

now that that is your position.

Attorney General McGrath. Yes, sir.

Senator Hickenlooper. Do you take the position, General McGrath, that the turning over of these files to a subcommittee of the Senate which has made no suggestion that under any circumstances it would attempt to make any part of these files public, is considered a substantial risk, that the integrity involved is such that the risk would be great of surreptitious disclosure of the contents of those files?

Attorney General McGrath. The risk can be one of degree, depending on the type of committee, of course. The thing that is important is to not break the principle, because when the principle is broken for one committee there is no way that you can refuse other committees of the Congress. The executive offices of the Government are not in a position to judge between the integrities of members of varying committees that may be appointed by the Congress from time to time.

Senator Hickenlooper. Do you know how many clerks and other minor officials have access to these confidential files in the Department of the Federal Bureau of Investigation, or agents or others who are employees?

Attorney General McGrath. I will say this. Mr. Hoover is here and he can answer that question, but I will say this to the Senators, that even the top officers of the Department

have very rarely, if at all, ever seen the files, the raw files, of the Bureau of Investigation. When we want information from those files we request it of the Bureau and it is given to us in memorandum file, and we never go near the raw files because we hold them in such sacred trust.

Senator Hickenlooper. There are, nevertheless, people in your Department who can have, if occasion demands it in your judgment, access to those files.

Attorney General McGrath. Anyone can have access to the files that Mr. Hoover will permit to see the files or the Attorney General may direct that they be seen.

Senator Hickenlooper. Mr. Hoover is subordinate to you in the Department of Justice, is he not?

Attorney General McGrath. Yes, he is.

Senator Hickenlooper. Therefore your orders to him would be controlling in his official actions, would they not?

Attorney General McGrath. I don't think I would give Mr. Hoover any orders. I think we would counsel together and I am sure we would come to the same conclusions.

Senator Hickenlooper. I understand your relationships are very cordial. I am asking a question with regard to the technical flow, the chain of command. If you issue an order in your official capacity to him in his, it would be his duty as a subordinate department within your department to obey that order, would it not?

Attorney General McGrath. I believe it would be, and I believe Mr. Hoover would obey it.

Senator Hickenlooper. I have no doubt he would.

Now then, may I ask you this: Do you consider the turning over of certain specific files for confidential information, without any proposition of making those files public, to a subcommittee of, for instance, the Foreign Relations Committee of the Senate, to be a hazard and a risk of publicity of those files that exceeds the hazard and risk of publicity of subordinate employees in the Federal Bureau of Investigation or in other departments of your Department which might have access to them?

Attorney General McGrath. I am not going to pass judgment on the integrity of this committee or any other committee of Congress. I say that there is great risk involved in breaking the principle that these files should not be made available.

Senator Hickenlooper. General McGrath, let me ask you this question: Do you know whether or not confidential investigative files have ever been turned over for access to congressional committees and for examination by congressional committees?

Attorney General McGrath. I think I may say with certainty that the raw files have never been turned over. There have from time to time been submitted to committees

reports prepared by the Federal Bureau of Investigation indicating the information that may be contained in the files.

Senator Hickenlooper. Are you aware whether or not the Judiciary Committee of the Senate has for a number of years requested and received investigative reports, especially in the case of Federal judges, from the Federal Bureau of Investigation?

Attorney General McGrath. It does with the authorization of the President and the approval of the Attorney General. That is quite a different situation. When a man presents himself for the favor of a presidential appointment to the judiciary of the United States, we feel that he should be willing that that be done, and that no damage can come to him. He should be willing to have the committee which passes on his qualifications for this lifetime job see his file.

In that instance an exception is made and the Chairman of the Judiciary Committee is permitted to see a summary of the file as prepared by the Federal Bureau of Investigation, not the raw file. Never the raw file.

Senator Tydings. Do I understand you to say that in the case of these judges the raw file is not turned over, only a summary of what is in the file?

Attorney General McGrath. That is correct.

Senator Hickenlooper. In pursuing that just a step

Further, by the "raw file" I take it you mean the file containing the actual names and identification, for instance, of all informants; in other words, the complete background of all information.

Attorney General McGrath. I mean by the raw file everything that the Department has on the subject of an investigation goes into the file--the notes of the interviews, statements that are made by those that are interviewed, exhibits, all such material as that goes into what we call the raw file. These raw files in some instances run into many volumes and into many filing cabinets.

Senator Hickenlooper. But in the summary of these files, which may or may not contain actual names of informants, for instance, all of the information in the raw file is presumably digested for the information of those who examine the digest and the report.

Attorney General McGrath. It is evaluated, yes, and put into a narrative form.

Senator Hickenlooper. And do you know whether Appropriations Committees of the House and Senate have on occasion been given access to the investigative files of the Federal Bureau of Investigation?

Attorney General McGrath. Not to my knowledge. I have no knowledge that that is so.

Senator Hickenlooper. General McGrath, I notice in

your statement that there runs through it consistently in the precedents "resisting the turning over of investigative files or summaries of these files". By the way, I take it that your objection would go just the same to turning over the summarization of the files, as is customarily done, for instance, for the Judiciary Committee. Your objection would go just the same to turning over a summarization of the files by the Federal Bureau of Investigation to this subcommittee?

Attorney General McGrath. I think the situation is different here than it is in the case of the Judiciary Committee considering the life appointment of a Federal judge. My objection runs to turning over a summary of the file.

Senator Hickenlooper. I say this without any declaration one way or the other, but it is entirely possible that there are occasions when the very lifeblood of this country depends upon certain information which may be acquired in proper places, as well as the lifetime appointment of a judge.

Attorney General McGrath. Such a situation could arise and the President has the power to make an exception if he sees fit to do it.

I was going to suggest that we are probably covering some ground that may be the subject of the Director's testimony, and while I am merely suggesting to you that Mr. Hoover be permitted to make his statement and I shall be glad to answer any questions after that, I only make that suggestion in the

interest of probably saving some time, as he in discussing the procedures of his Department may have the answers to some of these questions.

Senator Hickenlooper. I have just a few other questions, but then other members of the committee may want to question the General, and I do not want to take an undue amount of time at this time.

Senator Tydings. Proceed in any way you wish, but I would like to say Mr. Hoover will testify immediately following General McGrath, and many of the technical things Mr. Hoover could perhaps answer in more detailed fashion than General McGrath. Whatever way you wish to proceed will be proper.

Senator Hickenlooper. Especially with reference to the matter I was mentioning a moment ago, about the confidential nature of the receipt of information in these files, at the bottom of page 8 you again emphasize as follows: "With respect to files which this Committee has requested, their disclosure would, it seems to me, seriously impair the effectiveness of the Employee Loyalty Program."

Attorney General McGrath. That is correct.

Senator Hickenlooper. I merely emphasize that because so much of the objection to this has been bottomed on the fact that this subcommittee is going to take the files and disclose what is in the files.

Franklin A. Steinhilber, Room 5400, Capitol Building, Washington, D. C.

Attorney General McGrath. This committee has requested access to the raw files and it has requested the right of its staff members to go into its files, and that we very strongly object to.

Senator Hickenlooper. May I ask you this: If the subcommittee modified its request and said "We want to have delivered to us for our examination the customary and standard summarization of the raw files, such as is ordinarily made up by the Federal Bureau of Investigation for these various groups", would that change the picture any?

Attorney General McGrath. It doesn't to my mind. I would like you to direct that question to Mr. Hoover after he finishes his statement.

Senator Hickenlooper. The Federal Bureau of Investigation is not a constitutional department, isn't that true? It was, that is, created by an Act of Congress? It has a longer history than that, but it is now operating as a result of legislative recognition?

Attorney General McGrath. It is part of the Executive Branch of the Government.

Senator Hickenlooper. And it gets its authority as a result of statute at the present time?

Attorney General McGrath. The same way that the Department of Justice gets its authority. It was created by an Act of Congress.



Senator Hickenlooper. Could the Congress abolish the Federal Bureau of Investigation and its activities, do you believe?

Attorney General McGrath. Yes, it could, and it could abolish the Department of Justice if it wishes to.

Senator Hickenlooper. Could it abolish the Civil Service Commission by an Act of Congress?

Attorney General McGrath. Yes, it could.

Senator Hickenlooper. Do you hold that the Congress can direct the duties and the activities of departments and agencies which it has the authority to set up?

Attorney General McGrath. Congress can make the laws that govern the executive agencies. The President administers those laws.

Senator Hickenlooper. And, for instance, I take it that you agree that Congress in setting up an agency, or a department, even though Congress may elect to put that department under the Executive Branch of government for convenience of administration or for other purposes, has the right, in the law that sets up that department, to prescribe the duties of that department which it creates?

Attorney General McGrath. It can prescribe them within the limits of the Constitution. If it creates an executive agency it must leave it to the President to administer that agency. It can not keep it within the Legislative Branch. If

the Congress wished to create a Bureau of Investigation that was part of the Legislative Branch of Government, I suppose it could do that, if it would justify its need as an aid to the functions of the Legislative Branch. It has not seen fit to do that, however. It has created an independent agency in the Executive Branch, and therefore, under the Constitution the power of administration passes on to the President.

Senator Hickenlooper. Do you consider that Congress in setting up an agency of government can require that agency to make reports to Congress periodically?

Attorney General McGrath. It can go to some extent. It can not go to the extent which is indicated here by your request for files of this kind. I think that would be decided by the courts to be an encroachment upon the executive function. I think such an attempt would be struck down.

Senator Hickenlooper. Do you believe that Congress could create an investigative agency and in the Act creating it say that it shall investigate and inquire into certain activities of individuals and businesses and make periodic reports to the Congress, meanwhile putting that agency in the Executive Department for administrative purposes?

Attorney General McGrath. No. If it puts it in the Executive Branch, then it can not require it to give its reports to the Congress unless the President sees fit to permit it. If the Congress wishes an agency of that kind, it can

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establish it as part of the Legislative Branch of Government, and then the Executive has no control over it whatsoever.

Senator Hickenlooper. Then I take it that the reports of the Immigration Service and of the Federal Communications Commission and all of the rest of the agencies of government that are required by law to make periodic reports to the Congress are being made only at the sufferance of the President, according to your view?

Attorney General McGrath. The President could make a finding that it was not in the public interest in a particular instance to make those reports available and prevent them from being made. He would have to make that finding, however. It is not reasonable to suppose that a President is going to make a finding in matters of that kind. He has to reach the conclusion that the making of a particular report is or is not in the public interest.

I may remind the members of the committee that the Congress itself is pretty jealous of its prerogatives. Only two weeks ago one of the Federal courts issued a subpoena to the House of Representatives to produce the minutes of a meeting of a committee of the House of Representatives, and the committee politely refused to submit to the subpoena, and sent word to the court that the Judicial Branch of the Government had no control over the Legislative Branch, and indeed I am sure the committee of the House of Representatives was correct.

Senator Hickenlooper. Well, I don't care to argue that point, particularly. I call your attention to the fact that these Federal agencies that we have been referring to have been created by the Congress and their duties have been prescribed by the Congress. The Congress was not created by this Federal court, and it does not get its authority nor its power from the Federal Court.

Attorney General McGrath. Once Congress conceives them and brings them into being, they take on a different character. Once Congress is through with the law creating them, they then pass to the control of the Executive, and they are from thence forth part of the Executive Branch of the Government, which is quite independent of the Legislative Branch.

Senator Hickenlooper. I suppose that the legal interpretation of that would have to rest with the courts anyway, and I do not care to burden you with further discussion on this matter.

Attorney General McGrath. I think the courts have been passing on that for 150 years, and there isn't a dissent that I know of.

Senator Hickenlooper. I think that there is very excellent argument that does not quite sustain your position, but then there is argument that can be used to sustain it also.

It is a close question, and I think this particular question has never been squarely passed on by the courts. But

I merely wanted to get the position of your Department firmly fixed as to your Department's rejection of the request of this subcommittee for a delivery of either the raw files or, wanting that, the summarized files, which are not so-called raw files of the Department.

I believe that that is all the questions I have.

Senator Tydings. Senator McMahon, have you any questions?

Senator McMahon. I have a question or two for the Attorney General, but I would prefer to ask him after Mr. Hoover finishes his testimony.

Senator Tydings. Will you remain with us until Mr. Hoover finishes his testimony, Mr. McGrath?

Attorney General McGrath. I certainly will.

Senator Tydings. Senator Lodge, have you any questions?

Senator Lodge. Yes, I have one.

Senator Tydings. Go ahead.

Senator Lodge. Have the raw files ever been made available to a court?

Attorney General McGrath. In the Coplon case. I think perhaps Mr. Hoover can answer that. No request has ever come to me since I have been Attorney General for a raw file, but Mr. Hoover has had twenty-five years' or more experience in these matters, and he probably would be able to answer your question.

Senator Lodge. I wondered if there was any inconsistency

between their making the raw file available to the court and not making it available to the Congress.

Attorney General McGrath. If it was made available in the Coplon trial, and I am not sure that it was, it would have been done with the consent of the President via the Attorney General. I happen to know there were considerable differences of opinion as to whether the Government should have made as many files available in that case as it did. Whether it was the complete raw file or not, I don't know.

Senator Lodge. Your statement applies only, does it not, to FBI files, and not to State Department files or Civil Service files?

Attorney General McGrath. Oh, yes, Senator. I have nothing to do with the files of the other departments, except that we would object to your securing those files if they contained our FBI reports, which I think they do, because the FBI is the agency that does all of the investigating for the loyalty program. We would have no objection, of course, to your obtaining the personnel files of any department. We have no objection to your obtaining the Civil Service Commission files on employees, so long as those files contain no part of the Federal Bureau of Investigation's work.

Senator Lodge. Thank you. That is all.

Senator Tydings. Mr. Hoover, will you rise and hold up your right hand?

Do you solemnly promise that the evidence you shall give in this case as outlined in Senate Resolution 231 shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Hoover. I do.

Senator Tydings. Take a seat, sir.

Before you begin testifying, Mr. Hoover, I want to take this occasion to thank both Attorney General McGrath and you, sir, for accepting my invitation to come up here today and give your personal viewpoints on the matter that is pending before this committee.

Senator Hickenlooper. Mr. Chairman, just before Mr. Hoover testifies, I was handed a memorandum at the door as I came in from Senator McCarthy's office. It is as follows, on his stationery:

MEMORANDUM

"TO: Senator Bourke Hickenlooper

"FROM: Senator Joe McCarthy

"I would appreciate it very much if you would inform J. Edgar Hoover that I deeply regret that I shall be unable to hear his testimony this afternoon because of the fact that I am completely and inescapably tied up with the preparation of material which I expect to present on the Senate floor tomorrow.

"I am sure that Mr. Hoover will understand that my absence under the circumstances does not even remotely indicate any

lack of interest in his testimony. I shall obtain his testimony at the earliest possible moment for careful study.

Will you also inform Mr. Hoover that I shall greatly appreciate it if he will have one of his agents available when I address the Senate tomorrow so that I may turn over to him documents in the Lattimore case which I consider of some importance. Thank you.

(Signed) "Joe McCarthy"

Mr. Hoover. That request will be complied with.

Senator Tydings. Mr. Hoover, will you proceed in your own way? We will not interrupt you.

STATEMENT OF THE HONORABLE J. EDGAR HOOVER,

DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. Hoover. In the twenty-six years which I have been privileged to serve as Director of the Federal Bureau of Investigation, I have always maintained the view that if we were to fully discharge the serious responsibilities imposed upon us, the confidential character of our files must be inviolate.

A cardinal principle of success for any agency having a responsibility for investigations is its ability to secure information. To do that, it must be able to maintain confidence. Any person furnishing information must have the security of knowing that when he furnishes information on a confidential basis, he will not at a later date find that



confidence broken. When that occurs, the ability of the investigative agency to discharge its responsibilities in the future is materially lessened.

The public record clearly proves that the Federal Bureau of Investigation, because it does maintain confidences, has been able to develop valuable sources of information which have a direct bearing on the internal security of the nation. I need refer only to the government witnesses who testified in the trial of the eleven Communist leaders in New York last summer. Seven of these witnesses risked their lives as undercover employees of the FBI.

The question of opening the files of the FBI involves a grave matter of principle. In taking the position that the files of the FBI should remain inviolate I would not, of course, presume to discuss files other than those of the Federal Bureau of Investigation.

These files contain complaints, allegations, facts, and statements of all persons interviewed. Depending upon the purpose of the investigation, particularly in security cases, they contain not only background data on the individual but details of his private life which bear upon the investigation. In these files also are the identities of our confidential sources of information and full details of investigative techniques. In short, they consist of a running account of all that transpires.

A file is maintained in each case because the FBI has received information, allegations, or a complaint which if proven comes within the sphere of our responsibility, in pursuance of either Congressional or Executive directives. After the investigation is completed, when indicated by Department procedure or judgment, a summary of the facts developed is furnished to the Department of Justice and to United States Attorneys. In other types of investigations, the reports of special agents are submitted to the interested agency of the Government. Details and information dealing with administrative operations and confidential sources of information remain in our files. The contents of these files were never intended to be disclosed and, unless we drastically change and circumscribe our procedures, they should not be disclosed.

The question of divulging contents of the files of agencies of government is not a new one. When confronted with the question of divulging the files of an Executive Department in 1909, the late President Theodore Roosevelt said:

"Some of these facts . . . were given to the Government under the seal of secrecy and can not be divulged and I will see to it that the word of this Government to the individual is kept sacred."

The disclosure of the contents of the files of the FBI would reveal confidential procedures and techniques. If spread upon the record, criminals, foreign agents, subversives, and

others would be forewarned and would seek methods to carry out their activities by avoiding detection and thus defeat the very purposes for which the FBI was created. Each exception undermines this principle, establishes a precedent, and would result in a complete collapse of a traditional policy which has proven its soundness.

A disclosure of FBI reports would reveal the identity of confidential sources of information and, if it did not place the lives of such persons in actual jeopardy, it would certainly ruin their future value and effectiveness.

The disclosure of FBI reports would make otherwise patriotic citizens reluctant to furnish information. Already, as a result of some unfortunate disclosures of our files in court proceedings, our Special Agents frequently are being told by persons from whom they seek information that they will decline to be interviewed for fear the information will be misused by some agency other than the FBI.

In the conduct of official investigations, information of a highly restricted nature having a direct bearing upon national security often finds its way into the files, which, if disclosed, would be of considerable value to a foreign power. Increasingly, we have observed efforts of a foreign power to seek intimate personal details concerning many of our leaders in Government and industry. They should not be aided by having these details made public for their use and advantage.

thereby crippling the important work of the FBI.

So far, I have directed my remarks against a disclosure of FBI files on security grounds. There are other compelling reasons why the files of the FBI should be inviolate. For the want of a more apt comparison, our files can be compared to the notes of a newspaper reporter before he has culled through the printable material from the unprintable. The files do not consist of proven information alone. The files must be viewed as a whole. One report may allege crimes of a most despicable type, and the truth or falsity of these charges may not emerge until several reports are studied, further investigation made and the wheat separated from the chaff.

I, for one, would want no part of an investigative organization which had the power of discretion to decide what information would be reported and what would be omitted. An item of information which appears unimportant today may provide the solution of a case when considered with information received at a later date, or it may later establish the innocence of the accused.

Should a given file be disclosed, the issue would be a far broader one than concerns the subject of the investigation. Names of persons who by force of circumstance entered into the investigation might well be innocent of any wrong. To publicize their names without the explanation of their associations would be a grave injustice. Even though they were given an

opportunity to later give their explanation, the fact remains that truth seldom, if ever, catches up with charges. I would not want to be a party to any action which would "smear" innocent individuals for the rest of their lives. We cannot disregard the fundamental principles of common decency and the application of basic American rights of fair play in the administration of the Federal Bureau of Investigation.

The FBI has the obligation, within the scope of Federal law, not only to protect the rights, lives, and property of our citizens, but also to protect the confidential relationship of the citizen when he patriotically serves his Government by providing information essential to our security.

FBI reports set forth all details secured from a witness. If those details were disclosed, they could become subject to misinterpretation, they could be quoted out of context, or they could be used to thwart truth, distort half truths, and misrepresent facts. The raw material, the allegations, the details of associations and compilation of information in FBI files must be considered as a whole. They are of value to an investigator in the discharge of his duty. These files were never intended to be used in any other manner and the public interest would not be served by the disclosure of their contents.

In taking this stand, I want to reiterate that a principle is involved. I would take this same stand before the Attorney General, as I already have, or before any other body. The fact

that I have great respect, confidence, and a desire to be of assistance to a committee of distinguished Senators, however, in no way detracts from a principle. I say this because I do not want any misinterpretation of my remarks, nor do I want it said that this and other committees of Congress do not have my respect and confidence. I would, however, be derelict to my duty, untrue to my conscience, and unworthy of my trust if I took any other position.

Senator Byrdings. Thank you, Mr. Hoover.

Senator Green?

Senator Green. Mr. Hoover, there has been a good deal of evidence, although no direct statement, to the effect that the process of screening these respective individuals is entirely inadequate. Will you give the committee a description of what screening is done from the bottom up?

Mr. Hoover. Do you mean in these loyalty cases? Are you referring to those?

Senator Green. Yes.

Mr. Hoover. In the loyalty cases the procedure which is followed is for the Civil Service Commission to send to us various loyalty forms of the employees of the Government. Those forms are first searched in the files of the FBI against the names, what we call the name file, and if under the name index there is found any reference to subversive activities, or activities of a disloyal character, that loyalty form is

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returned to the Civil Service Commission with the notation that an investigation has been opened. If there has been no disloyalty information developed from that check, the notation is made "No disloyal <sup>data - FBI files</sup> information ~~ascertained~~."

In the first group of cases, those upon which we find subversive activities, we initiate a full field investigation. A case is sent out to <sup>our appropriate</sup> the respective offices where ~~the man lives or the employee lives~~, and various information is developed as to his background, <sup>etc</sup> predicated upon these allegations which are or may already be in the files of the FBI. Those reports are sent in to the Bureau and are there reviewed.

The report as you see it in the Bureau, the working file or the raw file, will contain the identity of all informants, the source of the information it has been received from, the method by which it has been received. That report is then digested and reduced to a so-called summary or an analysis of the file,

and in turn transmitted to the Civil Service Commission with <sup>Administrative details and confidential sources remain in our files</sup>

In the cases where informants are willing to appear and testify, their identities are set forth. In cases where they do not wish to have their identities disclosed, <sup>they are</sup> it is designated by a number.

I may say for your benefit, Senator Green, that that procedure of not disclosing the informant was not my decision, it was the decision of the Presidential Loyalty Review Board, and they decided that the identities would be kept confidential

Franklin A. Swaine