

Senator Kennedy. This week's Time magazine contains information about alleged wiretaps on newsmen, according to the article, requested by the White House, authorized by the Justice Department, installed by the FBI. How would you respond to those charges?

Mr. Gray. I would have to say, first, that with regard to the general matter of wiretaps -

Senator Kennedy. No, just on these charges. How do you respond specifically, I will come on to general wiretap questions later on. How do you respond?

Mr. Gray. How do I respond to these charges? When I saw this particular article and checked the records and indexes of the Federal Bureau of Investigation, and I am told also that the Department of Justice checked the records of the Internal Security Division of the Department of Justice, there is no record of any such business here of bugging news reporters and White House people.

Senator Kennedy. Well, is that the full answer?

Mr. Gray. That is my answer, yes, sir, that is my full answer.

Senator Kennedy. Did you talk to anyone about it at the White House or is it just a matter of your answer is "I just checked the record and we didn't find any authorization and we didn't do anything else."

Mr. Gray. That is my answer, that we checked the records and indexes of the Federal Bureau of Investigation, yes, sir.

Senator Kennedy. Could you describe that in some greater detail. These are some rather serious charges.

Mr. Gray. I know they are rather serious charges.

Senator Kennedy. Tell us what you did, exactly.

Mr. Gray. I went to the records and checked the records.

Senator Kennedy. What records?

Mr. Gray. The records that we keep on national surveillance wiretaps, the authorizations, the memorandums that are prepared, the reports and the indexes that are filed in connection therewith

Senator Kennedy. Well, unless you had some official designation that this was going on -

Mr. Gray. That is correct.

Senator Kennedy (continuing). You didn't feel that you had to pursue it any further?

Mr. Gray. That is correct because, you know, Mr. Hoover is not going to do something like this in the first place.

Senator Kennedy. I am not asking Mr. Hoover.

Mr. Gray. And in the second place -

Senator Kennedy. I am asking about you.

Mr. Gray. In the second place, every one of these come across my desk, every single one and, in the third place, when I came into the Federal Bureau of Investigation on May 3, the very first thing that I said is, I will not permit any wiretaps that are not in accordance with law. That is my answer, and that is what I have done. That is what I have said repeatedly.

Senator Kennedy. Well, you have indicated that you reviewed what wiretaps were authorized, and since any taps on the White House didn't appear on that list, that is the extent of your investigation?

Mr. Gray. That is the extent of my investigation.

Senator Kennedy. You don't feel - let me ask a question.

Mr. Gray. Yes, sir.

Senator Kennedy. Did you feel that you ought to talk to anybody at the White House about this?

Mr. Gray. The White House has already issued a denial, and the answer is no, Senator.

* * * * *

Senator Kennedy. Did you talk with anybody in the Justice Department about it?

Mr. Gray. I was advised - yes, I did - I was advised -
Senator Kennedy. Whom did you talk to?

Mr. Gray. I talked to Jack Hushen, public information officer.
Senator Kennedy. Public information officer?

Mr. Gray. Yes; because he called me, and he said this has appeared in Time magazine - I hadn't even seen it - "What do you know about it?" And I said, "You had better start checking the records in the Department of Justice and we will check the records in the Federal Bureau of Investigation, and that has got to stop," and that is all.

* * * * *

Senator Kennedy. And you didn't have any - that is the only contact you had with the Justice Department?

Mr. Gray. On this?

Senator Kennedy. On this issue.

Mr. Gray. Yes; I haven't talked to Assistant Attorney General Olson on this at all. I have not discussed this with the Attorney General at all.

* * * * *

Senator Kennedy. I was listening to you earlier when you were talking about how your Inspection Division follows up every single complaint that comes on out when it affects the FBI.

Mr. Gray. On one of us.

Senator Kennedy. But when a crime like this, and it is a crime. Would it not be a crime?

Mr. Gray. If these acts were committed, certainly it is a felony; no question about it, certainly.

Senator Kennedy. But the extent of your investigation is, as I stated, just a review of your own files, the files of the FBI, on what wiretaps had been authorized, and since you didn't see any approval there, and after a routine call from the public information officer from the Justice Department, you let that drop; is that correct?

Mr. Gray. I would not classify it as just a routine call. He was quite upset when he read this article to me, and I am sure he was speaking for the Attorney General. I am sure that there had been discussion between the Attorney General and the Assistant Attorney General in charge of the Internal Security Division where those reports are made. I have to assume this - this is a normal type of procedure - and I did what I would do under these circumstances - I checked our records and indexes.

Senator Kennedy. That is the sole extent of what you did?

Mr. Gray. That is correct, Senator Kennedy, that is exactly what my testimony is.

* * * * *

p.213/

/p.214

Senator Kennedy. ... As I understand it, at the hearings yesterday there was discussion about the copies of various FBI materials shown, or made available to Mr. Segretti prior to his grand jury appearance in the Watergate investigation, and, as I recall your testimony, I believe you said that no investigation was conducted of those allegations. That despite the fact that these materials have been disseminated to the Justice Department personnel and to assistant U.S. attorneys out in the field, and, of course, I imagine presumably to your own agents, your own Bureau, nothing was done to investigate those allegations or charges other than a phone call to the White House?

Mr. Gray. Senator, we don't investigate unless we have a violation of law. Our ground zero is found in our jurisdictional authority, and there is no violation of law, there is only a breach of trust if this occurred. I don't know that it occurred, and if it occurred Segretti was hearing what he had said himself.

Senator Kennedy. Well, I am interested in what steps were taken to find out or track this down by the FBI?

Mr. Gray. I testified as to the steps.

Senator Kennedy. We are just going to take a little time.

One telephone call?

Mr. Gray. Yes, one telephone call.

Senator Kennedy. One telephone call.

Mr. Gray. That is correct.

Senator Kennedy. Did you ever think of talking to Mr. Segretti about how he got the information?

Mr. Gray. No, I did not because there was no need to do that ...

* * * * *

p.215

Senator Kennedy. What do you do when there is unrestricted information or FBI leaks or whatever?

Mr. Gray. We try ~~to~~ in many ways to ascertain how ~~thax~~ those leaks occur. I am not going to discuss publicly, Senator, how we try to do it.

Senator Kennedy. Well, you didn't in this case, though, did you, Mr. Gray?

Mr. Gray. No, I did not. I did not.

* * * * *

P. 217

Mr. Gray. We have our records of national security surveillances, you know.

Senator Kennedy. That is correct.

Mr. Gray. And this is what we checked, and we found no evidence to the effect that we were tpping any newsmen or any White House personnel.

* * * * *

pp.219/20

Senator Kennedy.

Senator Kennedy. Well now, he, as I understand, Mr. Dean indicated that he himself did not leak the FBI report?

Mr. Gray. No, we didn't talk in terms of leak, Senator Kennedy.

Senator Kennedy. Well, how did he - I mean I am just trying to understand a little better whether he said "I didn't show the FBI report," that still leaves a pretty wide -

Mr. Gray. No, he said, "I didn't even have them with me." He said he did not.

Senator Kennedy. Could he have made some notes before or copies and brought those with him?

Mr. Gray. I would doubt it very much, Senator Kennedy.

Senator Kennedy. Did you ask him -

Mr. Gray. I didn't ask him.

Senator Kennedy. Whether he had passed on even any of the information -

Mr. Gray. No, I did not ask him.

Senator Kennedy (continuing). Any of the information that was in it?

Mr. Gray. No, sir; I did not ask him that.

Senator Kennedy. You just asked him whether he had shown the report to Mr. Segretti?

Mr. Gray. In fact, this was the allegation when I read it, and I read it to him out of the paper that morning.

Senator Kennedy. Did you ask him whether he had seen Segretti?

Mr. Gray. No, I did not.

Senator Kennedy. Do you know whether he saw Mr. Segretti?

Mr. Gray. No, I do not, sir.

Senator Kennedy. At one point while you were investigating the Watergate case, there were allegations in the press that a former Assistant Attorney General, Mr. Mardian, after he left the Justice Department and joined the Committee To Reelect the President, either ordered or was in some way involved in the destruction of relevant documents at the Committee To Reelect. Could you tell us what investigation, if any, the FBI conducted into those allegations?

Mr. Gray. We endeavored to interview Mr. Mardian, and we did interview him on July 17, 1972, and he claimed the attorney-client privilege and said no more to us.

Senator Kennedy. He what?

Mr. Gray. He claimed the attorney-client privilege with regard to his role with the principal, this is what we were interviewing him about.

Senator Kennedy. Well, who was his client?

Mr. Gray. I will have to take a look at the specific interview sheet. I will get the interview sheet, the FD-302, and provide the answer. I don't remember. I think he claimed that he had advised Mr. Stans and Mr. Mitchell.

Senator Kennedy. So he didn't respond any further?

Mr. Gray. That is my recollection, Senator, but I want to check the actual interview sheet.

Senator Kennedy. But you accepted his claim of lawyer-client relationship?

Mr. Gray. Senator, you know we have a point beyond which we cannot get.

Senator Kennedy. I am just asking you did you accept it?

Mr. Gray. We tried to get whatever information we could from him.

Senator Kennedy. And he said that it was a lawyer-client relationship?

Mr. Gray. That's This is my best recollection.

Mr. Gray. That is what - no, I am not going to get into the destruction aspect. I am not looking at the 302. His position as reflected there was he had counseled them.

Senator Kennedy. For any period of time, or for how long a period?

Mr. Gray. It doesn't say in that statement.

Senator Kennedy. Did you ask him?

Mr. Gray. I don't know, Senator. I will have to look at the 302.

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

Mr. Gray. After a review of the record, Senator Kennedy, I find that Mr. Mardian advised our Agents that he had, in the capacity of an attorney rather than as an employer, spoken to Mr. Liddy, Mr. Stans and Mr. Sloan, and as such he could not divulge either the nature or the substance of his conversations with those men. It is my understanding that the attorney-client privilege which he was invoking is a continuing one and exists until revoked by the client. Our Agents did not ask Mr. Mardian how long a period of time this privilege would be claimed.

Senator Kennedy. Who else did you interview about those alleged destructions of the files?

Mr. Gray. We interviewed quite a few people. Once again, I will have to go to the 302's to find which of them were asked specific questions regarding any destruction of files.

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

Mr. Gray. After checking, I find that there are two situations in which records at the Committee to Reelect the President were allegedly destroyed. The first of these relates to financial records of contributions before April 7, 1972, when the new Disclosure Act took effect. The second involved alleged destruction of records at the Committee offices after the arrests of the five men at the Democratic Headquarters on June 17, 1972. Our Agents contacted a number

of people at the Committee concerning these points and during the Federal grand jury inquiry a number of people were also questioned concerning the records destruction. Those questioned included Jeb Magruder, Herbert Porter, Maurice Stans, Hugh Sloan, Paul Barrick, Lee Nunn, Sally Harmony, Judith Hoback, Robert Odle, Robert Houston, Sylvia Panarites, Millicent Gleason and Martha Duncan.

Senator Kennedy. Do you remember whether you talked to Frederick LaRue? His name was mentioned in this.

Mr. Gray. I believe Mr. LaRue was interviewed.

Senator Kennedy. Could you tell us when?

Mr. Gray. Yes, he was interviewed on July 18, 1972, and again in more detail on July 21, 1972.

Senator Kennedy. Did you ask him about the destruction of files?

Mr. Gray. I am going to have to answer that one specifically: I will have to go to the 302 to see the detailed report of interview, Senator, and I will do that.

Mr. Gray. ... There was no allegation that Mr. Mardian had any information regarding the destruction of records ...Liddy's alleged destruction of records took place on June 17, 1972. In addition, Mr. LaRue was not interviewed regarding destruction of records as there was no allegation that he had any such information. ...

Senator Kennedy. T.. Can you tell us whether there actually was, as a result of the investigation, destruction of those files?

Mr. Gray. Can I tell you that there was destruction of those files? We had allegations to that effect, and statements to that effect made to us by individuals that we interviewed; yes, sir, I think I can say that; yes, indeed.

Senator Kennedy. Would that be a crime?

Mr. Gray. I don't know.

Senator Kennedy. What does your legal counsel say, if this was -

Mr. Gray. I didn't specifically ask that question of him, because all during the conduct of this investigation we were working hand in glove with the assistant U.S. attorney. If at any time an assistant U.S. attorney thought we were uncovering evidence of a crime, he would have pointed us in that direction regardless of what I wanted to do, Senator.

Senator Kennedy. What did you want to do?

Mr. Gray. I said regardless of what I wanted to do.

Senator Kennedy. Did he ever indicate to you that he thought that there was a possible crime?

Mr. Gray. No, I don't recall that specifically; and what I wanted to do from day 1, as we say in the FBI, was to give it a full court press with no holds barred and investigate to the hilt, and I believe we did.

Senator Kennedy. Welll now, but you had reason to believe that this could have been a crime, may have been a crime?

Mr. Gray. No, I don't; no, I don't. I am not testifying to that effect at all, Senator. I want to look at the facts and the circumstances and I want to look at the possible statutes that are applicable before I

give you an answer to that question, sir.

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

Mr. Gray. I have had this matter researched, Senator Kennedy, and I have been informed that if destruction of files is brought about by bribery, misrepresentation, intimidation, or force or threats thereof it could constitute a violation of Title 18, U.S. Code, Section 1510 (Obstruction of Criminal Investigations). However, in the absence of the elements listed (bribery, etc.) the act of destruction by an individual having lawful possession would not appear to be a crime unless the files were specifically protected by a statute or the destruction was the last step in a continuing criminal conspiracy (Title 18, U.S. Code, Section 371) to violate other substantive Federal laws and to avoid detection.

An example of statutory record-keeping requirements is found in the Federal Election Campaign Act of 1971, Title III of which requires keeping detailed and exact records of all contributors, the name and address of contributors, and all expenditures made by political committees covered by the statute. It should be noted that this statute became effective on April 7, 1972.

* * * * *

p.223

Senator Kennedy. You have not been what in that area?

Mr. Gray. Pushed, directed, guided in that area, to the best of my knowledge at this moment - but I will ascertain the facts.

Senator Kennedy. Could this not be considered as an obstruction of justice if the records were actually destroyed?

Mr.

Mr. Gray. I doubt it because I think what you are talking about - if you are talking about the same records that I have a recollection of - you are talking about those that were compiled prior to April 7, and I know -

Senator Kennedy. How do you know?

Mr. Gray. What?

Senator Kennedy. How do you know?

Mr. Gray. I don't know.

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

Mr. Gray. Senator, at this time I would like to state that Mr. Mardian was not questioned concerning what records existed prior to April, 1972, nor was he question concerning any destruction of records. ...

* * * * *

Senator Kennedy. One other area. Mr. Segretti. As I understand, Mr. Gray, Donald Segretti was interviewed during your investigation; is that correct? You have indicated that, given us the dates?

Mr. Gray. Yes, I gave you the dates - the 26th of June, 1972, the 28th of June, 1972, and also we saw him on the 30th of June in an effort to get him to identify pictures, Senator.

Senator Kennedy. Could you tell us why he was investigated?

Mr. Gray. Why he was investigated?

Senator Kennedy. Yes.

Mr. Gray. He turned up, his telephone number turned up, as I recollect, He was one of those telephone numbers that we ran down. This was my recollection. I would like to check my records to make sure I am correct, though.

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

Mr. Gray. After reviewing the records, Senator, I find that my recollection was correct and that we conducted investigation concerning Mr. Segretti because a review of the telephone toll records of Mr. Hunt's calls had showed numerous phone calls between Hunt and Segretti.

Senator Kennedy. And do you know whether he indicated that Hunt had asked him - what Mr. Hunt had asked him to do?

Mr. Gray. No. There is a little note here that I made, that he refused to give us any names, dates, or places at all. He was not too cooperative and helpful.

Senator Kennedy. He was uncooperative?

Mr. Gray. That is right, in the sense of giving us names, dates, and places. He talked to us once we contacted him, but he did not give us names, dates, and places. But this later, we are advised, came out at the Federal Grand Jury. I would like not to get into that.

Senator Kennedy. What other investigations were conducted on Mr. Segretti, other than the two interviews on the 26th and 28th, do you know?

Mr. Gray. I am not really sure I understand that question. We were not investigating him for anything other than his involvement, if any, in this IOC situation at the Democratic national headquarters.

Senator Kennedy. Were his telephone toll cards obtained?

Mr. Gray. I believe that they were; yes, sir.

Senator Kennedy. Why were his toll cards obtained?

Mr. Gray. I think we probably wanted to see to whom Segretti could lead us. We obtained an awful lot of toll calls. As I recall, there were 2,200 of them, not from Segretti, though, but from all the people involved in this investigation as interviewees or as principals.

Senator Kennedy. Who did they lead to?

Mr. Gray. I don't recall that with specificity, Senator.

Senator Kennedy. Would there be any names on there - would you remember them?

Mr. Gray. No; I wouldn't. I would have to provide ^{that} for the record for you, Senator. I just don't remember that.

(Mr. Gray subsequently submitted the following document for the

record:)

Mr. Gray. Our records show that during the period of time we felt was pertinent and checked, from about August, 1971 to June, 1972, there were about 700 calls charged to Mr. Segretti. The investigating Agents screened these calls to try to pinpoint those which would appear to involve the Watergate subjects (Hunt, Liddy, McCord, Barker, Martinez, Fiorini and Gonzalez). We also looked for calls to the Committee to Reelect the President, Committee to Reelect the President people, the White House, White House people, or calls which might show Segretti was in contact with Hunt or Liddy during their travels. The greater majority of these calls did not appear to relate to the people involved in the Watergate incident. We did learn that Mr. Segretti was in touch with the published ^{telephone} number of the White House on several occasions; with hotels in Miami, Washington, D.C., and Chicago; with Mr. Dwight Chapin's residence; and with Mr. Hunt, both at his office and at his residence.

* * * * *

p.226

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

Mr. Gray. After checking the records, I have found that Mr. Kalmbach was interviewed on September 4, 1972, at Los Angeles. This interview was conducted at the request of Assistant U.S. Attorney Silbert, who directed the grand jury inquiry. Mr. Silbert wanted us to find from Mr. Kalmbach details concerning payments of money to Segretti such as how much was paid where the money came from and whether reports were made by Segretti. ...

... He said he had no knowledge of what Segretti was doing to justify these expenses or to earn his salary. He said the money he used to pay Segretti came out of campaign funds that were obtained from contributors prior to April 7, 1972. ...

* * * * *

Senator Kennedy. Did you interview everyone that Mr. Segretti had called?

Mr. Gray. The Federal Bureau of Investigation?

Senator Kennedy. Yes/

Mr. Gray. No, sir; there would have been a selective screening at the case agent and field supervisory level and they would have done that themselves. I would not have interfered, though, I would not have said, "Don't do this or don't do that." I turned them loose.

Senator Kennedy. What is the basis of the screening?

Mr. Gray. It is basically to save manpower and get your most probable parties first.

Senator Kennedy. How do you decide which ones you are going to get?

Mr. Gray. The case agents from the knowledge of the case and the total buildup of the statement pattern as it is being developed, discuss this among themselves and their supervisors and they begin to zero in. In these investigations one thing leads to another. It is that type of situation.

Senator Kennedy. Why would Kalmbach and Chapin be on the list of the interviewed and some others not be?

Mr. Gray. I think it was a natural and probable consequence by that time.

Senator Kennedy. Why?

Mr. Gray. Because it was certainly an obvious conclusion to be drawn by anybody that these would be people who should be interviewed, because of some of the allegations that were made once again in the Federal Grand Jury

Senator Kennedy. Did you ever talk to Chapin's boss?

Mr. Gray. Who is that, sir?

Senator Kennedy. Mr. Haldeman.

Mr. Gray. Mr. Haldeman, no, sir, we did not.

Senator Kennedy. Did anybody that you know of in the FBI talk to him?

Mr. Gray. No, sir, I know of no one from the FBI who talked to Mr.

Haldeman. I know of no one in the FBI who sent out a lead to talk to Mr. Haldeman and I know of no one in the FBI who recommended that we talk to Mr. Haldeman, and when I asked these very same questions in our skull sessions -

Senator Kennedy. You asked the same questions?

Mr. Gray (continuing). I asked those very same questions in our skull sessions.

Senator Kennedy. Why did you ask them?

Mr. Gray. Why did I ask them? Because once again I wanted to leave no stone unturned.

Senator Kennedy. You think if they asked Mr. Chapin's boss that some stone might have been turned?

Mr. Gray. I doubt it very much because we have no indication in the total statement pattern, the total evidentiary pattern of development of this investigation to indicate that he was involved. We did interview Mr. Ehrlichman, so the natural conclusion has got to be drawn, Senator, that if we had thought, if any of my investigators had thought that Mr. Haldeman should have been interviewed such a recommendation would have been made, such a lead would have been carried through.

* * * * *

Senator Kennedy. What would have been the type of thing you might have been looking for with Mr. Haldeman, what Mr. Chapin's duties were?

Mr. Gray. No.

Senator Kennedy. What sort of thing?

Mr. Gray. Any participation, guidance, direction, involvement in the IOC. That was the criminal matter that we had under investigation.

Senator Kennedy. Limited only to that?

Mr. Gray. Sir?

Senator Kennedy. Limited only to that?

Mr. Gray. Yes, sir. That is correct.