictions, all of which culminated in your recommendation to the President that certain illegal actions be taken, he asked you whether anybody expressed any concern about the Constitution. And it just happens, Senator Mathias, that our counsel, Mr. Schwarz, asked that question previously in executive session, the same question that you put to the witness. Mr. Schwarz asked, "Was there any person who stated that the activity recommended, which you have previously identified as being illegal opening of the mail and breaking and entry or burglary—was there any single person who stated that such activity should not be done because it was unconstitutional?" And you, Mr. Huston replied, "No." And then Mr. Schwarz asked, "Was there any single person who said such activity should not be done because it was illegal?" And you replied, "No." Now, I take it that still remains your testimony?

Mr. HUSTON. Yes. But Senator, I might point out that on the constitutional question, that—you know, at the time of the *Olmstead* case, in 1927, it is my recollection that the Supreme Court at that time held that, in that period, held that wiretaps—I think they adopted the exclusionary rule, that didn't apply to the States. And it wasn't until 19—I think it was in the Warren Court, in 1960—that the Supreme Court finally held that a nontrespass electronic surveillance constituted a violation of the fourth amendment.

It was not until 1972 that the Supreme Court held that warrantless wiretaps—my only point is that in many of these areas throughout there have been men of honest differences of opinion who felt that the Constitution—I'm sure, for example, that Justice Black would have said from day one that the Constitution clearly prohibited this, but there were other men of equal intent who said that the Constitution did not contemplate the prohibition of that.

The CHAIRMAN. As far as bugging is concerned, there has been an evolution in the courts, and this has been a gray area in the law, but I do not think that, as far as opening the mail was concerned, there was any such gray area, and you yourself referred to your recommendation as an illegal act. So, we are talking about the whole plan, and in the course of its evolution, none of these people, even the directors of these agencies, with such great power, ever raised the question of the constitutionality of what was being proposed.

Mr. HUSTON. That's right.

The CHAIRMAN. That is correct?

Mr. HUSTON. Yes, sir.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Huston, one of the areas I am interested in is whether or not the Huston plan ever died. First you have its proposal, acceptance, and then its withdrawal. But 2 months later—in fact, less than 2 months later—John Dean wrote about the Interagency Domestic Intelligence Unit and said it would be established with operational and evaluational purposes in mind, and that it would help to determine what the restraints were that could be removed.

Then, in April of 1971, following after that, there was another meeting with Mr. Hoover, Mr. Helms, Admiral Gayler, discussing a broadening of the operations to remove restraints, and particularly of the very confidential type. So the idea keeps emerging, almost like a phoenix out of the ashes; and then 3 months after that, the Plumbers was established. Do you really feel that the concept, the ideas, the proposals really died at that point?

Mr. HUSTON. Well, I can only speak, Senator, of my own knowledge. I was not involved in the creation or operation of the Interagency Evaluation Committee. I left the White House before the Plumbers were organized, so I do not have any personal knowledge of what happened after that.

My knowledge is simply that I was told by Mr. Haldeman that the ening of the operations to remove restraints and particularly of the FBI, had decided to withdraw his approval, that I was to get the memorandum back, and that the matter then might be reconsidered, if the President could meet with the Attorney General and Mr. Hoover. I assumed that such a meeting would be held. As far as I know, however, no such meeting was held.

Now, it is entirely possible that—and perhaps, based upon Mr. Dean's memorandum, it seems to me likely—that as a result of the decision of the President to terminate his authorization that he had given in connection with the report of the Interagency Committee, that they decided to go forward on a narrower basis, and, therefore, established the IEC. However, the IEC concept was substantially different from that concept which was set forth in the report of the Interagency Committee, in that we contemplated that the continuing group would be comparable to the U.S. Intelligence Board, that it would operate within the FBI, that the Director of the FBI would be chairman. It would be staffed by FBI people.

And, as I understand, the IEC was set up within the Justice Department, under the direction or the chairmanship of the Assistant Attorney General, that it had Justice Department staffing, and that the Bureau, for all intents and purposes, did not cooperate with it. But that is all I know personally.

Senator SCHWEIKER. Well, as I understand it, it is true they did not supply a staff which was taken over by Justice Department, but they did attend meetings and they were part of the formal group. So while there was a balking up along the way, somebody was pushing, pushing, pushing with a concept, and even, eventually, the FBI attended that group meeting, while it did not supply staff.

So I think you can make a pretty good case out of the fact that an awful lot of concepts survived intact, when you also consider

that—and you admitted this under earlier testimony—that Operation CHAOS was in full blast in the CIA. There were other activities that even the President did not know about previously that were still going on, that some of the agencies did not want to talk about, and did not want to admit to their peers and colleagues that they were doing. So I think when you see the total picture, it is not quite as definitive as just the ending of a chapter, the closing of a door.

Mr. Huston, you said in your previous testimony that you spoke about a classification program, and you said on page 96 of your May 23 deposition, that :

The whole concept of intelligence operations was obviously a very sensitive matter. If it wouldn't have been classified in the way that it was in the agency and hadn't been recognized as such, if this wasn't possible, then we couldn't have had such a plan.

Isn't really one of the hearts of this issue Government classification of information? Many of us did not even know about these matters until much later than it happened, because it was highly classified.

Is classification not really a way that the executive branch not only keeps things from the legislative branch but keeps it from the people, because by your own testimony I think you are obviously saying that if it had gotten out, it probably would have self-destructed? So isn't Government secrecy and classification "top secret" really the means and the vehicle that the Executive accumulates this great power that people do not want them to have?

Mr. HUSTON. I do not think, in my mind, there was ever any justification for the existence of the committee, or, had the Interagency Domestic Operations Board been established, there would have been any justification for having the mere existence of those operations classified. Nor do I think that, in many respects, much of what was discussed or contemplated should have been classified.

The only thing, in my mind, that should be classified would be that which would reveal, would disclose the identity of sources or otherwise jeopardize the collection of intelligence information.

Senator SCHWEIKER. I think an interesting footnote to what you are saying is that many of the documents here today were just declassified yesterday. Here we have had the Huston plan kicking around for a long period of time; it has been fairly general press knowledge. And yet we would have been restrained from asking certain questions if we had not gotten certain documents declassified by yesterday. If it had not come through, we might not have been able to have the hearing. And I think this is a pretty good picture of the technique that a Government branch or agency uses to put these things into motion. This would not ever get off the ground if it were open to the light of day.

We have had a lot of discussion about the fourth amendment, Mr. Huston, because I realize, that that is the heart of the issue. I have a little trouble, though, when I hear your answer. I know what you told me earlier, that you were concerned about revolutionary violence and that you were concerned about the disturbances rocking the country, and that this was the lesser of two evils, and that the Constitution gave the President an inherent security power of some kind.

But in reading the fourth amendment, it is pretty clear what it says:

The right of the people to be secure in their persons, houses, and papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

I do not know that you really need the Supreme Court to say what that means.

What one part of the Constitution gives the executive branch the rights that you saw for internal security protection? What part of the Constitution can you quote?

Mr. HUSTON. Well, Senator, first of all, I do not take the position—and I am not about to take the position here that Mr. Wilson took before the Ervin committee, because that is not my belief. I am simply trying to convey to you what the impression, unreasoned that it was, that existed in June of 1970.

In my judgment, any thoughtful consideration given to the risks versus the benefits, the literal reading of the Constitution and the general concept under which we have to operate in this country support your position. I would say, though, that the justification that would have been cited under the fourth amendment would be the question of whether the search was unreasonable.

Senator SCHWEIKER. Are you saying that there is or is not constitutional power to back up the ultimate right to effect the use of—

Mr. HUSTON. In my judgment, now, there is not.

Senator SCHWEIKER. As I recall from the nice chat that we had when I took your deposition before, Mr. Huston, I thought you felt at the time—

Mr. HUSTON. I did, at the time. Yes, I did.

Senator SCHWEIKER. Because I think it is really the heart of the issue, where that power falls and rests. And I think it is significant, as one of the other Senators pointed out, that they asked you to sign that memo. It seems to me that the White House knew they were walking all over the fourth amendment. And it seems to me this is just one more thing that we have learned to call plausible denial, whereby if something happens, why, they can really deny it happened, except that some bureaucratic person gets the blame.

And it just seems to me that the fact it became the Huston plan is a pretty good indication that it was not somebody else's plan, that they really knew they were walking over the fourth amendment, but thought they could get away with it. Would you agree with that or not?

Mr. HUSTON. No, Senator. My guess would be that they never gave any thought to it.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Huston, when you were testifying in executive session before this public hearing, you were asked about your present view. And I think there are two portions of the deposition that ought to be read into the record, on which I would like any further comment you may want to make.

You were asked what the risk was of setting aside the laws, even

though the purpose seems a very compelling one as you reflect back upon it. And this is what you said:

The risk was that you would get people who would be susceptible to political considerations as opposed to national security considerations, or would construe political considerations to be national security considerations, to move from the kid with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate. And you just keep going down the line.

Is that not really about as good a statement—certainly, it is one of the best I have ever seen—of the risks that we assume once we begin to disregard the laws?

Mr. HUSTON. Yes, I think it is a risk. I think people start out with the best intentions in the world. I don't think there was anyone that was involved in this operation who was motivated by a desire to protect the President, to secure his reelection, to embarrass the Democrats, to engage in any partisan political purpose. There was no one who was going to get any medal put on him that said "hero," or who was going to be invited as a special guest to the White House Press Club.

But we went from this kind of sincere intention, honest intention, to develop a series of justifications and rationalizations based upon this, what I believe to be the basic issue of this distorted view of inherent executive power, and from that, whether it was direct, as Senator Schweiker seems to think it is, or was indirect or inevitable, as I tend to think it is, you went down the road to where you ended up, with these people going into the Watergate.

And so that has convinced me that you have just got to draw the line at the top of the totem pole, and that we would then have to take the risk—it is not a risk-free choice, but it is one that, I am afraid, in my judgment, that we do not have any alternative but to take.

The CHAIRMAN. Has that not really been a lesson that has been learned by the historians and the scholars through the years who have been interested in the growth and preservation of a free society, that in the end our reliance must be upon the law?

Mr. HUSTON. I think that is. But I think to me the interesting thing is that many of us who should have known better adopted a view of the Presidency that was comparable to the pre-Vietnam views of Dr. Schlesinger and others, and then proceeded to exaggerate and accelerate it.

As I say, I think so much of it was incremental, but we have got, as you say, correctly, I think, to get back to the elemental considerations. And, as I say, in your consideration I hope you will focus on this really dangerous question of power without any accountability whatsoever, at least with respect to the Presidency, that it ultimately was an accountability to the people through the Congress. But it could be entirely conceivable that the rest of these things would have been going on forever, and no one, including the President, no one would have known about it.

The CHAIRMAN. Of course, accountability is at the heart of this issue. And the thing that has not been known until today about the Huston plan is that it was just a 5-day episode where the President was asked to confer his authority to do these various things. He asked

for options. He authorized these things. Five days later, upon reconsideration, he revoked it. And the fact of the matter is these things had been going on long before he was asked, and they continued long after he revoked his authority.

We have found this to be the endemic problem in the intelligence service and in the law enforcement service of the Government. And you have characterized it, you have said, "These agencies are fiefdoms." It is not only that they do not want the President to know what is going on for fear he might say you shouldn't do it, but they do not want one another to know what is going on. The CIA does not want the FBI to know what particular things it may be up to and vice versa.

And this compartmentalization is always justified with elaborate arguments about secrecy, sensitivity, national security. And the end result of it all is such a chaos that the President himself cannot govern or control the very agencies that are supposed to be upholding the law and protecting us against the enemy.

Now, that has to be changed. And accountability, as you have said, goes to the very heart of our search, and it has got to be an accountability not only to the President; in the future, it has got to be an accountability to the Congress as well. And we are going to find it if we can, and we are going to recommend changes in the law and in the procedures that we hope will make these agencies accountable in the future.

Senator Mondale.

Senator MONDALE. Thank you, Mr. Chairman.

Earlier, Mr. Huston, you indicated that one of the great needs in this whole field was to draw the line between what, I guess you would say, were legitimate functions of these agencies, and a point where they become involved in the political sense, so that they corrupt and undermine and subvert the political process.

Would you not agree that that line has been drawn in terms of the criminal law now, that that has been the basic thrust of the law from the beginning of American society, to give the law enforcement officers enough power to apprehend criminals but not so much power that these agencies can be turned in on the American people, in terms of spies and in other ways, and that, thus, the first prerequisite of accountability is an agreement that everybody has to obey the law?

Mr. HUSTON. Yes, I agree.

Senator MONDALE. All right.

During your testimony today, you seemed to indicate that the present criminal law did not arm the Government with adequate tools to anticipate and prevent riots and violence. I find that somewhat disturbing, as an old law enforcement officer myself, because it is my impression that there is a host of laws on the books available to criminal investigators and prosecutors, law enforcement officers, within the legitimate framework of the Constitution and the laws, that permit investigations and arrests for conspiracy to commit crimes, or conspiracies to cross State lines for purposes of rioting and the rest.

Is there anything in your background which equipped you to draw the judgment that the criminal law is inadequate to deal with the problems of violence with which you were trying to deal?

Mr. HUSTON. No. I have no claim to any expertise that would qualify me to say that, other than the general specific impression that I had,

the information that I had from those people who were responsible for handling this problem.

Senator MONDALE. Yet most of the people you were talking to were not in law enforcement at all. They were in counterintelligence work and in an area which, as we now know, was violating the law. As it was, the only law enforcement principal you had there was Hoover, and he opposed it.

Might it be that the whole basis for this recommendation to the President to relax restrictions on these police activities in order to meet these threats was based on a false assumption that the law did not, in its proper exercise, contain adequate remedies to deal with it?

Mr. HUSTON. Well, I think that the intelligence collection or analysis and collection process is different from the law enforcement process. And I think that the intelligence community can do its job without the necessity for extraordinary—the use of extraordinary investigative techniques.

But I think, for example, if you take the Safe Streets Act that sets forth the criteria under which you can have court-ordered wiretaps, it is my recollection that those taps can only run for like 7 days—I'm not sure; it's some limited period of time—pursuant to a court order, before they have to be disclosed to the party who is subject to being overheard. And in a continuing intelligence collection process, that would not be as effective a way to go about it.

But I don't think that—my judgment would be that there's nothing we can do today that cannot be done generally within the parameters of existing criminal laws.

Senator MONDALE. I am glad to hear you say that, because I think there was an impression left here that the country that lives within the constitutional law is powerless to deal with violence. Within the law and the Constitution, good law enforcement officers know perfectly well how to investigate the suggestions of probable cause or the commission of crimes. There are plenty of laws to stop crime before it is committed, before conspiracies are developed.

I would like to at least correct what I think is the impression here that somehow if you are constitutional and legal, you are also defenseless, that criminal law is a rough tool as practiced constitutionally, and it can work effectively if people have the patience to work within it.

One final point: earlier today you said that you did not see how your recommended restrictions on due process in any way contributed to the Plumbers. I will concede that you did not want the Plumbers created. But if violations of the law by public officers are acceptable for your purposes, why are violations of the law for other purposes not equally justifiable?

Mr. HUSTON. My view on the Plumbers is that you had a group of vigilantes operating outside the framework of established, authorized law enforcement agencies, who were operating for what appeared to me to be essentially political purposes, whereas what we were talking about was the exercise of functions by authorized law enforcement agencies for internal security purposes, and not political purposes.

Senator MONDALE. Which is the more offensive to American society and principles, official lawlessness by persons who are public employees, and many of them lawyers, on the one hand, or paid lawlessness by persons outside of the Government?

Mr. HUSTON. Well, I am not sure that you can establish any qualitative distinction there, except for the risk, the propensity for such acts to be undertaken by the vigilantes, as opposed to the professionals.

Senator MONDALE. Do you think that those who ordered the Plumbers were not just as convinced of the righteousness of their cause as you were?

Mr. HUSTON. I do not have any idea what they were convinced of, but I am convinced that the intelligence community would never have undertaken the Plumbers' operation.

Senator MONDALE. Well, I have some trouble accepting that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Huddleston.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Just one more question, Mr. Huston, on the subject of the intelligence-gathering capability of the IRS. You have testified, I believe, that you did not specifically make a request of the Service to gather intelligence on any particular group or individual. Is that correct?

Mr. HUSTON. Yes, sir.

Senator HUDDLESTON. Were you surprised to learn, then, that the IRS, in fact, through its Activist Organizations Committee, and through the FBI, had been supplying to the White House, some 5 months prior to the memorandum that we referred to earlier, intelligence information on at least one organization, the Students for a Democratic Society?

Mr. HUSTON. I do not think I ever saw, or I have no recollection of ever having seen any information that came to the White House from the IRS, Senator.

Senator HUDDLESTON. We have a memorandum to that effect [exhibit 65¹] about Mr. Paul Wright, who at that time was head of the AOC, indicating that he was giving his permission to the FBI to relay to the White House, at the request of the White House, intelligence information that had been gathered on the SDS.

Mr. HUSTON. Well, Senator, as I think I testified earlier, there had been, I assume—I don't know what that memorandum dealt with, but if it dealt with financial matters or sources of funding, there had been a standing request from the President, before I became involved in this, to the Bureau, to provide the White House with continuing information with respect to sources of funds that were being used by organizations who were engaged in violence; and so what may have happened is that the Bureau was given that assignment; they went to the IRS and said, "do you have any information we can use?" And IRS said, "Yes, you may use this information." The Bureau then sent it to the White House.

But as far as I know, I never saw any memorandum from the IRS directly to the White House, or to anyone else to say that this information was derived from information secured by the IRS.

Senator HUDDLESTON. Well, this memorandum would certainly indicate that the IRS was supplying to the White House certain very sensitive intelligence information.

The point I would like to make is that this episode, and this testimony by you, Mr. Huston, and the subsequent action of the IRS, is somewhat consistent with other types of information that we have received, where those in high authority within these agencies expressed

¹ See p. 400.

to us that it was not their intent that any abuse occur, and it was their understanding that all down the line understood that no abuse occur. Yet, as we see in this case, where subsequent to your inquiry of the agency, they did increase their activity in this regard, creating the Special Service Staff. We saw this in the case of the poisons that were not destroyed, even though the Director of the Agency was under that impression, and had the understanding that they were destroyed, and that everyone understood. There have been other instances in a more serious area, which we cannot go into at this time, but relating to possible assassination plots.

We see consistently that the higher authorities indicate that they had an understanding that these abuses would not occur, but down the line, the persons who were implementing the action had an understanding, according to their testimony, that they were acting in accordance with expressed authority from higher-ups. And this is the dilemma in which we find ourselves as we continue to try to pinpoint the accountability for the kind of actions that are contrary to everything we believe in, a free and open and democratic society.

Thank you, Mr. Chairman.

The CHAIRMAN. I think that sums it up, Senator.

Senator Schweiker, do you have any further questions?

Are there any further questions on the part of the committee? If not, I want to thank you very much for your testimony today. It has been extremely important testimony, and the committee will stand adjourned until 10 tomorrow morning.

[Whereupon, at 12:15 p.m., the committee adjourned to reconvene at 10 a.m. Wednesday, September 24.]

