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93-14 LEGISLATIVE OVERSIGHT OF SEC: INQUIRY INTO
WITHHOLDING AND TRANSFER OF AGENCY FILES
PERTAINING TO ITT

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BEFORE THE
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS
SECOND SESSION

INQUIRY INTO WITHHOLDING AND TRANSFER OF SEC FILES
PERTAINING TO ITT

DECEMBER 14, 1972

Serial No. 93-14

Printed for the use of the
Committee on Interstate and Foreign Commerce

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LEGISLATIVE OVERSIGHT OF SEC: INQUIRY INTO WITHHOLDING AND TRANSFER OF AGENCY FILES PERTAINING TO ITT

WEDNESDAY, DECEMBER 14, 1972

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1 p.m., in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

Present: Representatives Staggers, Pickle, Blanton, Springer, and Shoup.

The CHAIRMAN. The committee will come to order.

Before hearing from our witnesses this afternoon, I would like to set forth the jurisdiction of this subcommittee and the legislative purpose behind this hearing.

I will also review the facts which have led to this hearing.

Rule 11 of the House of Representatives charges the Committee on Interstate and Foreign Commerce with responsibility for legislation involving securities and exchanges. The Securities and Exchange Commission itself was set up by the Congress to administer the Federal securities laws. It is one of the regulatory agencies whose functions come within the legislative oversight responsibility of the House Commerce Committee.

Our concern must be that this agency of the Government, which operates only by virtue of delegated authority from the Congress, administers the laws as Congress intended. We must also assure ourselves that the laws themselves continue to be adequate in the light of present-day circumstances. This concern with the adequacy of the laws, and of their administration, is what legislative oversight is all about. This requires a continuous review of the operations and policies of the regulatory agencies set up by the Congress. This legislative oversight function is, in my view, just as important as the passage of new legislation. After all, what is the value of passing new laws if existing ones are not being carried out?

At this point, to save time, I will direct, without objection, that the full text of clauses 12 and 28 of House Rule XI be inserted in the record. I will only note briefly that clause 28 requires each standing committee to "review and study, on a continuing basis, the application, administration, and execution" of the laws falling within the jurisdiction of the committee.

(The document referred to follows:)

SELECTED PROVISIONS OF THE RULES OF THE HOUSE OF REPRESENTATIVES APPLICABLE TO SUBCOMMITTEE ACTIVITIES

RULE XI. POWERS AND DUTIES OF COMMITTEES

All proposed legislation, messages, petitions, memorials, and other matters relating to the subject listed under the standing committees named below shall be referred to such committees respectively:

* * * * *

12. COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

- (a) Interstate and foreign commerce generally.
- (b) Civil aeronautics.
- (c) Inland waterways.
- (d) Interstate oil compacts and petroleum and natural gas, except on the public lands.
- (e) Public health and quarantine.
- (f) Railroad labor and railroad retirement and unemployment, except revenue measures relating thereto.
- (g) Regulation of interstate and foreign communications.
- (h) Regulation of interstate and foreign transportation, except transportation by water not subject to the jurisdiction of the Interstate Commerce Commission.
- (i) Regulation of interstate transmission of power, except the installation of connection between Government water-power projects.
- (j) Securities and exchanges.
- (k) Weather Bureau.

* * * * *

28. (a) In order to assist the House in—

(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

(b) Each standing committee shall submit to the House, not later than January 2 of each odd-numbered year beginning on or after January 1, 1973, a report on the activities of that committee under this clause during the Congress ending at noon on January 3 of such year.

(c) The preceding provisions of this clause do not apply to the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, and the Committee on Standards of Official Conduct.

(d) Each standing committee of the House shall, in its consideration of all bills and joint resolutions of a public character within its jurisdiction, endeavor to insure that—

(1) all continuing programs of the Federal Government, and of the government of the District of Columbia, within the jurisdiction of that committee, are designed; and

(2) all continuing activities of Government agencies, within the jurisdiction of that committee, are carried on:

so that, to the extent consistent with the nature, requirements, and objectives of those programs and activities, appropriations therefor will be made annually. For the purpose of this paragraph, a Government agency includes the organizational units of government listed in paragraph (d) of clause 7 of rule XIII.

(e) Each standing committee of the House shall review, from time to time, each continuing program within its jurisdiction for which appropriations are not made annually in order to ascertain whether such program could be modified so that appropriations therefor would be made annually.

The CHAIRMAN. House Resolution 170 of the 92d Congress authorizes the committee, acting as a whole or by subcommittee, to conduct "full and complete studies and investigations" concerning this sub-

ject matter. I will also direct, without objection, that the text of House Resolution 170 also be inserted in the record. Our witnesses here this afternoon have been provided with printed copies of these materials and I invite their careful attention to them.

(The document referred to follows:)

H. RES. 170, 92D CONGRESS, 1ST SESSION

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 1971

Mr. STAGGERS submitted the following resolution; which was referred to the Committee on Rules

FEBRUARY 25, 1971

Reported with an amendment, referred to the House Calendar, and ordered to be printed.

MARCH 2, 1971

Considered, amended, and agreed to

RESOLUTION

Resolved, That, effective January 3, 1971, the Committee on Interstate and Foreign Commerce, acting as a whole or by subcommittee, is authorized to conduct full and complete studies and investigations and make inquiries within its jurisdiction as set forth in clause 12 of rule XI of the Rules of the House of Representatives. However, the committee shall not undertake any investigation of any subject which is being investigated for the same purpose by any other committee of the House.

Sec. 2. (a) For the purpose of making such investigations and studies, the committee or any subcommittee thereof is authorized to sit and act, subject to clause 31 of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or any member designated by him and may be served by any person designated by such chairman or member. The chairman of the committee, or any member designated by him, may administer oaths to any witness.

(b) Pursuant to clause 28 of rule XI of the Rules of the House of Representatives, the committee shall submit to the House, not later than January 2, 1973, a report on the activities of that committee during the Congress ending at noon on January 3, 1973.

Sec. 3. (a) Funds authorized are for expenses incurred in the committee's activities within the United States; however, local currencies owned by the United States shall be made available to the Committee on Interstate and Foreign Commerce of the House of Representatives and employees engaged in carrying out their official duties for the purposes of carrying out the committee's authority, as set forth in this resolution, to travel outside the United States. In addition to any other condition that may be applicable with respect to the use of local currencies owned by the United States by members and employees of the committee, the following conditions shall apply with respect to their use of such currencies:

(1) No member or employee of such committee shall receive or expend local currencies for subsistence in any country at a rate in excess of the maximum per diem rate set forth in section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754).

(2) No member or employee of such committee shall receive or expend an amount of local currencies for transportation in excess of actual transportation costs.

(3) No appropriated funds shall be expended for the purpose of defraying expenses of members of such committee or its employees in any country where local currencies are available for this purpose.

(4) Each member or employee of such committee shall make to the chairman of such committee an itemized report showing the number of days visited in each country whose local currencies were spent, the amount of per diem furnished, and the cost of transportation if furnished by public carrier, or if such transportation is furnished by an agency of the United States Government, the cost of such transportation, and the identification of the agency. All such individual reports shall be filed by the chairman with the Committee on House Administration and shall be open to public inspection.

(b) Amounts of per diem shall not be furnished for a period of time in any country if per diem has been furnished for the same period of time in any other country, irrespective of differences in time zones.

The CHAIRMAN. To put the matter quite simply, the regulatory agencies in this Government are conducting the public's business. It is the responsibility of the public's collective representative, the Congress, to inform itself and be advised as to how that public business is being conducted. This process cannot take place under a cloud of agency secrecy; there must be a free and candid flow of information if this Congress is to meet its responsibilities in the legislative oversight area. We are all servants of the American people, whether we serve in Congress, in a regulatory agency, or in an executive department. As such, we all have a responsibility to see that this essential process of legislative review not be compromised.

For my part, I can think of no practice which will more effectively break down the operations of Government, and the public's confidence in Government, than throwing a cloak of secrecy over the operations of the agencies which Congress has set up to administer the laws. It is not enough that an agency say, "Rely on us—you do not have to check our work." It is precisely when that kind of assertion is made that we must be most suspicious.

This brings me to the fact situation involved in these proceedings.

Some time ago we received definite and strong allegations that certain documents in the possession of the SEC detailed numerous contacts between the International Telephone & Telegraph Corp. and high Government officials seeking to obtain preferred treatment for that corporation under the law. Moreover, these allegations, if supported, would raise serious questions about the policies and procedures of the SEC itself.

It was to resolve these questions that we sought access to the agency's files. We felt the files themselves, as they existed in the SEC, were the best evidence to refute or support the allegations we received. But our inquiry was at first stalled and then willfully obstructed.

I notified Chairman Casey on September 21, 1972, that this subcommittee wished to examine certain records in the SEC's control which the agency had obtained during its IIT investigation. These materials were to be examined at the offices of the SEC itself. There would have been absolutely no interference with any staff work in progress at the Commission. On September 26, Chairman Casey wrote me that the Commission was refusing access to its files. He stated in part:

[The SEC staff is] working diligently to complete all aspects of the investigation. I feel quite sure that the investigation will be concluded and the Commission will be in a position to take whatever action may be indicated as appropriate before the end of the year.

After a discussion in my office on September 27, Chairman Casey promised me that the SEC would reconsider the matter and advise me of its decision the next day. I was never so advised.

I renewed my request for access to the Commission's files by letter dated September 28. With my written request still unanswered and without a word of warning, on October 6, Chairman Casey wrote me that the Department of Justice had asked for the files on October 4 and that the Commission had immediately complied with its request.

Now that these files have been transferred to a unit of the executive branch of Government, it has become much more difficult, or even impossible, for the subcommittee to review them. I requested the Justice Department to make these files available. The Department has refused.

At this point, I will direct, without objection, that the relevant correspondence between the SEC, the Justice Department, and myself be included in the record.

(The correspondence referred to follows:)

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., September 21, 1972.

Hon. WILLIAM J. CASEY,
*Chairman, Securities and Exchange Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: Recently your commission investigated the International Telephone & Telegraph Corporation with regard to possible violations of the securities laws in connection with the acquisition of the Hartford Fire Insurance Company by I.T.T. During the course of this investigation, the Commission had occasion to subpoena various records, documents and other materials from I.T.T. It is my understanding that as a result of this investigation, I.T.T., Lazard Freres & Co., Mediobanca, and certain individuals consented to a permanent injunction against further violations of various provisions of the federal securities laws.

The Special Subcommittee on Investigations desires to examine the material obtained by the Commission from I.T.T. pursuant to subpoena during the course of the above-described investigation. It is our desire that this review be conducted as soon as possible. I have, accordingly, instructed our staff to contact your office tomorrow morning to make the necessary arrangements to conduct this review.

Your cooperation with the work of our subcommittee is appreciated.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, DC., September 26, 1972.

Hon. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Thank you for your letter of September 21, 1972, and the request of the Special Subcommittee on Investigations to examine material obtained by the Commission from International Telephone and Telegraph Corporation pursuant to subpoena during the course of our investigation of matters surrounding certain transactions in IT&T shares.

We had our first opportunity to discuss your request at the meeting of the Commission this morning. First, I would like to say that although, as your letter states, the Commission has brought and settled an injunctive proceeding against

IT&T arising from this investigation, other aspects of this matter are still under investigation. I checked again with the staff and I am satisfied that they are working diligently to complete all aspects of this investigation. I feel quite sure that the investigation will be concluded and the Commission will be in a position to take whatever action may be indicated as appropriate before the end of the year.

It is the general policy of this Commission not to make public or deliver to any other party, materials, records and documents, during the course of this kind of an investigation and for a very good reason. Any investigation might lead to referral by the Commission of its investigative files to the Department of Justice with a recommendation for criminal prosecution. In such cases, the Commission has the same obligation as a grand jury to protect possible defendants from being unfairly injured by the possibility of a damaging but not fully substantiated charge. As you know, the Courts have strictly construed the right of a defendant to be free from pre-trial publicity. We do not want to take the chance that our release of any material obtained pursuant to our subpoena issued for the purpose of enforcing securities law would impair the rights of possible defendants or render ineffective any action taken to enforce the law.

I am sure you can understand our need to keep this file inviolate at this time. This need was recognized in the exception for investigative files which the Congress provided for in the enactment of the Freedom of Information Act.

As soon as the investigation is completed and the Commission has taken whatever action we find appropriate, I will be back in touch with you and I will be glad to discuss the needs of the Special Subcommittee on Investigations.

Sincerely,

WILLIAM J. CASEY, *Chairman.*

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., September 28, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I have considered your letter of September 26 in response to my earlier request to examine material obtained by the Commission pursuant to subpoena during the course of the Commission's investigation of matters involving International Telephone and Telegraph Corporation. After a thorough and careful evaluation of this entire matter and of applicable legal authorities, I hereby strongly renew my request.

Clause 12 of Rule XI of the Rules of the House of Representatives assigns to the Committee on Interstate and Foreign Commerce responsibility for "interstate and foreign commerce generally" and "securities and exchanges" specifically. Clause 28 of that Rule provides: ". . . each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee." House Resolution 170 of the 92nd Congress, First Session, provides, in part, "For the purpose of making such investigations and studies, the committee or any subcommittee thereof is authorized . . . to hold such hearings and require . . . the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary." For your convenience, I am enclosing a copy of selected provisions of the Rules of the House and of House Resolution 170.

The legislative oversight responsibility of Congress is a long established American tradition. Woodrow Wilson in *Congressional Government* pointed out, "The power of making laws is in its very nature and essence the power of directing, and that power is given to Congress. The principle is without drawback, and is inseparably of a piece with all Anglo-Saxon usage." In this same vein, Justice Douglas, when he was Chairman of the SEC, emphasized that the responsibility of the regulatory agency "is to administer these laws as they are written, not to nullify them by inaction nor to trade out at the conference table decisions made in legislative halls. This is the mandate required by the trusteeship of public office."

Our request for access to examine materials obtained by the Commission pursuant to subpoena has been specifically restricted to subpoenaed materials only. These materials were obtained pursuant to the authority delegated by Congress to the Commission in Section 19 of the Securities Act of 1933 and

Section 21 of the Securities Exchange Act of 1934. That delegated authority is nothing more nor less than the authority of Congress and this committee to obtain those materials for itself. No request is being made for materials constituting the decisional process within or without the Commission. We have so limited our request precisely to avoid interfering with that process. Any inference that the Subcommittee or any member thereof will misuse the materials in such a manner as to injure the rights of any parties to future Commission action is to assume that we are unwilling to protect those rights. That is simply not the case.

Prior examples of Commission cooperation with similar Congressional requests are too numerous to catalogue. In the Penn Central investigation, no less than three separate committees of the House and Senate were furnished copies of trading questionnaires and other materials obtained pursuant to the Commission's right of inspection of broker-dealer records and of subpoena. During the fall and winter of 1970, the Special Subcommittee on Investigations alone was supplied by your Commission with more than 10,000 separate papers. In a Subcommittee study conducted during 1970 and 1971 the Subcommittee was permitted access to non-public files, including those pertaining to continuing investigations in which the Commission subsequently took enforcement action. This Subcommittee study resulted in the publication of "Review of SEC Records of the Demise of Selected Broker-Dealers." The Commission itself has found it valuable to refer to this study. While you have been serving as Chairman of the SEC, the Subcommittee has been permitted to review investigative files, including subpoenaed materials in the study of transfer agents (my letter of August 12, 1971), and of bucketing of government securities (my letter of April 11, 1972). I must say the Commission's sudden refusal in light of these prior examples of cooperation is most strange and unprecedented.

In your letter you point to the exemption in the Freedom of Information Act for investigative files. I know I need not point out that the final sentence in the section creating the exemption reads, "This section is not authority to withhold information from Congress." In House Report 1497, 89th Congress, second session, entitled "Clarifying and Protecting the Right of the Public to Information," the Committee on Government Operations pointed out:

"Members of the Congress have all of the rights of access guaranteed to 'any person' by S. 1160 [Freedom of Information Act], and the Congress has additional rights of access to all government information which it deems necessary to carry out its functions." (pp. 11-12).

Since the legislative oversight responsibility over the SEC rests within the jurisdiction of the Special Subcommittee on Investigations, it is clear to me that it is our responsibility to examine the materials requested and is the Commission's responsibility to cooperate.

In the case of *Watkins v. United States*, 354 U.S. 178 (1957), the Supreme Court considered the power of Congress to investigate in a situation involving the exposure of the private affairs of individuals. In reaching its decision, the Court was explicit in stating the basic rule:

"We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste . . ." (Page 187.)

There have been many studies and reports prepared on the extent of this power which reach the same conclusions. I take the liberty of citing two: "*Right of Access by Special Subcommittee on Legislative Oversight to Civil Aeronautics Board Files and Records*," Staff Report prepared for the Special Subcommittee on Legislative Oversight (October 17, 1957), and "*The Right of Congress to Obtain Information from the Executive and from Other Agencies of the Federal Government*," Study by the staff of the Committee on Government Operations (May 3, 1956.)

In concluding, I might quote from the Memorandum of Law, "*Right of Access by Special Subcommittee on Legislative Oversight to Civil Aeronautics Board Files and Records*":

"To hold [that pending files may be withheld from Congress] would be to give an agency being investigated too easy a device to shield particular matters from congressional scrutiny. To do so, it would need only to hold up final action

in cases it wishes to cloak until after the particular congressional probe has passed. This is particularly true if one realizes that it is common, in cases of consequence, for losing parties to file petitions for rehearing or reconsideration. By simply holding off its decisions on such petitions, an agency could effectively stifle congressional inquiries from going into matters of legitimate legislative concern, if congressional committees may be entirely barred by agency fiat from investigating such 'pending cases.' " (Page 42.)

For these reasons, I cannot agree with the Commission's refusal to grant access to the materials. The Commission is free to advise any and all parties if it so desires that it is making this information available to the Subcommittee.

I sincerely hope that the Commission will see its responsibilities in the same light in which I view them.

Sincerely yours,

HARLEY O. STAGGERS, *Chairman*.

SECURITIES AND EXCHANGE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., October 6, 1972.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Thank you for your letter of September 28, 1972, with its review of the legal authorities directing Congressional oversight committees to review the administration of laws and authorizing them to hold hearings and require the production of records for that purpose. We fully recognize the right of Congress to review the Commission's operations and are anxious to cooperate with the Congress in any study it wishes to make.

This is illustrated by the prior examples of Commission cooperation with similar Congressional requests which your letter cites. I must, however, correct the statement that the Commission's position on this matter is unprecedented. Our basic policy was clearly set forth in the December 17, 1969 letter which former Chairman Budge sent to the Committee on Government Operations. Chairman Budge expressed the Commission's position on the availability of data from pending investigations in the following language:

"The Commission has consistently taken the position, however, and has generally persuaded interested Congressional committees that, barring exceptional circumstances, it is inappropriate for Congressional committees to be furnished nonpublic information pertaining to a pending investigation or Commission adjudication. The Commission has adopted this position (1) to maintain the appearance as well as the fact of agency impartiality in its adjudicatory functions and to avoid any impediment to its investigatory and enforcement function." The Commission's activities in this regard have been likened to those of a grand jury. See *Woolley v. United States*, 97 F. 2d 258, 262 (C.A. 9, 1938); *In re Securities and Exchange Commission*, 84 F. 2d 316, 318 (C.A. 2, 1936).

Chairman Budge further stated: "Any reluctance on the Commission's part to furnish information would be dictated by the impairment of pending investigations or the probable impact disclosure would have on third parties."

The considerations which Chairman Budge stressed are particularly vital in a matter which can attract wide publicity and speculation. As I explained to you last week, I believe it to be a misuse of our subpoena power to permit access to documents except for the enforcement purposes for which it was authorized, a failure in our obligation to avoid anything which could jeopardize an enforcement action, and an impropriety in disposing of documents, which may be used as evidence in a prosecution, in any manner which could cut off any rights a possible defendant might want to assert with respect to them in relation to any party other than the Commission.

As Commissioner Herlong and I recounted to you subsequent to the completion of our enforcement actions on insider trading, the staff recommended, and the Commission approved, that the IT&T investigation be continued to determine whether there had been an obstruction of justice. We have been regularly discussing this phase of our investigation with the Department of Justice, which, as directed by the Senate Judiciary Committee, has been also investigating possible obstruction of justice. Lawyers for IT&T and individuals involved recently questioned the propriety of requiring their clients to respond to two separate investigations, both relating to the possible obstruction of justice.

On October 4, the Justice Department asked that our files on this matter be referred to them. The Commission recognized that the Justice Department has a clear right to material bearing on a possible crime. In the final analysis, the Justice Department would have to draw the whole matter together and handle any prosecution. The Justice Department is also in the best position to handle problems relating to the rights of potential defendants and safeguarding the validity of any subsequent legal action.

Therefore, the Commission unanimously approved referring the IT&T file and investigation to the Justice Department for possible criminal prosecution. The Commission's enforcement staff has been directed to cooperate with the Justice Department in any way the Department may find useful in discharging its obligations.

Very truly yours,

WILLIAM J. CASEY, *Chairman.*

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., October 13, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: In your letter of October 6, you advised me that "on October 4 the Department of Justice asked that our files on this matter be referred to them." The obvious import of this language was that the Department on its own initiative had solicited the materials. This, frankly, came as a surprise in view of your earlier letter, dated September 26, in which you advised me that the files in question would not be made available to our Investigations Subcommittee because the matter was still in the investigatory stage at the SEC. Specifically, you stated:

"... [The staff] are working diligently to complete all aspects of this investigation. I feel quite sure that the investigation will be concluded and the Commission will be in a position to take whatever action may be indicated as appropriate before the end of the year."

I am now informed that the Department of Justice is advising the public that the request for the files was as a result of action initiated by you in a telephone call you made to Deputy Attorney General Ralph E. Erickson. The Department did not present a written request for the materials. Furthermore, the materials submitted by the Commission to the Department were not accompanied by a criminal reference report and recommendation as is the Commission's standard procedure in accordance with Section 21(e) of the Securities Exchange Act of 1934. Under the circumstances as they now appear on the public record, I am forced to conclude that the Department's action was an accommodation to the SEC.

This action, initiated by you, raises serious questions. Under the circumstances, it appears that your primary objective was to withhold the materials at any cost in order to thwart the legitimate oversight examination by the Special Subcommittee on Investigations.

I have directed the staff to commence immediately a thorough investigation of all aspects of the Commission's handling of this case. I am advising you that all persons in the Commission in any way connected with this matter are going to be interviewed by my staff and that such further action as may be warranted will be taken.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., October 17, 1972.

HON. RALPH E. ERICKSON,
Deputy Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. ERICKSON: The Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce desires to examine the materials collected by the Securities and Exchange Commission during its investigation

into International Telephone & Telegraph Corporation and other companies. I have been advised by Chairman Casey that the Commission referred these files pursuant to Department request on October 6, 1972.

As you know, the House Committee on Interstate and Foreign Commerce is required by law to "review and study, on a continuing basis, the application, administration and execution" of, among other things, the Federal securities laws. The Special Subcommittee on Investigations has express responsibility in this area. Since the law requires review "on a continuing basis", it precludes holding the legislative oversight functions in abeyance while the regulatory agency decides upon further action.

Because these are files of the Securities and Exchange Commission and pertain directly to matters within the Committee's legislative oversight responsibility, I would assume the Department will make them available. Accordingly, I would appreciate someone from your staff contacting Mr. Daniel J. Manelli, Acting Chief Counsel, telephone 225-4441, to make the necessary arrangements.

Your cooperation with the Subcommittee will be appreciated.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION.

OFFICE OF THE CHAIRMAN,

Washington, D.C., October 25, 1972.

HON. HARLEY O. STAGGERS,

Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: The Commission has considered a request from members of your staff to make available to them for questioning the staff members of the SEC who worked on our investigation involving International Telephone and Telegraph.

As you know from my letter of October 6, 1972, the Commission is most concerned with its responsibilities in connection with open investigatory files. The Commission has to consider its responsibility to work with the executive in enforcing the law.

We are still concerned about the possibility that any enforcement action which may be necessary could be jeopardized by publicity resulting from discussions between our staff and yours. We would appreciate, therefore, a more detailed idea from you as to the subjects your staff wishes to pursue at the inquiry. If we are advised of the focus of your interest, we can perhaps work out an accommodation without risking prejudicial disclosure of information.

The Commission, of course, wishes to cooperate with the Subcommittee in any way it can without jeopardizing its statutory responsibilities on enforcement matters. I hope we will find a mutually satisfactory way of accomplishing this.

Sincerely,

WILLIAM J. CASEY, *Chairman.*

DEPARTMENT OF JUSTICE,

OFFICE OF THE DEPUTY ATTORNEY GENERAL,

Washington, D.C., October 26, 1972.

HON. HARLEY O. STAGGERS,

Chairman, Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have your letter of October 17, 1972, requesting access to materials collected by the Securities and Exchange Commission during its investigation into the affairs of International Telephone and Telegraph Corporation which were forwarded to the Department of Justice earlier this month.

As Chairman Casey advised you in his letter of October 6, 1972, the prior Securities and Exchange Commission investigation into International Telephone and Telegraph Corporation insider trading was continued by the Commission to determine whether there were involved any obstruction of justice violations. The Department of Justice was advised of this continuing phase of the investigation.

When it later appeared that possible violations of federal criminal laws might be involved, the files were forwarded to the Department of Justice to avoid jeopardizing any enforcement action. It was in this context of possible obstruction of justice violations that we asked that the files be referred so that a full

investigation could be undertaken by our Criminal Division to determine if there were any criminal violations warranting prosecution.

Under these circumstances, it would be inappropriate for us to make the materials available to your Committee. Indeed, any such action would jeopardize possible criminal prosecution, as well as the rights of any potential defendant, if we were to make the materials available to anyone outside the Department.

Sincerely,

RALPH E. ERICKSON,
Deputy Attorney General.

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., November 1, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I have read your letters of October 20 and 25, 1972, concerning the International Telephone and Telephone Corp. matter.

Your letter of October 20 merely confirms my information that it was you, not the Department of Justice, who initiated the transfer of files from the SEC to the Department. Whether or not the formality of a request for these files was actually gone through, is, of course, immaterial. What is material is that you have sought to impede the legitimate Congressional oversight inquiry into the operations of your agency. This much is clear from all of the surrounding circumstances of this case, including the fact that no duplicates were made of the materials in question before they were turned over to the Justice Department. I must view this circumstance against the background of your representation to me that your staff was diligently continuing its evaluation of these materials. If this were in fact the case, it would seem that you have materially prejudiced your staff's ability to further pursue its investigation by transferring the files to the Department.

In my letter of October 13, I advised you that I had directed my staff to interview various employees of your Commission concerning this matter. My staff advises me that it has been impossible for them to carry out my directions because their initial attempt to interview an SEC employee was met with a refusal on his part. This refusal was based upon his assertion that he could not speak without permission from the Commission. My staff took up the question of securing such permission directly with your office. I take your letter of October 25, 1972 to be your response to that contact.

The substance of that letter is that your and the Commission's cooperation in this matter will depend upon my supplying you with some sort of a "more detailed idea" as to the subject matter my staff will pursue during its interviews with your employees. I must decline to establish a precedent that Congressional oversight can proceed only after negotiations and pre-clearance of such matters with the head of an agency which is the subject of the inquiry. The legislative oversight responsibility which it is the duty of this committee to discharge is unequivocal. It requires that the standing committees of Congress evaluate the performance of the various regulatory agencies which the Congress has set up to administer the laws. This responsibility cannot be discharged if the extent and nature of Congressional inquiry is to be a matter of negotiation and debate between the Congress and the agency whose operations are to be examined. On this basis, I must decline your suggestion that we "work out an accommodation" on this matter.

In the particular matter at hand, I have advised my staff that their examination should cover all aspects of the SEC's handling of this case. This will include, but not be limited, to *ex parte* communications, administrative delay, possible prejudice of rights of recovery by potential litigants, inadequate disclosure under the Securities Act, Securities Exchange Act and the Investment Company Act, limitations on the scope of the investigation, adequacy and timeliness of action taken, mutual fund portfolio revaluation, trading in securities, and all other matters bearing upon the Commission's administration of the Federal securities laws.

By way of further clarification, my staff has been initially instructed to interview all of the following persons:

1. All Commissioners and their legal assistants.
2. Charles S. Whitman, III.

3. Ronald F. Hunt.
4. Irving M. Pollack.
5. Wallace L. Timmeny.
6. All persons signing the injunctive complaint, including G. Bradford Cook, Stanley Sporkin, Irwin M. Borowski, Richard E. Nathan, Ralph C. Ferrara and Kevin Duffy.
7. All staff members designated in the formal order to investigation, and any amendments thereto, as officers of the Commission for purposes of the investigation.
8. All persons in the Division of Corporation Finance involved in processing the registration statements of ITT, including Irving D. Borochoff and Matthew H. Epstein.

It may, of course, be necessary to interview additional personnel based on information developed in those interviews. You have expressed concern about "the possibility that any enforcement action which may be necessary could be jeopardized by publicity resulting from discussions between our staff and yours." As I pointed out in my letter of September 28, 1972, "any inference that the Subcommittee or any member thereof will misuse the materials in such a manner as to injure the rights of any parties to future Commission action is to assume that we are unwilling to protect those rights. That is simply not the case." We are concerned with the adequate and proper enforcement of the law and with protecting the legal rights of all parties. We both know that can be accomplished at the same time my staff conducts its examination.

In view of the prolonged delay which has already taken place in this inquiry, I shall expect an early and favorable response to this letter; specifically, it is requested that you advise me whether or not you will consent to the above-described interviews with members of the Commission and its staff. Your answer will allow us to determine our next course of action.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., November 8, 1972.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: This is in response to your letter of November 1, 1972, concerning the pending investigation by the Commission of IT&T and others, and the files obtained by the Commission in the course of that investigation. In your letter you assert (1) that we "have sought to impede the legitimate Congressional oversight inquiry into the operations of . . ." the Commission; and (2) that you need not apprise us of the subject matter and areas of inquiry you seek to cover in interviews of a minimum of 12 key staff officials as well as all members of the Commission and their legal assistants for which you seek our voluntary acquiescence.

While, in your second letter, that of September 28, 1972, you referred generally to the legislative oversight authority of the Congress, your request was for documents with no expression of intent to review our proceedings. It is only your latest letter which, for the first time, explicitly states a purpose to review the Commission's handling of an investigative matter as distinguished from a broad request to take documents from an active investigative file for unspecified purposes.¹

As the Commission previously has advised Congressman Moss, the Commission has consistently taken the position, and has generally persuaded interested Congressional committees that, barring exceptional circumstances, it is inappropriate for Congressional committees to be furnished nonpublic information pertaining to a pending investigation or Commission adjudication. The Com-

¹ In your letter of September 21, 1972, you only stated that: "The Special Subcommittee on Investigations desires to examine the material obtained by the Commission from I.T.T. pursuant to subpoena during the course of the above-described investigation." I should note also that at no time have we been advised that the Subcommittee, acting *qua* Subcommittee, has requested production of the documents you seek, or that the Subcommittee has authorized the extensive interviews you now seek.

mission has adopted this position (1) to maintain the appearance as well as the fact of agency impartiality in its adjudicatory functions² and (2) to avoid any impediment to its investigatory and enforcement functions.³

Any reluctance on the Commission's part to furnish information would be dictated by the impairment of pending investigations or the probable impact disclosure would have on third parties. We do not view this matter as involving strictly a Commission determination. Rather, having due regard for the public charges with which this agency and the Congress are entrusted, it has been our practice to raise any questions we may have and to attempt to work out a mutually satisfactory accommodation. In many instances the only problem with respect to furnishing the information may be the timing of the request. In such situations, the termination of Commission consideration of a matter usually cures any problems attendant to the request for information.

It was in this vein that I suggested to you that we might be able to "accommodate" the functions of the Commission and your Subcommittee. Similarly, I requested an idea of the subject matter of your proposed inquiry (at a time when it was not clear precisely what the genesis, origin and authority for this inquiry was) with a view toward determining whether any documents we had obtained could be furnished to you in accordance with your request, without jeopardizing our enforcement and investigative efforts or those of the Department of Justice. While I do not, of course, question the right of Congress (either directly or through its duly delegated committees) to perform its oversight and legislative functions,⁴ you have not indicated, nor do I perceive, any reason why the oversight functions your Subcommittee apparently wishes to undertake cannot be conducted in a manner which would prevent the rights of various parties and interested persons from being jeopardized. I believed, and still maintain, that questions of the immediacy and scope of your Subcommittee's inquiry can be resolved in accordance with our respective obligations and functions.

In this connection, I am disturbed that you have, in your correspondence with me and in your recent public pronouncements, characterized in a most unfair manner the Commission's efforts to accommodate the legislative function of your Subcommittee with the Commission's executive function of enforcing the laws. The Commission has at all times, and in as fair and appropriate a manner as possible, attempted to and will continue to cooperate with your Subcommittee

² Although the Commission recognizes a basic distinction between Commission and judicial adjudications, it should be noted that "[t]he courts will not permit a committee [of Congress] to sit in judgment over people or issues when the identical case or controversy is pending before a court of competent jurisdiction." *Congressional Power of Investigation*, S. Doc. No. 99, 83d Cong., 2d Sess. 9 (1954).

³ In some instances, cooperation with certain individuals not otherwise available is obtained upon assurance of complete confidentiality. In this manner, the Commission has been able to obtain trade secrets, commercial or financial information and other information necessary to the Commission's varied investigatory and enforcement functions. The Commission has consistently maintained that the furnishing of this information to anyone without the prior consent of the individual who divulged such information would be inappropriate. Cf. *Clarifying and Protecting the Right of the Public to Information, and for Other Purposes*, H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966), where this Committee referred to the facts that "... a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to disclose documents or information which it receives, it should be able to honor such obligations."

The Commission's activities in this regard have been likened to those of a grand jury. See, e.g., *Securities and Exchange Commission v. First Security Bank of Utah, N.A.*, 447 F. 2d 166, 168 (C.A. 10, 1971), certiorari denied sub nom. *Nemelka v. Securities and Exchange Commission*, 404 U.S. 1038 (1972); *Consolidated Mines of Calif. v. Securities and Exchange Commission*, 97 F. 2d 704, 708 (C.A. 9, 1938); *Woolley v. United States*, supra, 97 F. 2d 258; *In re Securities and Exchange Commission*, 84 F. 2d 316, 318 (C.A. 2), reversed as moot sub nom. *Bracken v. Securities and Exchange Commission*, 299 U.S. 504 (1936).

⁴ As you are aware, in addition to provisions in the statutes administered by the Commission prohibiting disclosure of nonpublic information, there are general statutory provisions which govern such disclosures by governmental officials. One such statute, 18 U.S.C. 1905, makes it a crime for any government official or employee to disclose in any manner not authorized by law confidential information obtained in the course of any investigation or filing. This statutory provision does not, in terms, except Congress or its committees from its operation. Compare 18 U.S.C. 1906 (prohibiting certain disclosures by bank examiners) which specifically excepts from its terms "... the Congress of the United States, or either House thereof, or any committee of Congress or either House duly authorized. ..." See also, Section 210(b) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-10(b), the only provision relating to confidentiality in the legislation we administer which in terms specifically exempts Congress from its operation.

It should also be noted that, while we wish to assist appropriate Congressional inquiries, we do have an obligation to assure ourselves that nonpublic information concerning pending and active investigations is sought for committee functions only.

or any other Congressional bodies, consistent with our enforcement functions and our obligation to protect the public interest.⁵

We will consent to the examination of anyone in the Commission by your staff on the matters specified in your November 1, 1972, letter. However, it does not appear to us that review of the Commission's handling of this matter necessarily will require disclosure of the details of evidence which was subpoenaed for enforcement purposes and which, if used for any other purpose, could infringe individual rights and jeopardize enforcement action. Certainly, we believe that no risk of this should be incurred except under circumstances satisfactory to the Justice Department, which carries the responsibility for protecting the rights of possible defendants and the validity of any enforcement action. We are inclined, therefore, in the absence of further discussions with you, to instruct those to be examined not to answer questions relating to evidence on possible obstruction of justice until the Department of Justice has completed its action. I judge from the Deputy Attorney General's letter to you that Justice deems that necessary to assure, as you say in your letter, "the adequate and proper enforcement of the law and . . . protecting the legal rights of all parties." Without that assurance, we would be troubled if our staff were to disclose evidence which could impair individual rights or jeopardize ongoing enforcement of the federal securities laws, at least in the absence of appropriate formal action of your committee, which I understand you have not yet had an opportunity to consult on this matter. I do not believe that you or your Subcommittee would wish to resort to subpoena power in the absence of appropriate safeguards, since it would then be clear that the possible impairment of anyone's rights, or the validity of an enforcement action, would be your responsibility, and not ours.

In your letter you refer to past instances of Commission cooperation with investigating committees of Congress, and, as always, we adhere to the spirit of that cooperation. I do not believe that it is in our respective interests to reach an impasse over this matter, and I can assure you that we will take all appropriate steps to prevent such an occurrence. I hope that, when your schedule permits, we can meet to resolve this matter in a manner satisfactory and responsive to all the interests to which the institutions we represent must be faithful.

This letter expresses the unanimous views of the members of this Commission.

Sincerely yours,

WILLIAM J. CASEY, *Chairman.*

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., December 7, 1972.

HON. WILLIAM J. CASEY,
*Chairman, Securities and Exchange Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: The Special Subcommittee on Investigations will hold a public hearing on matters pertaining to the Commission's investigation of the International Telephone and Telegraph Corporation and others. As you know, this has been the subject of correspondence between us beginning September 21, 1972.

The hearing will commence promptly at 1:00 PM, Thursday, December 14, 1972, in Room 2123 Rayburn House Office Building. In addition to yourself as Chairman, the attendance of the following persons as witnesses will be required:

1. Charles S. Whitman III
2. Irving M. Pollack
3. Stanley Sporkin
4. Irwin M. Borowski
5. Ralph C. Ferrara

⁵ I do not perceive the significance of the reference, in your letter, to the question whether the Commission or the Department of Justice "initiated" the transfer of documents compiled during our investigation of IT&T. My representation to you that the Department of Justice requested that we send these documents to them is beyond question. More important, however, is the fact that the Commission and the Department of Justice, the latter having primary and ultimate responsibility and discretion for the criminal enforcement of the federal securities laws, are in constant communication concerning pending and active Commission investigations, and the matter in which you presently are interested—IT&T—is no different. There was and is nothing sinister in the working relationship these two enforcement agencies have developed since 1934. Indeed, the efficient performance of our congressionally-mandated functions dictated the establishment of this working relationship long before you or I were actively involved in the implementation of the Securities Act or Securities Exchange Act.

It is requested that you and the other witnesses refresh your recollections concerning the conduct of the ITT investigation, and the transfer of records from SEC to the Department of Justice which took place in October of this year, so that you will be in a position to provide your testimony to the Subcommittee in as complete a form as possible.

I am enclosing copies of the applicable Rules of the House of Representatives which are provided to witnesses at Subcommittee hearings. These should be distributed, along with copies of this letter, to the appropriate parties. As is customary in the Subcommittee's hearings, all witnesses will be expected to testify under oath.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., December 11, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

Dear MR. CHAIRMAN: It will be appreciated if you will arrange to have Mr. King Mallory present as a possible witness at the Subcommittee hearing on December 14th in addition to the individuals designated in my letter to you of December 7, 1972.

Would you also please bring with you copies of all of the various subpoenas issued by the Commission to ITT, Lazard Freres, Mediobanco, and others in connection with the ITT investigation. In addition, please bring copies of any catalogues or other listings, prepared by Commission staff, enumerating or otherwise listing and describing the materials submitted to the Commission in return of the subpoenas.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

The CHAIRMAN. After the transfer of the files, a new dimension was added to this matter. A spokesman for the Justice Department was quoted in the press to the effect that it was Chairman Casey, not the Justice Department, who initiated the action leading to the transfer of the files. We are concerned because the action was undertaken at a time when the Commission staff was still subpoenaing witnesses and documents, and taking testimony.

I must say again that the administrative procedures of this Government will quickly break down if the agencies actually become a "headless fourth branch of Government," responsible to no one. I think we all have to be concerned, both as Congressmen and citizens, when an agency seeks to forestall a congressional inquiry by the simple expedient of declaring that its files are still in the investigatory stage. As we all know, an agency is in complete control of the progress of an investigation and it would be the easiest trick in the world to keep an investigation going forever. As it is, some agencies take years to complete certain investigations.

We have to be further concerned when, in a case like this, official records are abruptly purged from an agency building and bundled over to the executive branch.

Chairman Casey will understand, I hope, that there is nothing personal in this inquiry. We do not wish to minimize the significant contributions that he has made during his service as Chairman of the Commission. But the issues and the facts involved in this case go far beyond personalities. We mean to explore those issues and those facts as fully as we can. To do less is to ignore our responsibilities to the American people.

Chairman Casey, I would like you, and the other six individuals from the Commission whom I have requested as witnesses from the Commission, to step forward at this time.

Mr. CASEY. Mr. Chairman, I have Commissioner Owens and Commissioner Loomis here if you would care to have them come with us.

The CHAIRMAN. The ones we asked for, are they here?

Mr. CASEY. Oh, yes.

The CHAIRMAN. Well, if they would step forward, please. I would ask all of you to stand and raise your right hand, please.

Do you solemnly swear or affirm that the testimony you are about to give this subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CASEY. I do.

Mr. WHITMAN. I do.

Mr. MALLORY. I do.

Mr. POLLACK. I do.

Mr. SPORKIN. I do.

Mr. BOROWSKI. I do.

Mr. FERRARA. I do.

The CHAIRMAN. The rest of you may be seated. I will ask Chairman Casey to remain at the table. Do you wish personal counsel to be with you?

Mr. CASEY. No.

The CHAIRMAN. All right. You may be seated, sir.

TESTIMONY OF HON. WILLIAM J. CASEY, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY CHARLES S. WHITMAN III, EXECUTIVE ASSISTANT TO CHAIRMAN CASEY; CHARLES KING MALLORY, ACTING EXECUTIVE DIRECTOR; IRVING M. POLLACK, DIRECTOR, DIVISION OF ENFORCEMENT; STANLEY SPORKIN, DEPUTY DIRECTOR, DIVISION OF ENFORCEMENT; IRWIN M. BOROWSKI, CHIEF ENFORCEMENT ATTORNEY; AND RALPH C. FERRARA, STAFF ATTORNEY, SEC

Mr. SPRINGER. Mr. Chairman, there are five members of this Commission when you are at full strength?

Mr. CASEY. Yes. We have five. One post on the Commission is vacant at the moment. We have four sitting Commissioners.

Mr. SPRINGER. Now, present today are yourself, Mr. Loomis, and Mr. Owens. Where is Mr. Herlong?

Mr. CASEY. The fourth Commissioner, Mr. Herlong, is in the hospital. He had a gall bladder operation and is recuperating.

Mr. SPRINGER. He is in the hospital, so what you have here is one vacancy, one man in the hospital, and the three Commissioners that are here acting at present. Have I got this right now?

Mr. CASEY. That is correct.

Mr. SPRINGER. All right. Thank you.

The CHAIRMAN. Mr. Casey, in my letter to you dated September 21, 1972, I asked that you bring with you to the hearing this afternoon copies of all the various subpoenas issued by the Commission to ITT, and to various other parties in connection with the ITT investigation. I also asked you to bring copies of any catalogs or other listings pre-

pared by Commission staff describing the materials submitted to the Commission in return of the subpoenas. Do you have those materials with you?

Mr. CASEY. Yes, sir; they were brought along.

The CHAIRMAN. Would you please turn them all over to our staff at this time?

Mr. CASEY. Yes; we are prepared to turn them over to your staff at this time. I think I should say, however, that there may be some of these documents, which, if the information in them became public, would seriously impair and undermine any court action which the Justice Department may decide to bring. It would likely subject individuals who are possible defendants in these matters to publicity and to charges which are normally not made available until a grand jury proceeding, and if this information became public it would impair the protection that individuals in our system are entitled to until they are indicted by a grand jury. Nevertheless, we will be happy to submit it. But I want to make clear, Mr. Chairman, that we have discharged our responsibility in this matter as far as we can. At this point you are exercising your authority to take them over and we are prepared to deliver them.

The CHAIRMAN. Before any other thing is done, we will certainly consult with you or your staff.

Mr. CASEY. Very good.

The CHAIRMAN. Would a member of the staff take the documents, please?

Mr. SPRINGER. Mr. Chairman, this bothers me just a little bit. If the Justice Department is going to proceed in this case, then the SEC has washed their hands of responsibility. I am not sure I want to do that.

Mr. Chairman, let me ask you this, because this is pretty important. Do any of these things contained in this folder have to do with the possible prosecution of somebody?

Mr. CASEY. Well, that folder contains notes and identifies individuals who may or may not be prosecuted.

Mr. SPRINGER. Is there any evidence in there now?

Mr. CASEY. There are no documents, but there are digests and references to digests.

Mr. SPRINGER. Do they quote what the documents say?

Mr. CASEY. They summarize some of them, summarize the contents of the documents.

The CHAIRMAN. Mr. Casey, do you have a statement you would like to make right now? We did not receive any from you. If you have a short statement, you may put it in the record or summarize it.

Mr. CASEY. I would, if I may, Mr. Chairman, just make a few things clear at the outset if I might have your attention.

The CHAIRMAN. I have a few questions. I thought maybe you might want to make it during that time, or afterwards, or briefly make it now.

Mr. CASEY. This will take just a few minutes.

I think there has been a good deal of misinformation about this matter and the handling of it, and we are pleased to have this opportunity to bring it all together and lay it out so everybody can understand what we have done in this matter.

I think I would first like to make it very clear that all the decisions, the positions, and the action that the Commission has taken in this matter were carefully considered by all the members of the Commission with the advice of its staff. And all these steps represent the unanimous opinion as to what was the appropriate and proper exercise of the Commission authority, and what was required in the discharge of our obligations in this matter was arrived at independently by all four members of the Commission.

I would like to also state that what we did here is in line with the traditional position of the Commission, which was last expressed by Chairman Budge in a letter to Congressman Moss, in which he said the Commission has consistently taken the position and has generally persuaded congressional committees that, barring exceptional circumstances, it is inappropriate for congressional committees to be furnished nonpublic information pertaining to a pending investigation or Commission adjudication.

The Commission has adopted this position to maintain the appearance, as well as the fact of impartiality in its adjudicatory function, and to avoid any impediment of its investigatory and enforcement function. The Commission's activities in this regard have been likened to those of a grand jury. Any reluctance on the Commission's part to furnish information would be dictated by the impairment of pending investigations or by the possible impact disclosure would have on third parties.

Now, in addressing this matter, this Commission adopted that traditional policy and our position was stated forthrightly to this committee. I have stated that we believe it to be a misuse of our subpoena power to permit access to documents, except for the enforcement purpose for which it was authorized, a failure in our obligation to avoid anything that could jeopardize an enforcement action and an impropriety in disposing of documents which may be used as evidence in a prosecution in any manner which could cut off any rights of a possible defendant might want to assert with respect to them in relation to any party other than the Commission.

So that is the basis of our position here, and it was stated forthrightly in my letter to you, Mr. Chairman.

Now, the Commission agreed that the documents should not be delivered unless your committee took responsibility for the consequences and it was clear that the Commission had no alternative, but we all agreed that if a subpoena were issued we could comply although we would consider it a precedent damaging to our enforcement effectiveness. The handling of the obstruction phase of this ITT matter had been discussed between SEC and the Justice Department staffs over several weeks. Mr. Sporkin has described to members of the staff of your committee the discussions that he had, and will be prepared to do so again today.

I want to emphasize that only the Justice Department has the authority to prosecute. The only result of this obstruction phase of the investigation was either to close it or refer it to the Justice Department.

Now, the state of the matter was revealed to Deputy Attorney General Erickson. We explained the committee had requested evidence from our investigative files, and we described the Commission's posi-

tion that we should not deliver these documents but we would not resist a subpoena. Now, as I understand it, there were four reasons Justice requested the file:

First, it had ultimate responsibility for the validity of the case in a court and for the protection of rights of possible defendants; second, attorneys for ITT and its officers had objected to our staff about the propriety of their being submitted and their clients being submitted to two separate investigations by two different agencies on the same set of actions.

The third consideration was that Justice at that time, at the request of the Senate Judiciary Committee, was reviewing the transcript of the hearings of confirmation of Mr. Kleindienst's nomination as Attorney General for possible perjury. These two inquiries were inter-related and they felt it made sense to consolidate.

And the fourth thing, on September 28, six days earlier, six days before Justice requested our files, the Justice Department had sent a circular memorandum to all agencies of Government. It was a 10-page memorandum. I have it here. They sent it out to all Government departments and agencies announcing a change in policy on the handling of obstruction of justice cases and stating that the FBI would now investigate all obstruction cases.

Now, nevertheless, we made it clear to Justice that the Commission would not at this point volunteer to send the case to Justice, but would refer the case then only if Justice requested it. In making this decision as to what was the appropriate response to that request, the Commission had to consider its responsibility to the executive function of law enforcement and particularly the support of criminal prosecution which has to be conducted by the executive branch and had to weigh that against its responsibility which it always tries to consider to cooperate with the oversight responsibility of Congress.

It was clear, it seemed to us, that the publicizing of evidence and internal memos could seriously undermine any prosecution which might be called for. While maintaining our previously established policy of not making materials of open investigatory files available, we have not, we believe, impeded the oversight function of Congress. We are always prepared to explain our consideration of any matter as we are prepared to do today. We have notes, digests, and documents which we have made available to this committee.

The CHAIRMAN. Mr. Casey, I do not have handy your statement, and the rules say that any witness must submit to this committee ahead of time any statement he is going to make, and we did not have that statement in time, but we will let that go for the time.

Mr. CASEY. Well, I just made some notes as I was coming over here, Mr. Chairman.

The CHAIRMAN. I would like to ask you a few questions. In my letter to you dated September 21, 1972—and I would like you to answer these yes or no, if you can, as briefly as you can—I requested you to make certain SEC files available for review by our subcommittee staff. The files in question were the materials obtained by the Commission from ITT pursuant to subpoena during the course of the SEC's investigation.

In your reply to me, dated September 26, 1972, you declined to permit this kind of access. You indicated that your staff was still investigating these materials. You also stated that the staff was "working

diligently to complete all aspects of this investigation" and that you were quite certain that the investigation would be concluded before the end of the year.

What is the status of this investigation now? Is your Commission pursuing this investigation actively at the moment? Will it be finished by the end of the year?

Mr. CASEY. No, sir; only the Justice Department is pursuing it actively.

The CHAIRMAN. All right.

Chairman Casey, now that you have transmitted all of the files in this matter to the Justice Department, how is your own staff going to be able to complete its investigation?

Mr. CASEY. The responsibility for this belongs to the Justice Department and always did. Our own staff would merely assist the Justice Department in the preparation of this case. Our own staff is presently spending time as required and they have spent time, I understand, working with the Justice Department to assist them in the preparation of the case.

The CHAIRMAN. Well, since your own investigation is not complete, why did you take the unusual step of physically transporting all of these documents over to the Department of Justice when you hadn't completed your investigation?

Mr. CASEY. Mr. Chairman, let me first say we didn't consider it an unusual step. I have looked back over the last year, and of half the cases we referred to the Justice Department for criminal prosecution there was no criminal reference report made. It was decided at some point in the course of the investigation that it would be appropriate for the Justice Department to take and carry it on—

The CHAIRMAN. After we asked to see the records, though, this has come up all of a sudden.

Mr. CASEY. No, no, no.

The CHAIRMAN. I would like to ask you this question: Are you aware that the investigatory work by your staff was cut off in mid-course; that on at least one occasion an SEC attorney who was in the process of taking testimony pursuant to this investigation was called out of the room and advised that the SEC files were being sent over to Justice? Did you know that?

Mr. CASEY. No.

The CHAIRMAN. Was the Justice Department's need for all of these files really so urgent as to require that kind of interruption of the SEC's work?

Mr. CASEY. No, I am not aware of that. Let me tell you what happened. The Commission met on Wednesday and made the decision that the staff's case should be referred to the Justice Department at its request, the Secretary's office was informed of that information, they told the enforcement staff and the enforcement staff, as I understand it, 2 days later sent the files over. We didn't tell them to do it tomorrow afternoon. We made the decision and transmitted it to the staff for implementation in the normal course of its work.

The CHAIRMAN. Are you aware that some of these ITT documents were especially sensitive and were kept separately under lock and key?

Mr. CASEY. I was informed that that was the case. That decision was made by the enforcement staff; not by the Commission.

The CHAIRMAN. My information is that 34 cartons of documents were sent over in a panel truck to the Justice Department at approximately 10 o'clock on the morning of Friday, October 6, and further that a high-ranking SEC official, who was not even working on the case, was sent over in his own car with a folder containing the sensitive files, which he personally delivered to the Office of Deputy Attorney General Erickson; is that correct?

Mr. CASEY. Mr. Chairman, I guess it is. I don't know personally. I didn't implement the decision.

The CHAIRMAN. You did not implement it?

Mr. CASEY. I did not implement the decision.

The CHAIRMAN. Mr. Chairman, in its normal criminal reference procedure, the SEC customarily prepares a criminal reference report which outlines the factual situation and indicates the nature of the possible criminal violations. This report is accompanied by copies of the relevant documents which would be necessary for the Justice Department to evaluate the matter and subsequently prove the case in court.

Isn't this an accurate statement of the usual course of events in a criminal reference situation?

Mr. CASEY. That is an accurate statement of one procedure by which a case is referred to the Justice Department for possible criminal action.

As I said a moment ago, over the last 6 months, half of the 22 cases that were sent over were not sent over in that manner. In this case, at the direction of the Commission—and it is all spelled out in the Commission's minutes—the Commission directed that the Justice Department be told exactly what we were investigating, and what they were to carry on. A letter was prepared spelling out the things that we thought ought to be looked at, the possible crimes that should be evaluated, and we have offered the assistance of the staff in doing that.

The CHAIRMAN. Well, it wasn't done in this case, was it? It was not done in respect to the ITT files.

Mr. CASEY. The criminal reference report wasn't prepared.

The CHAIRMAN. There was no criminal report, was there?

Mr. CASEY. There was a letter—

The CHAIRMAN. No criminal report, though?

Mr. CASEY. I have never seen a criminal reference report, Mr. Chairman. If you will ask Mr. Pollack—

The CHAIRMAN. All right. We will ask him.

Mr. CASEY. I don't prepare these criminal reference reports. It is a piece of paper which tells what we have done and suggests what they might want to do. Such a piece of paper was sent over there.

Now, whether that is a criminal reference report or another kind of memorandum is a matter of semantics, I think.

The CHAIRMAN. There was no selective copying of just relevant materials, was there?

Mr. CASEY. I don't know. I don't think there was.

The CHAIRMAN. Instead there was a wholesale transmission of every file on the premises of the SEC involved in this matter, was there not?

Mr. CASEY. I believe that has been the normal procedure, Mr. Chairman.

The CHAIRMAN. I say wasn't there a wholesale transmission of all the files?

Mr. CASEY. Yes, I understand, but I believe that is the normal procedure.

The CHAIRMAN. All right. At this point in the record, without objection, I will direct that a portion of a report by the Wells committee be inserted in this record.

(The document referred to follows:)

SECURITIES AND EXCHANGE COMMISSION—REPORT OF THE ADVISORY COMMITTEE
ON ENFORCEMENT POLICIES AND PRACTICES, JUNE 1, 1972

(By John A. Wells, Chairman, Manuel F. Cohen, and Ralph H. Demmler)

B. FEDERAL AUTHORITIES

Criminal violations of the federal securities laws are prosecuted by the U.S. Attorneys in the several districts after approval by the Attorney General. Although the Commission is not authorized by law to prosecute criminal violations, criminal cases are developed through investigations by the Commission's staff, are instituted as the result of a criminal reference by the Commission and usually require extensive participation by the staff in the indictment and trial stages. The Committee believes that better coordination between the Commission, the Justice Department and the U.S. Attorney's offices would result in more efficient handling and disposition of criminal cases.

Criminal cases are usually developed by a staff attorney under the supervision of a Branch Chief with the oversight and guidance of the Regional Administrator. Once a case is developed, the staff attorney, with the assistance of the Branch Chief, reviews the matter and prepares a criminal reference report. The criminal reference report is then reviewed by the Regional Administrator and, if approved, forwarded to the office of Criminal Reference in the Division of Trading and Markets where it is reviewed by a Branch Chief and then approved by the Assistant Director in charge of that office. Depending on the nature of the case, the report may also be reviewed by the Associate Director or the Director. If the Division approves the reference, a memorandum summarizing the nature of the offense and the proof is prepared and submitted first to the General Counsel and then to the Commission for their approval. If the Commission approves the recommendation, the criminal reference report is delivered to the Securities Fraud Unit, Criminal Division of the Justice Department. Prosecution of the case is not commenced until that Unit has reviewed the report and referred the matter to a U.S. Attorney in an appropriate federal district.

The process by which a criminal matter is developed and brought to trial in our judgment invites unnecessary delay. We recommend that the Commission confer with appropriate representatives of the Department of Justice with a view to shortening the period of time between the initial staff determination that a criminal reference is warranted and presentation of the matter to the Grand Jury. The disposition of criminal cases could also be expedited by improved communication between the Commission's staff, the Securities Fraud Unit and the local U.S. Attorney's office. Procedures should be adopted to screen potential criminal cases at an early stage of the investigation. The recent assignment of staff members of the Securities Fraud Unit to each regional office should eliminate prolonged and intensive investigation of cases that will not be recommended for prosecution and assist in the development of required proof.

Except in districts where the U.S. Attorney's office has developed a special unit to prosecute securities cases, the U.S. Attorney may require the assistance of the Commission's staff in preparing a case for trial. Many U.S. Attorneys' offices are overburdened with a number of complex matters or lack experience in the preparation and trial of securities cases. Also, in most instances, virtually the entire investigation has been conducted by the Commission's enforcement staff. We understand that many U.S. Attorneys request and welcome participation by members of the Commission's staff in the prosecution of securities cases. The Committee suggests that the Commission consider with the Justice Department the desirability of having staff attorneys appointed in appropriate cases as Special Assistants to the U.S. Attorney. Under the procedure we contemplate the staff attorney appointed would normally be one who had spent a substantial amount of time developing the facts supporting the criminal reference report and would therefore be most familiar with the matter. Although the extent of

his participation would be within the control of the U.S. Attorney, the staff attorney, by reason of his appointment, would be able to participate directly in the Grand Jury presentation and could provide such other assistance as may be appropriate.

The CHAIRMAN. This portion of the report of this three-man committee describes the normal criminal reference procedure employed by the SEC in referring matters to the Justice Department.

Manuel Cohen, former Chairman of the SEC, was one of the members of that committee. Without reading the entire excerpt aloud at this point, I think it is accurate to state that the procedure you employed in the situation we are discussing this afternoon was quite a departure from the usual procedure as it is outlined in the Wells committee report.

It is also important, and I will note this for the record as well, that we are speaking here of a criminal reference matter at the headquarters level, not staff. We are aware, of course, that different procedures are followed in the field offices and that on occasion files are sent over in their entirety without even a cover memorandum. But here we are talking about the headquarters level. As far as I know, this episode of October 6 is unique. Would you disagree with that?

Mr. CASEY. My general counsel, Mr. Chairman, just gave me a note which says the procedure you described is used where there is a Securities Act violation. In this matter the reference made was—

The CHAIRMAN. Well, I don't—

Mr. CASEY (continuing). To possible perjury, to possible failure to honor our subpoena.

The CHAIRMAN. I don't think this is true at a headquarters level, and I think the Wells committee report so states, and we will have the counsel on here in a few minutes and we will ask him that.

Mr. CASEY. OK.

The CHAIRMAN. I would also like to state for the record that after receipt of your letter on September 26, Chairman Casey, you and I, together with Commissioner Herlong and members of my staff, met in my office on September 27. As a result of that meeting you agreed to reconsider your position and advise me the following day.

I would also like to note for the record, and the correspondence has already been inserted in the record, that I reiterated my request for these records on September 28, 1972.

Now, at this point, without objection, I would like to introduce into the record a copy of Commission minutes showing that the SEC met at 3 p.m. on Wednesday, October 4, 1972, and voted to send its files to the Justice Department. The meeting appears to have lasted for 10 minutes.

(The document referred to follows:)

MEETING OF THE SECURITIES AND EXCHANGE COMMISSION

Wednesday, October 4, 1972, 3 p.m.

Commissioners present: William J. Casey, Chairman; Hugh F. Owens; A. Sydney Herlong, Jr.; and Philip A. Loomis, Jr.

Consideration was given to a request from the Department of Justice that the Commission make available for review its investigative files in the matter of International Telephone and Telegraph Company (File H.O.-536) and Hartford Fire Insurance Company (File B-793).

The Commission determined to comply with the request and directed the staff of the Division of Enforcement, in transmitting the files, to:

(1) specify to the department the possible violations which should be considered, and

(2) offer the assistance of those staff members familiar with the investigation in connection with the Department's review of the files.

The meeting was adjourned at 3:10 p.m.

RONALD F. HUNT, *Secretary*,
By SHIRLEY E. HOLLIS, *Recording Secretary*.

The CHAIRMAN. Chairman Casey, when and in what manner did the Justice Department request the files from the SEC?

Mr. CASEY. The Justice Department requested the files from the SEC through Deputy Attorney General Erickson.

The CHAIRMAN. Did he make a request of you personally?

Mr. CASEY. Yes, of me personally, and he made it some time on the date of October 4.

The CHAIRMAN. Can you recall any of the details of that conversation?

Mr. CASEY. Why, yes; as I tried to indicate in my opening statement, he called me and asked me the day before, October 3, and asked to talk about this matter. I told him that the committee had requested documents from the file, certain documents. I explained that the Commission felt that those documents from a pending investigative file should not be delivered. I explained, however, if the committee subpoenaed the documents we would not refuse, but we wouldn't do it otherwise. We discussed the fact that he had another investigation going and that we had problems with respect to the attorneys being subjected to two separate investigations. I also explained, as I said before, that we wouldn't voluntarily deliver the files. He said he thought they ought to have them and he made the request. I confirmed that request on no less than three separate occasions.

The CHAIRMAN. Did you explain to the Justice Department that our subcommittee had made the request?

Mr. CASEY. Oh, certainly I did.

The CHAIRMAN. Did the Justice Department request that you send over all the files in this matter?

Mr. CASEY. They requested that the matter be referred to them.

The CHAIRMAN. All the files?

Mr. CASEY. Whatever that would entail. We didn't determine what was sent over. We just directed that the file be sent over and that it ought to be referred—

The CHAIRMAN. The whole file, and that was 34 boxes plus some extra?

Mr. CASEY. I never counted the boxes.

The CHAIRMAN. Did they ask that you not retain any copies?

Mr. CASEY. No, they did not.

The CHAIRMAN. Was it their intention that you interrupt your own investigation?

Mr. CASEY. No; it was their request that the investigation be assigned to them. As I said before, they had sent out to all the departments in Government on September 28 a request, 10 pages mimeographed, asking that all obstruction of justice matters be turned over to be investigated by the FBI. This is something they had done before we had any conversations. This September 28 memorandum went to all the executive branches of the Government on obstruction of justice cases. I would like to submit this for the record.

The CHAIRMAN. If you will, please.

(The document referred to follows:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 28, 1972.

MEMORANDUM TO THE HEADS OF ALL DEPARTMENTS AND AGENCIES IN THE EXECUTIVE
BRANCH OF THE GOVERNMENT

The purpose of this communication is to announce new guidelines relating to the investigation of obstruction of justice and perjury allegations. As you know, such criminal violations may arise in connection with judicial or administrative proceedings participated in by any department or agency of the United States. Experience has demonstrated that past investigative policies were not adequate to assure effective and immediate investigative coverage. Thus new guidelines have been established.

A copy of the new investigative policy is attached. I will appreciate your bringing it to the attention of appropriate personnel of your department or agency.

It is only through your continued cooperation in expeditiously reporting allegations of obstruction of justice and perjury violations that we can insure prompt and efficient investigation and prosecution in order to maintain the high standards of integrity of the judicial and administrative processes.

RICHARD G. KLEINDIENST,
Attorney General.

INVESTIGATION OF OBSTRUCTION OF JUSTICE AND PERJURY MATTERS

United States Attorneys and Assistants are urged to be thoroughly familiar with the following investigative policy. They may be confronted with the need to determine very rapidly whether the Federal Bureau of Investigation (FBI) or another agency will conduct an obstruction or perjury investigation. Reported obstruction violations may involve the making of threats or the offering of bribes to jurors, witnesses, or the court (judges and magistrates) for the purpose of influencing the outcome of litigation. Such allegations often are first reported by litigating counsel to the judge or other person presiding over the litigation or proceeding. Presiding officials frequently contact the United States Attorney immediately with the request that the FBI conduct an investigation of the allegation. Such requests for FBI investigation are often explained in terms of a desire for an agency not otherwise involved in the substantive litigation and/or a need for the greatest expertise to be utilized in connection with allegations which touch on or intrude heavily into the essence of the judicial system. United States Attorneys must know which reports the FBI will investigate and must be prepared to so inform the court and, if necessary, to explain the rationale of the investigative policy. If a reported violation will not be investigated by the FBI, the United States Attorney, in order to avoid subsequent embarrassment, must make that fact clear from the beginning, and be prepared to assist the investigating agency as needed.

In the past there have been instances in which obstruction of justice and perjury allegations in matters and cases not within the jurisdiction of the FBI were not promptly and adequately investigated by other agencies. Such agencies claim that current manpower, the infrequent rate of occurrence of such violations under their jurisdiction, and the lack of statutory power to carry firearms and/or power to make arrests do not justify staffing, training, or requests for additional statutory authorizations. They also indicate such responsibilities would be inconsistent with the current functions authorized by Congress. The serious nature of these violations necessitates an appropriate policy to insure effective and immediate investigative coverage.

By statute, 28 U.S.C. 533, the Attorney General is authorized to detect and prosecute crimes against the United States. By regulation, 28 C.F.R. 0.85(a), the Attorney General directed the FBI to investigate violations of the laws of the United States except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The FBI is the primary investigative agency for obstruction of justice and perjury matters. The FBI's investigative policy relating to obstruction of justice and perjury has been changed; the FBI will investigate such violations for agencies that do not have a trained investigative staff.

The FBI will now investigate all obstruction of justice and perjury violations in cases and matters involving departments and agencies of the United States, except those of the Secret Service; Internal Revenue Service; Immigration and Naturalization Service; Bureau of Customs; Bureau of Narcotics and Dangerous Drugs; Bureau of Alcohol, Tobacco and Firearms, and the Postal Inspection Service. These agencies have the authority to carry firearms and to make arrests and are familiar with their own cases. This practice will prevent a duplication of investigation by the FBI. However, even in cases and matters coming within the jurisdiction of the above agencies, the FBI will investigate an obstruction of justice violation if it involves threatened or actual bodily harm to a judge or juror. Of course, the FBI will continue to investigate violations relating to cases and matters not involving the United States, or a department or agency thereof. For example, the FBI will investigate an obstruction of justice and perjury violation committed in connection with a civil case in a Federal court to which the United States, or a department or agency thereof, is not a party. (Since the United States Government ordinarily should not be in the position of taking sides in private civil litigation, the United States Attorney must evaluate such allegations to determine whether the court itself may be able to resolve the matter during litigation, without investigation by the FBI.) The FBI will also continue to investigate obstruction of justice and perjury violations committed in connection with any inquiry or investigation being had by either House, or by any committee of either House, or by any joint committee of the Congress on the written request of the Department.

Title 18, United States Code, contains several sections relating to obstruction of justice and perjury. Allegations of obstruction of a criminal investigation (prohibited by 18 U.S.C. 1510) are investigated by the agency (if one of the seven listed above) which is investigating the substantive violation. See Department Memorandum No. 561, dated January 30, 1968. On the other hand, jurors of the grand jury usually consider more than a single case and contacts with them by written communication (prohibited by 18 U.S.C. 1504) or offers to such jurors of enrichment (prohibited by 18 U.S.C. 201 because the term "juror" is included in subsection (a) as a "public official"), usually can be related to a particular case only after investigation of such allegations has been completed. For that reason, violations of section 201 involving "jurors" and section 1504 (and also 18 U.S.C. 505, 1505, 1506, 1507, 1508, and 1509)¹ are investigated by the FBI.

Subsections (d) and (e) of 18 U.S.C. 201 concern witnesses (rather than jurors) and as matters involving witnesses can more readily be related to a particular substantive violation, the determination of which investigative agency is to be responsible for investigation of such allegations is dependent on the factors discussed herein. The seven enumerated agencies will investigate obstruction violations relating to witnesses in their substantive cases; the FBI will handle others. Perjury, 18 U.S.C. 1621, subordination of perjury, 18 U.S.C. 1622, and false declarations, 18 U.S.C. 1623, relate to witnesses and thus come within the rationale applicable to obstruction directed at witnesses.

When a reported obstruction of justice violation involves an attempt to influence a juror sitting in the trial of a case, the investigator and attorney directing the investigation must be exceedingly cautious. An intrusion into the privacy of the jury may cause a mistrial to be declared. *Gold v. United States*, 352 U.S. 985; *Remmer v. United States*, 350 U.S. 377 and 347 U.S. 227. Before commencing an obstruction of justice investigation relating to pending litigation, the United States Attorney should inform the judge to whom the case is assigned. If a person to be interviewed is sitting as a juror in litigation, clearance should be obtained from the court before conducting the interview.

There have been instances in which a pyramiding of violations has occurred. For example, in a civil action in a Federal court, not involving the United States, there are efforts made to contact jurors for the purpose of influencing the verdict. When the obstruction violation is presented to a grand jury and later tried there are subornation and perjury violations committed to prevent indictment for and conviction of the obstruction of justice. In this case the FBI would handle the entire matter because it handled the original violation. Generally the agency that handles the original violation will continue to handle subsequent violations, unless the violation consists of actual or threatened bodily harm to the court or a juror which would justify FBI involvement.

¹ Prosecution may not be initiated under 18 U.S.C. 1509 without prior authorization from the Department of Justice. Title 10, United States Attorneys' Manual, p. 16.

The FBI will furnish significant assistance to other investigative agencies that are conducting obstruction investigations. A principal form of this assistance is the completion of investigative leads which the other agency cannot handle because it lacks the capacity to cover a distant area and the FBI is readily available for such service. If neither the other agency nor the FBI has an investigator reasonably near the scene, the other agency should handle the matter. Services of the FBI laboratory are also available to other agencies and may be used for a number of examinations. However, to eliminate duplication, evidence will not be examined by the FBI laboratory if the evidence in the same case has been or will be examined by any other experts in the same scientific field on behalf of the Government. The FBI also maintains an Identification Division which is a national clearing-house of information based on fingerprints of arrested persons. These facilities may be used by other agencies conducting obstruction of justice investigations.

In exceptional situations, the FBI may conduct an obstruction investigation to assist another agency. For example, in a customs case in Alaska the Bureau of Customs had only two investigators, one of whom was on a full-time stake-out and the second was in travel status and a great distance away. Because the nature of the obstruction required immediate action, the FBI handled the matter.

Conduct appearing to be an obstruction of justice violation may be a violation of a criminal statute such as bribery or extortion by threatening communications (18 U.S.C. 875, 876) that is within the investigative jurisdiction of the FBI. The premise of such violation may be sufficient with other factors to cause the Special Agent in Charge for the FBI to conduct the investigation as a bribery or extortion matter, rather than obstruction of justice.

Exception situations will be determined on a case-by-case basis and will require consideration of the factors involved, including the personnel of the originating agency, the location of the obstruction violation, the nature of the obstruction violation, and the overall appeal of the case. FBI participation must be approved by FBI headquarters, so United States Attorneys should contact the Criminal Division to have it facilitate FBI consideration of the request.

It may be necessary that United States Attorney personnel participate in obstruction of justice and perjury investigations if the matter is not handled by the FBI and the other agency involved is in need of assistance in completing the investigation. This assistance may be in the form of Assistant United States Attorneys interrogating the witnesses and/or counseling the agency's investigators. In some cases a grand jury inquiry may be not only appropriate, but recommended as the quickest and most assured method of reaching a satisfactory termination of the investigation. By statute, 18 U.S.C. 3053, United States Marshals and their deputies have arrest authority. Depending on local conditions the Marshal's office may be of assistance in the investigation by United States Attorney personnel of an alleged obstruction of justice.

Because obstruction of justice and perjury violations affect the integrity of the judicial process, all offenders should be vigorously prosecuted. Because of threats to the lives of witnesses, jurors and others, time is of the essence in conducting the investigation and initiating prosecution. United States Attorneys may submit obstruction of justice and perjury matters to the grand jury for its consideration or an information may be filed without prior authorization from the Criminal Division. Obstruction and perjury matters will be under the supervisory jurisdiction of the Division and Section of the Department having responsibility for the case or matter in which the obstruction occurred. When such responsibility for the subject matter cannot be identified, supervisory responsibility is with the General Crimes Section of the Criminal Division. Attorneys in the General Crimes Section familiar with obstruction and perjury matters may be reached on extensions 2604 and 2723.

The CHAIRMAN. Were all these factors discussed during the SEC's 10-minute meeting on October 4 about the subcommittee's request, and about our meeting, and all the letters, and all these other things, and not the consequences? Were they all discussed?

Mr. CASEY. Mr. Chairman, let me say that this is not a matter that came to members of the Commission for the first time. We had discussed it very carefully, very carefully, on several previous occasions. Commissioner Herlong and I had discussed it very carefully with you, but we had the request—

The CHAIRMAN. I told you at that meeting that you were responsible to the Congress of the United States, did I not?

Mr. CASEY. And I said the Commission, I of course agreed, was responsible to the Congress of the United States. We couldn't agree that that required us to take documents out of a pending investigative file and turn them over. It is a matter which is an open legal question. Chairman Eastland of the Senate Judiciary Committee, made a statement recently in which he said that he certainly did not think that any file that has to do with an investigation should be given to any congressional committee.

Now, this is an open legal question and we don't want to argue it. If you will subpoena us we are going to give it to you. We—

The CHAIRMAN. I think you knew that in my office you were going to be subpoenaed for those documents, and 2 days after, they appeared then over at the Justice Department.

Let me ask you this: My information is that at about 9:10 a.m. on October 6—at a time, let me add, when the files were still in the SEC building—that the assistant counsel of the Senate Subcommittee on Administrative Practice and Procedure called your office on behalf of the subcommittee chairman, Senator Edward Kennedy. In your absence he was referred to Mr. Charles Whitman, your assistant.

On behalf of Senator Kennedy, who had apparently learned on October 5 that you were preparing to transfer the files, the subcommittee counsel requested that the Commission maintain the status quo by either retaining the files in question, or retaining copies of them, until Senator Kennedy could talk directly to you. Is this in accord with your recollection?

Mr. CASEY. I didn't have the conversation. I think I was told that there had been such a call, but we didn't feel any obligation to acquiesce in that request.

The CHAIRMAN. You didn't feel any responsibility; all right.

Mr. CASEY. Our responsibility is to you, the oversight committee.

The CHAIRMAN. At this point, without objection, I will direct that a letter from Senator Kennedy to me, which I have just received this morning, be inserted in the record giving these facts. It contains an account of the facts I have just outlined.

(The letter referred to follows:)

COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,
Washington, D.C., December 13, 1972.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that on this Thursday, December 14, 1972, your Committee will open hearings into the refusal of the Securities and Exchange Commission to comply with your requests for documents relating to the SEC proceedings against International Telephone and Telegraph Corporation and its officers. It may be useful for you to have, for your background, the various communications between the SEC and the Senate Judiciary Committee, and thereafter the Administrative Practice and Procedure Subcommittee, on this issue.

Shortly after commencement of hearings in February 1972 on the nomination of Richard G. Kleindienst to be Attorney General, members of the Judiciary Committee requested that Chairman Eastland secure from the SEC its files relating to ITT and ITT's antitrust cases. We were told informally that the request had been denied because it involved investigative data.

On April 19, 1972, five members of the Committee formally requested the chairman to narrow the request to the SEC to ITT documents in the possession of the

Commission, so as to exclude agency investigative memoranda. Because of the evidence of extensive shredding of the documents in the Washington ITT office, we believed that those documents in the SEC's possession could have been the only unshredded ITT documents relating to the antitrust settlement under Committee investigation. SEC Chairman Casey's response indicated that investigative proceedings were underway and that disclosure would, in his view, be improper at the time. (See Hearings before the Committee on the Judiciary, United States Senate, 92d Congress, 2d Session, on Nomination of Richard G. Kleindienst to be Attorney General, April 1972, volume 3, p. 1664.)

Following the conclusion—by consent decree—of the SEC's investigation into insider trading by ITT and its officials during the period in which settlement of its antitrust litigation was reaching conclusion, I requested directly from Chairman Casey access to those files on behalf of the Subcommittee on Administrative Practice and Procedure. Mr. Casey again refused this request, indicating that the Commission investigation was still open on the matter.

On October 5, I learned that the SEC would be sending files, which included the material I had requested, to the Justice Department. I was not in town at the time and instructed the Subcommittee staff to call Mr. Casey to request that the Commission maintain the status quo by either retaining the files in question or keeping copies of them until I could talk directly to him. This request was communicated by the Subcommittee Assistant Counsel to Mr. Charles Whitman, Assistant to SEC Chairman Casey, at about 9:10 a.m. on October 6. I spoke with Mr. Casey the following week and he told me that the files had already been transmitted to Justice in spite of our October 6 request. Our request for those materials remains in force at the present time.

I am enclosing copies of the Hearings and correspondence referred to above. Feel free to use this letter and enclosures in whatever manner you deem appropriate. If we can be of any further assistance to you, let me know.

Sincerely,

EDWARD M. KENNEDY, *Chairman.*

The CHAIRMAN. Senator Kennedy has also provided copies of his letter to Chairman Casey, dated August 15, 1972, requesting the files, and Chairman Casey's response of August 31, denying access.

Without objection I direct that these materials also be included in the record.

(The letters referred to follow:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 15, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: In June 1972 the Securities and Exchange Commission initiated civil actions against officials of International Telephone and Telegraph Corporation, the company itself, and affiliated firms. On June 20 the Commission announced a consent settlement decree on all charges with regard to all defendants. This would constitute a termination of the ITT stock trading investigation as to the defendants and issues involved.

During the course of the SEC's study of these cases, documents, statements, and other materials were received by the Commission relating to ITT, its subsidiaries and affiliates, and their mergers, settlement negotiations, settlements, and related matters covering or affecting the period 1969 to June 1972. Because of certain document-destruction activities undertaken by ITT earlier this year, many of these documents may presently be unavailable from any source other than the Commission. I am thus requesting that the Commission provide the Subcommittee on Administrative Practice and Procedure, in connection with its continuing study of federal antitrust settlement and consent judgment procedures, with access to the documents and materials described above. We are particularly interested in ITT documents in the possession of the SEC, for example, correspondence, memoranda, and depositions.

I believe that Subcommittee access to the requested material is timely and appropriate. Because of the settlement in June, disclosure could not impair any federal enforcement actions. As to any materials which may be classified, we are prepared to maintain proper protection.

I will look forward to hearing from you concerning how we might work out a mutually convenient procedure for Commission compliance with this request that might avoid unnecessary duplication of lengthy documents. Thank you for your assistance in this matter.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure.

SECURITIES AND EXCHANGE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 31, 1972.

HON. EDWARD M. KENNEDY,
U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to yours of August 13, [sic] 1972, requesting material from the Commission's investigating files on matters relating to the International Telephone & Telegraph Corporation.

The Commission has, as your letter points out, initiated and settled civil actions involving some of the transactions under investigation. However, the staff informs me that it is still investigating other collateral matters which might lead to further appropriate proceedings.

In such investigations the Commission has been likened to a grand jury and like a grand jury it is the Commission's policy to conduct its investigations on a confidential basis. Accordingly, in order to protect the contents of its investigatory files and the integrity of its investigative procedures, the Commission refrains from giving out material from its pending investigations. Pursuant to this established procedure, it is the Commission's decision to respectfully refuse your request.

Sincerely,

WILLIAM J. CASEY, *Chairman.*

The CHAIRMAN. Was the request of the Justice Department really so urgent that Senator Kennedy's request, as well as my own, had to be disregarded?

Mr. CASEY. No. We made the decision for better or for worse. We all agreed with the decision that the Justice Department request should be honored and directed that the files be sent over. I don't know when I heard about Senator Kennedy's request.

The CHAIRMAN. Was there any pressing reason why copies of the files should not be retained by anybody at SEC?

Mr. CASEY. I don't know. Nobody was told not to make copies. That was done by the staff. In the course of all the decisionmaking, nobody was directed not to make any copies.

The CHAIRMAN. Chairman Casey, isn't it a fact that it was you who initiated the contact with the Justice Department, and it was on your suggestion that they agreed to accept the files?

Mr. CASEY. No. I didn't initiate the contact with the Justice Department. The Justice Department initiated the contact with me.

The CHAIRMAN. Let me just say this: At this point in the record, without objection, I will insert a number of newspaper accounts—

Mr. CASEY. Oh, Mr. Chairman, that is hearsay and it is obviously statements by uninformed people. You have Deputy Attorney General Erickson's statement that he asked for the file, so what relevance does a newspaper statement by a public relations officer have? I don't object to it being stated in the record. I want to make clear that that is the kind of misinformation—

The CHAIRMAN. We will have a witness to be sworn in in a few minutes to refute that statement. I just want to say this, that I will insert in the record a number of newspaper accounts which describe the

events that we are considering here this afternoon. I will not specifically enumerate the various articles, except to point out that a number of them relate that it was you, Chairman Casey, who initiated the transfer of files.

(The documents referred to follow:)

[From the *Chicago Sun-Times*, Friday, Oct. 13, 1972]

NADER AIDE, CONGRESSMEN HIT ITT SHIFT

(By Morton Kondracke, Sun-Times Bureau)

WASHINGTON.—The Securities and Exchange Commission files on the ITT case were shipped to the Justice Department in order to conceal politically damaging new evidence until after the election, it was charged Thursday.

Those making the charges, two congressmen and an associate of consumer advocate Ralph Nader, said that they were not sure what the evidence contains but they were sure it was important because of "desperate" efforts to conceal it.

Rep. John E. Moss (D-Calif.) said he suspects the evidence indicates that either the SEC or the Internal Revenue Service, or both, acted improperly in handling their respective phases of the transaction that allowed the International Telephone & Telegraph Corp. to acquire and keep the Hartford Fire Insurance Co. in U.S. history's largest corporate merger.

Previously, the Justice Department's decision to drop anti trust action against the merger was the subject of lengthy Senate hearings triggered by allegations linking the decision to a \$400,000 ITT pledge to support the Republican National Convention.

The Justice Department announced on Tuesday that it would not complete until after the Nov. 7 election its investigation to determine whether perjury was committed at the Senate hearings. Justice's inquiry began on June 27.

In the latest development, Moss and House Commerce Committee Chairman Harley O. Staggers (D-W. Va.) disclosed that they had requested the SEC's file after receiving "definite and strong allegations" that it contained documents detailing "numerous contacts between big business interests of ITT and high government officials seeking to obtain preferred treatment under the law."

When they sought access to the files, the two congressmen said in a joint statement, the SEC "stalled and then willfully obstructed our investigation" by sending its documents to Justice.

Once material becomes part of a Justice Department criminal investigation file, it is protected from disclosure to Congress and the public under regulations designed to guard the civil liberties of potential defendants.

Staggers and Moss released copies of a letter in which SEC Chairman William J. Casey told them that "on Oct. 4, the Justice Department asked that our files in this matter be referred to them."

However, when reporters asked the Justice Department how it happened to request the SEC documents, a spokesman said that they were offered first by Casey.

The spokesman said that "early this month" Casey called Deputy Atty. Gen. Ralph Erickson and "asked if we (Justice) were interested in looking at the documents. We said, 'Sure, send them along.'"

Moss charged in an interview that "there was obviously collusion" between the SEC and Justice. "They were acting in concert to cover up something. The timing suggests that they were trying to avoid an embarrassing situation" before the election.

Moss vowed that the committee would pursue the case by interrogating SEC staff members and subpoenaing, if necessary, Casey and other commissioners.

Besides Moss and Staggers, Nader associate Reuben B. Robertson and staff aides to Sen. Edward M. Kennedy (D-Mass.) have been seeking access to the SEC files.

Kennedy said "I deplore" shipment of the files to Justice. Robertson said, "There's got to be something very hot politically in those documents for the SEC and Justice to go to such extreme lengths to keep them out of the hands of Congress before the election."

Moss said that he has told Casey personally that he suspects the SEC of "not doing its job" in investigating the ITT-Hartford case.

Last June 16, late on a Friday afternoon, the SEC filed a complaint in New York charging ITT with distributing 1.7 million shares of unregistered stock. On June 19, the following Monday the SEC entered a consent decree in which ITT admitted no past wrongdoing but promised to obey the law in the future.

The SEC charges grew out of ITT's placing of Hartford stock in an Italian bank, Mediobanca of Milan, in order to secure IRS approval for its acquisition of Hartford.

Nader and Robertson have charged that IRS seemingly violated its own regulations by approving a transaction that was less than an "arms-length" sale. ITT, not Mediobanca, retained control of the stock, they said.

[From the *Los Angeles Times*, Saturday, Dec. 10, 1972]

HOUSE UNIT PRESSES ITT RECORDS BATTLE

SEC CHIEF CALLED TO EXPLAIN TRANSFER OF SECRET DOCUMENTS TO JUSTICE DEPARTMENT

(By Robert L. Jackson, Times Staff Writer)

WASHINGTON.—The chairman of the Securities and Exchange Commission has been summoned before a House subcommittee in a widening battle between Congress and the Administration over secret documents of the International Telephone & Telegraph Corp.

In what has become an increasingly bitter sequel to last spring's ITT affair, SEC Chairman William J. Casey will be asked to explain why his agency abruptly shipped 34 boxes of ITT documents to Justice Department in early October after two congressional subcommittees had asked to see them.

In an interview, Casey refused to comment on reports that the company records, which the SEC obtained by subpoena last year, detail numerous private contacts between ITT executives and high government officials regarding federal regulation of the firm.

But Casey said he would reiterate to the House commerce subcommittee on investigations at next Thursday's special session what he told them previously by letter—that he gave the Justice Department the ITT files because the department had requested them.

Transfer disputed

This point is in dispute. Some Justice Department officials have claimed that Casey initiated the file transfer without being asked.

Two members of the House Commerce Committee—Chairman Harley O. Staggers (D-W. Va.) and Rep. John E. Moss (D-Calif.)—say that Casey "thwarted" a congressional review of the SEC's actions on the ITT case.

The senate administrative practices and procedures subcommittee headed by Sen. Edward M. Kennedy (D-Mass.), was seeking to look at the files when they were removed to the Justice Department.

The department, part of the executive branch of government, can more easily resist congressional scrutiny than can the SEC, which is a creature of Congress although its members are presidential appointees.

Two months of Senate hearings were conducted last spring on accusations that ITT sought to influence the Nixon Administration by pledging support for the Republican national convention, then scheduled for San Diego. Testimony early in the investigation showed that ITT had shredded many memos and other documents in its Washington office—an action for which ITT chief Harold S. Geneen later apologized to the Senate Judiciary Committee.

Duplicates of many of these shredded documents are believed to be among the 34 boxes of records now in Justice Department custody. They were obtained by the SEC in the fall of 1971—long before the ITT furore—as part of the agency's investigation into alleged "insider trading" by ITT officials.

The upcoming congressional hearing climaxes weeks of bitter charges and behind-the-scenes efforts by House investigators to gain access to the documents.

By request

Casey, in two letters to Staggers in October, insisted that the SEC files were transferred "at the request of the Justice Department." The government has been investigating possible perjury and obstruction of justice charges growing out of the Senate hearings.

Justice Department spokesman Mark Sheehan subsequently told reporters that the SEC chairman had phoned Dep. Atty. Gen. Ralph E. Erickson to initiate the transfer.

"He (Casey) asked if we were interested in looking at the records," Sheehan said. "We said we were, and they sent them along."

Erickson, in an interview two weeks later, said it was "not important who initiated the contact" between himself and Casey. He later wrote the subcommittee in support of Casey, saying the Justice Department had requested the ITT documents.

The CHAIRMAN. Specifically, that it was you, yourself, who telephoned the Justice Department suggesting to Deputy Attorney General Erickson that the Justice Department accept these files, and that he agreed to your suggestion.

Is that an accurate statement of the facts?

Mr. CASEY. No; it is not.

The CHAIRMAN. All right. Then you are saying that these reports are erroneous?

Mr. CASEY. Oh, yes.

The CHAIRMAN. All right. For the record, then, I—

Mr. CASEY. Erroneous statement of what happened.

The CHAIRMAN (continuing). Will specify the news accounts to which I make reference.

I have reference to an article by Mr. Morton Kondracke, of the *Chicago Sun Times*, dated October 13, 1972, and an article to the same effect by Mr. Robert Jackson of the *Los Angeles Times* dated December 10, 1972.

Mr. CASEY. They are inaccurate.

The CHAIRMAN. I will also note that a member of our staff personally telephoned the Department of Justice and spoke with Mr. Mark Sheehan on this subject.

Mr. CASEY. That is hearsay. Mr. Sheehan wasn't there when Mr. Erickson asked me for the files.

The CHAIRMAN. At this point, without objection, I will insert in the record a memorandum of a telephone conversation between Mr. Mark Sheehan and Mr. Michael F. Barrett, attorney on this subcommittee staff, which conversation took place on October 13, 1972.

(The document referred to follows:)

Memorandum of telephone conversation between: Michael F. Barrett, Jr. and Mark Sheehan.

Subject: SEC/ITT.

A joint press release was issued by Chairman Staggers and Congressman Moss on October 12, 1972, making public the fact that certain SEC files requested by the Subcommittee had been transferred to the Department of Justice. Thereafter, I was notified by reporters from two different newspapers that a spokesman for the Department of Justice was answering press inquiries by stating that Chairman Casey of the SEC, rather than Deputy Attorney General Erickson, had initiated the action resulting in the transfer of the files. A copy of one newspaper account to this effect is attached.

To verify the accuracy of this information, on October 13, 1972, I telephoned Mark Sheehan, at the Department of Justice (telephone 739-2007). I explained the press reports and asked for verification. Mr. Sheehan advised me that because of Department procedures, Congressional inquiries had to be cleared through the appropriate Associate Deputy Attorney General dealing with Congressional relations, but that I would be further advised. About one hour later, Mr. Sheehan called me back to say he had been authorized to tell me what I wanted to know.

I asked him who initiated the file transfer. He said Mr. Casey called Mr. Erickson, he believed on October 4. He was uncertain as to the time or exact date. He said Mr. Casey advised Mr. Erickson that the SEC had developed an extensive record during the course of its investigation of the ITT—would he

[Erickson] be interested in looking at the records. To this extent, Mr. Sheehan said, you could say the Justice Department asked for the files. He also said to the best of his knowledge there was nothing in writing requesting the transfer.

I asked Mr. Sheehan whether the request by Mr. Erickson was an accommodation to the SEC. He replied, he could not answer that question because he did not know.

I also asked where the SEC files were within the Department of Justice and was told, "in the Criminal Division." I asked whether the Department of Justice request for the files was for everything the SEC had and was told he did not know.

The CHAIRMAN. I will not read the memorandum in its entirety but I will read the following paragraph:

"I asked him who initiated the file transfer. He said Mr. Casey called Mr. Erickson, he believed"——

Mr. CASEY. He believed.

The CHAIRMAN. Now, wait a minute—"he believed, on October 4." Now, he said you called but he said he believed it was October 4:

He was uncertain as to the time or exact date. He said Mr. Casey advised Mr. Erickson that the SEC had developed an extensive record during the course of its investigation of the ITT; would he [Erickson] be interested in looking at the records.

To this extent, Mr. Sheehan said, you could say the Justice Department asked for the files.

Only when he said send them over: "He also said to the best of his knowledge there was nothing in writing requesting the transfer."

Chairman Casey, when it was decided that the files would be transferred to the Justice Department, what instructions did you give as to the actual collection, packing, and transportation?

Mr. CASEY. I didn't give any instructions.

Mr. Chairman, could I interject something? I want to say that that statement by the Justice Department spokesman obviously shows he doesn't know what he is talking about. He said I called the Justice Department to say we had a lot of files here on the ITT. Well, the Justice Department knew we had been working on these files for a period going back several months. I didn't have to tell him we had the files. And I want to say also, to the best of my recollection, Deputy Attorney General Erickson called me on the day before.

The CHAIRMAN. We have further developments than this, so if you will allow me to go on. Who in your staff did you entrust with this operation of sending these files over?

Mr. CASEY. Well, the Commission made the decision and the staff——

The CHAIRMAN. Who on your staff did this?

Mr. CASEY. I guess it was under the direction of Mr. Sporkin.

The CHAIRMAN. Mr. who?

Mr. CASEY. Mr. Sporkin.

The CHAIRMAN. All right. Was it your instructions that there be no copies retained by the Commission of these materials?

Mr. CASEY. No.

The CHAIRMAN. Chairman Casey, our information is that when the people at the Justice Department saw this material arrive, they expressed surprise and some dismay at the volume of material you had sent over.

Mr. CASEY. As I understand it, that was the shipping clerk. The documents came in some place and they said, what do we do with these boxes? I don't know what happened.

The CHAIRMAN. Our information is that they questioned your staff as to the necessity of sending over such a large volume of material, and suggested that this was an inappropriate point in your own agency's investigation for this material to be sent over. Does this coincide with your information?

Mr. CASEY. I wasn't there. I never heard that. My dealing was with the Deputy Attorney General, and he requested the files.

The CHAIRMAN. We are also advised that the personnel at the Justice Department were also somewhat puzzled at the absence of a criminal reference report from the SEC as is customary in these cases. Does this coincide with your information?

Mr. CASEY. I don't know, because I didn't talk to those people. I do repeat that we did send the letter spelling out what it was all about, which was I think the equivalent of a criminal reference report.

The CHAIRMAN. Well, throughout this matter you have made references to your desire to avoid anything which might jeopardize an enforcement action. You have made references, both direct and indirect, to improper publicity which might prejudice the rights of potential defendants. I would like to explore this issue with you for a minute or two.

Would you state, for the record, exactly what type of improper publicity you had in mind?

Mr. CASEY. Mr. Chairman, I don't think any of us have to be naive about this. There had been continuing efforts on the part of other committees in the Congress seeking not the files, not to examine our handling of the case, but seeking particular documents, some of the files which we viewed as evidence in a possible criminal prosecution. And there was publicity in the press to the effect that Senator Kennedy was expected to get information and get documents which might have political interest. I think we ought to recognize that in the climate at the time that it was considered that there was impatience on the part of some people to get this information and publicize it.

Now, I don't want to charge anybody with anything, but I think in the exercise of ordinary prudence the Commission had to recognize that this was a particularly bad time for documents to be floating around.

The CHAIRMAN. Let me just say this: If, as a hypothetical situation, the subcommittee and staff had been given access to the files, as I requested on September 21, and no improper discussion of their contents had been made, would that have jeopardized anyone's rights, or constituted improper publicity?

Mr. CASEY. In my view the mere act of turning documents over which had been subpoenaed to an enforcement action to anybody, any other agency, without giving the person from whom those documents were subpoenaed the right to assert his protective rights in full, would have cut off rights that other person had, and I stated that and we stated that in our letter to you, as one of the reasons we felt we should not deliver documents in an open file to the committee.

The CHAIRMAN. Let me say that in all of our correspondence, all of our open questioning, and all of our contacts that there had never been any publicity given to anybody. On what basis do you presume that the subcommittee or its staff would misuse the files in question?

Mr. CASEY. I made no such presumption.

The CHAIRMAN. During the past year, Chairman Casey, as you well know, members of my staff have on occasion had access to various SEC files, some of which were being used in various investigations. In your view, was any of the resulting information misused?

Mr. CASEY. I don't know of any occasion.

The CHAIRMAN. I am sure you don't. Were the rights of any potential defendants ever compromised by my staff, ever?

Mr. CASEY. That I don't know.

The CHAIRMAN. I think you would know if they were.

On what basis, then, does the present ITT matter differ from all the previous occasions? Never a bit of evidence or anything else ever went to the public.

Mr. CASEY. Mr. Chairman, I am not aware of any occasion when the files were taken out of an open investigative file and given to this committee or any other committee during my tenure at the Commission. That has been the traditional policy of the Commission and we merely carried on that policy. It is a policy of precaution, protection of the enforcement action which we are charged to develop.

The CHAIRMAN. Well, I can say I know that our committee looked at broker-dealer and other matters and I am sure there were other matters just as much so as this one, but this seems to be a peculiar one.

Mr. CASEY. Mr. Chairman, there were other situations in which you in your letter to me specifically stated the broad policy and purpose. You wanted to see what we had done with broker-dealer violations and difficulties such as the bucketing case. In this case you never expressed any purpose. I tried to find out the purpose. Commissioner Herlong was with me. There was never any expression of purpose, merely a request for documents from a file for unspecified purposes.

The CHAIRMAN. All right, Mr. Casey. I will give up my questioning now because some of the other members are going to ask some questions.

Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Casey, we want to talk about this case and perhaps clear up some of the questions that have been raised. In reading some of the background of this case in trying to prepare for it, I had observed that back in 1970 ITT had announced that it wanted to merge with the Hartford Insurance Co. and at that time the ITT had owned 8 percent or \$92 million worth of Hartford stock. This made ITT, at that time, the largest single stockholder in Hartford Co.

I note that ITT had some trouble perhaps getting a clearance for the merger from the Connecticut Insurance Commission, but finally it was determined that ITT could gain control of Hartford with an exchange of ITT stock for Hartford stock. The Internal Revenue Service later informed ITT that it would have to sell the Hartford stock ITT owned before the proposed stock exchange could be tax free. It is this tax-free matter that I want to ask you a question about.

To transfer \$92 million worth of the Hartford stock that ITT owned, ITT contacted a brokerage firm in New York, Lazard Freres, and that brokerage company sold or transferred \$92 million worth of stock with a firm in Italy, Mediobanca.

Now, the transaction between Lazard Freres and Mediobanca was actually an exchange of paper. Mediobanca received no dividends from the Hartford stock and agreed to resell the stock.

The \$92 million worth of Hartford stock that this brokerage firm transferred for ITT, this stock was never registered in any manner, was it, with the SEC?

Mr. CASEY. No.

Mr. PICKLE. Is that required?

Mr. CASEY. Well, we brought an injunction action in which we said it should have been registered. It was an open question. It was a close legal question, Mr. Pickle, and the Mediobanca did have an opinion from lawyers that the registration was not required. They took the position—

Mr. PICKLE. And is the Mediobanca position something that you are finding out months later? Are you telling me something Mediobanca told you 6 months or a year later?

Mr. CASEY. Well, we discovered when we investigated the matter, it was our position that that sale should have been registered, yes.

Mr. PICKLE. Well, as I understand it, it was clearly a matter of law requirement that the stock exchange should have been registered.

Mr. CASEY. Well, it is not all that clear. They would dispute it.

Mr. PICKLE. But you contend that it should have been?

Mr. CASEY. Yes.

Mr. PICKLE. Now, subsequently Mediobanca sold the Hartford stock to the Dreyfus Fund. Should that sale have been registered?

Mr. CASEY. I don't know.

Mr. PICKLE. Were either of these sales cleared through the SEC?

Mr. CASEY. No, they were not.

Mr. PICKLE. Some 12 months later then, whenever it was, these transactions were brought to your attention?

Mr. CASEY. Yes.

Mr. PICKLE. So ITT, Lazard Freres, and the Dreyfus Fund were involved in the sale, or exchange, of securities totaling some \$92 million and no one registered with the SEC the transfer of the stock: is that correct?

Mr. CASEY. Yes.

Mr. PICKLE. When and in what manner did you find out about these unregistered sales?

Mr. CASEY. I tell you, you would get better information on that from one of the men who worked on the case. I found out about it when I got the staff report, the report of our investigative and enforcement staff. This was in the press—yes. We held that the first sale wasn't a sale and it was the sale to Dreyfus that should have been registered. We arrived at that judgment after investigating the whole transaction, after subpoenaing documents from Dreyfus, ITT, and studying them.

Mr. PICKLE. You testified just a minute ago that you thought both sales should have been registered. Now you have been reminded by a memorandum that you have held that the ITT to Mediobanca sale did not need to be registered, but the Mediobanca to Dreyfus sale should have been. Is this your position now?

Mr. CASEY. You know, this is a very complicated legal question which I was into in depth at the time but I don't recall the details. All I can tell you is that there was—

The CHAIRMAN. I would like to identify all the gentlemen you are talking to and all the gentlemen who were sworn in.

Would they all get up and state their names?

Mr. WHITMAN. Charles C. Whitman, executive assistant to Chairman Casey.

Mr. FERRARA. Ralph C. Ferrara, staff attorney for the Commission.

Mr. BOROWSKI. Irwin Borowski, chief enforcement attorney.

Mr. POLLACK. Irving Pollack, Director, Division of Enforcement.

Mr. MALLORY. Charles King Mallory, Acting Executive Director of the Commission.

Mr. SPORKIN. Stanley Sporkin, Deputy Director of the Division of Enforcement.

The CHAIRMAN. All right.

Mr. PICKLE. Now, I asked a question previous to Chairman Staggers' request. Would you repeat for us your reply, please.

Mr. CASEY. As I understand it, ITT made a sale to Mediobanca and Mediobanca made subsequent distributions, resold that stock, and ITT had a participation in the proceeds. We took the position that the second distribution by Mediobanca with the distribution going back to ITT that was a sale which should have been registered.

Mr. PICKLE. Just for a matter of explanation from you, what did the SEC consider the ITT to Mediobanca transfer, or sale? In other words, start from the brokerage sale in New York, to Mediobanca in Italy. What did you call that transaction?

Mr. CASEY. There wasn't a public offering. It was a sale to one buyer. It wasn't a public offering. Therefore, legislation—

Mr. PICKLE. Mr. Chairman, I don't want to pass judgment and be impatient but it would seem to me on a matter that is so sensitive in a case of this kind where you have had so much experience, that you would know whether it was a sale or transfer, whether it would be tax free or not.

Was the Mediobanca to Dreyfus sale considered tax free?

Mr. CASEY. Mr. Pickle, we have no authority and no judgment to determine whether it was tax free or not. That is a determination to be made by the IRS and they did give a ruling it was tax free.

Mr. PICKLE. Now then, the Government received no benefit of this exchange of the \$92 million worth of stock, where the purpose of ITT in transferring the Hartford stock was to be able to exchange later on ITT stock for Hartford stock tax free. With the tax question being a central issue here, are you saying the SEC was not concerned about the tax question.

Mr. CASEY. It is not our jurisdiction. We have no authority. That is IRS.

Mr. PICKLE. One more question on this: At some point you issued an injunction against some of the firms that I have mentioned for further sale of unregistered stock to the public. What was the nature of the injunction?

Mr. CASEY. It was an injunction against Lazard Freres and Mediobanca, and we asked the court to enjoin them from further violation of section 5 of the 1933 act which requires registration.

Mr. PICKLE. What does that mean?

Mr. CASEY. That means that next time they do such a thing they could be held in contempt of court.

Mr. PICKLE. That is all?

Mr. CASEY. That is all the authority that Congress has given us.

Mr. PICKLE. Have you at anytime brought this matter to Congress?

Mr. CASEY. Well, this is something the Congress certainly knows. They enacted the law. This is the way the law has been for almost 40 years and has been widely commented on.

Mr. PICKLE. It is obviously difficult for the Congress to know what is going on when you withhold information from us. Does this mean that this Mediobanca could not engage in any further sale of any kinds of stock or securities?

Mr. CASEY. No.

Mr. PICKLE. Hasn't it generally been held when you put an injunction on a firm other restrictions ensue?

Mr. CASEY. No.

Mr. PICKLE. Then all the injunction means is that the enjoined firm can't do the objectionable practice again.

Mr. CASEY. SEC statutes are remedial in character. That is the way the Congress enacted the law.

Mr. PICKLE. Does this mean the injunction is still in the courts?

Mr. CASEY. Yes; our injunction is still in the court.

Mr. PICKLE. How long will it stay there?

Mr. CASEY. It is a permanent injunction. It is a permanent injunction.

Mr. PICKLE. Then there is no other action that is going to ensue from this case by the SEC. It is just a nonpunitive injunction, a slap on the wrist and the SEC said "don't do this again."

Mr. CASEY. That is the effect.

Mr. PICKLE. Do you think this is a proper position for the SEC to take or for the law to—

Mr. CASEY. Sir, it is the Congress that has to change that position. As to whether there should be fines or other penalties is something which has been discussed at very great length in law reviews and debates.

Mr. PICKLE. I think that I will agree with you, Mr. Chairman. The Congress rightfully should concern itself with the SEC's powers but I also would say that it is shocking that the Chairman of the SEC, knowing this transaction occurred—and perhaps this has happened in other cases—has never specifically brought the ensuing results to the attention of the Congress. Did you not want to bring this matter to our attention?

Mr. CASEY. I thought it has been well publicized, that everybody knew what happened and it is a matter I would think which any Congressman is charged with knowledge that has the state of the law as far as the SEC is concerned. We bring injunction actions of this character a couple of times a week and that is all we can do. That is our authority.

Mr. PICKLE. I have to doubt the sincerity and validity of that answer, and I will say to you that here is one Congressman who thinks something ought to be done to strengthen the remedial aspects of injunctions issued by the SEC. I intend to do something about it.

The CHAIRMAN. The gentleman from Illinois, Mr. Springer.

Mr. SPRINGER. Thank you, Mr. Chairman.

I have been listening to this, Mr. Chairman, with a great deal of interest, and I am trying to get to the thread of this, what your position is. Now, the position of this subcommittee is that this is an in-

vestigatory matter and, when someone is brought in here before them, we take these matters up to find out what happened, and if we think that that shouldn't have happened, then we ask, what is your justification for it.

Now, first of all, I would like to find out what your responsibility is, we'll say, when something is demanded from you by, the Subcommittee on Investigations or the Kennedy subcommittee of the Senate. When that is demanded, what then does the Commission do?

Mr. CASEY. The Commission takes up the requests or the demand as a Commission and determines what in its opinion under its authorities and its responsibilities, what is the appropriate response, and we make that response.

Mr. SPRINGER. Now, what is your position in this case? This matter was under investigation at the time that it came to the attention of this subcommittee; am I right?

Mr. CASEY. Yes.

Mr. SPRINGER. Now, when that demand was made for either certain documents or certain witnesses to testify, was this a demand made to you orally or in writing?

Mr. CASEY. I received a letter from Senator Eastland of the Judiciary Committee, a letter from Senator Kennedy—

Mr. SPRINGER. The Eastland letter was April 25 of this year; the Kennedy letter was August 15 of this year; am I right?

Mr. CASEY. Yes.

Mr. SPRINGER. And this subcommittee's letter was on September 21?

Mr. CASEY. Yes.

Mr. SPRINGER. Now, what is your fundamental position when a request like that is made in writing, for certain documents from you if that matter is pending?

Mr. CASEY. Well, our fundamental position is, I read Chairman Budge's statement to Congressman Moss 3 years ago, and we still have the same position, that the documents from open investigative files should not be sent out of our hands.

Mr. SPRINGER. Are you talking about when it is under investigation or when it is not under investigation?

Mr. CASEY. I am now talking about open investigative files, files which cannot be closed, where the investigation has not been terminated.

Mr. SPRINGER. That has been the position of the Commission consistently?

Mr. CASEY. Yes, sir.

Mr. SPRINGER. All right. On this one thing, was this your decision or did the Commission meet and is there a record of an action of that Commission? Is there or is there not?

Mr. CASEY. The Commission met and approved the response in each case. The draft response was prepared, the Commission met, agreed on any changes that should be made in the draft response, and authorized the response.

Mr. SPRINGER. Let me ask you this: Let's get this record straight. Was this unanimous?

Mr. CASEY. Yes, it was unanimous.

Mr. SPRINGER. Now, was there ever any decision made on this matter by you separately, other than the Commission action, taken on your own?

Mr. CASEY. No.

Mr. SPRINGER. Whatever was done was done by this Commission after a deliberation, whether it was 10 minutes or 10 hours? Is that right or not?

Mr. CASEY. That is correct.

Mr. SPRINGER. Now, secondly, I want to go into enforcement. This has been raised, and this is awfully important, to know what your jurisdiction is or is not. It is my understanding—you correct me if I am wrong—that neither the Securities Act, nor any other legislation existing on the books at this time, gives you any power to put anybody in jail. Am I right or not?

Mr. CASEY. That is correct.

Mr. SPRINGER. You can get an injunction. You have mentioned that to my colleague from Texas. Now, what else can you do?

Mr. CASEY. We can get an injunction, we can put people out of business.

Mr. SPRINGER. You can put them out of business?

Mr. CASEY. We can put brokers out of business, we can suspend them, we can impose sanctions on them, censure, suspension, or bar from being in the business.

Mr. SPRINGER. What happens when you get to a situation in a case where there is a strong probability which has been reached after a decision or a report of your staff, which the staff goes into first, doesn't it, in terms of whether or not there is probability of criminal liability? Am I right or not?

Mr. CASEY. That is correct.

Mr. SPRINGER. Is that report then made to the Commission?

Mr. CASEY. Yes.

Mr. SPRINGER. Then it is the duty of the Commission to act on that or at least take it into consideration? Am I right?

Mr. CASEY. Yes. The Commission normally directs that the matter be referred to the Justice Department, which is the only agency of Government which can conduct a prosecution of a criminal matter.

Mr. SPRINGER. Let's get this straight again. Now who can do the prosecuting?

Mr. CASEY. The Justice Department.

Mr. SPRINGER. Who can get an indictment?

Mr. CASEY. Justice Department.

Mr. SPRINGER. Can anybody else get an indictment?

Mr. CASEY. No.

Mr. SPRINGER. Well, let me ask you this: Do you think you ought to have additional authority?

Mr. CASEY. Well, I think we should have additional authority, but I don't think we should have additional authority which would conflict with that of the Justice Department. I don't think we should prosecute criminally or be empowered to get indictments.

Mr. SPRINGER. I will admit the Justice Department isn't going to want to do that, but it seems to me it is a long, long time after you find somebody that is doing something before you get any action.

I will admit you can't do it under the present existing law, but I think that one of the things that ought to come out of this is whether or not you ought to have some responsibility in this field besides that of just getting an injunction against somebody or censuring them or telling them not to do it again.

Mr. CASEY. We could impose a fine, I suppose. We don't have that authority now.

Mr. SPRINGER. You can't? I thought you could.

Mr. CASEY. No; we can't.

Mr. SPRINGER. You cannot impose a penalty?

Mr. CASEY. No. We have no penal powers except the suspension from the business.

Mr. SPRINGER. Well, I will have to confess, until this case came up, I was under the impression that the SEC could do one whale of a lot more than you are testifying to here now. Now that was my impression. Is the Commission agreed on this?

Mr. CASEY. Well, yes. We can get ancillary relief sometimes.

Mr. SPRINGER. What is that?

Mr. CASEY. Well, we can ask a court to direct certain conduct, we can ask a court to have a receiver appointed, we can ask a court to order restitution of funds.

Mr. SPRINGER. But you don't really have any enforcement other than a civil action, do you?

Mr. CASEY. That is correct.

Mr. SPRINGER. Well, I thought you had a lot more power than this.

Now, whether you do or not, and if you are going to turn everything over to Justice—and I presume that would be the position of Justice—but I am just wondering whether or not this Commission ought not to have some more authority than you have got.

I don't know what this is or ought to be, but it seems to me you ought to have more than you have indicated here that you have got.

You have raised this question: Suppose that in this first instance the Chairman had sent a subpoena down there and said, "Mr. Chairman, here is a subpoena on you," what would have happened to those documents?

Mr. CASEY. We would have honored the subpoena. We would have thought it was a mistake, a bad precedent, we would have considered that it undermined our enforcement ability, but would not have resisted a subpoena.

Mr. SPRINGER. In other words, if the subpoena had been delivered to you, you would have submitted those documents?

Mr. CASEY. Yes.

Mr. SPRINGER. Well, I think the Committee has learned something over this. That is, to go down there with a subpoena, not a letter, and then we will get what we want.

But the way in which it is done, thinking it would be complied with anyway, a subpoena was not delivered, but you would have responded immediately to a subpoena?

Mr. CASEY. I think you'd want to think a long time before getting into a practice of moving into an investigation of cases with subpoenas, but if you have the power to do it, that is in your judgment.

Mr. SPRINGER. Well, of course, I will admit, Mr. Chairman, that you are right in one thing, that if we did send a subpoena down there and this leaked and got into the newspapers and there was a big lot of publicity, then this subcommittee would have had to accept the responsibility. If Justice ultimately got these defendants to trial and the judge determined that the pre-trial publicity prejudiced the right of those defendants, this subcommittee would have to accept the respon-

sibility, so I can see why you wanted the subpoena rather than a letter, because this would make it possible for you then to be free of responsibility.

Mr. CASEY. Well, also I think there is a further point, if I may say so. I read the debates and the literature on the congressional oversight powers because it is a matter of concern and interest to me, and many people contend that the oversight power should be on a policy level, should review broad operational matters, but should not get into the handling of specific cases.

As soon as they get into that, then there is a division of authority, confusion as to who is supposed to do the job, and the job isn't done as well, and I believe the record will show over the years the Commission has done an outstanding job in its investigative and enforcement work, if we were to be called to account for it. But I don't think that the Congress should get into helping us do it.

Mr. SPRINGER. Mr. Chairman, we could argue over that all day, but I want to get to this because I think it is awfully important. I take it that you assume, from what you have said here, that there are three responsibilities that somebody in government assumes. The Executive assumes, supposedly, under this law, the responsibility for the enforcement of them. That is, if anybody is criminally tried, the administration has to do this.

Now, you can do a certain amount of investigation and you can recommend and you can censure, and you may go to court and even get an injunction.

Mr. CASEY. We can do civil enforcement, but not criminal.

Mr. SPRINGER. All right; now, there is a third responsibility, which is this body here, which we are trying this afternoon in our humble way to see if we can contribute something by finding out what took place.

Now, the way this thing looks to me, you have done, apparently, every step of the way here you have got the unanimous verdict of the Commission which, in effect, in a lot of ways, clears your skirts because everybody said yes, as a matter of policy, and I would assume that all of you are men of integrity, and you have said this is what on a policy level we had to do.

Now, the Justice Department hasn't said a damn thing up to this point, but I assume they are going to give it pretty serious consideration.

But the third one is us, and that is why you are up here. I hope you understand we are not trying to run your business now. We have got plenty to do up here. But I can understand, in view of the fact that each step was unanimously adopted, you have a policy which you are here attempting to justify.

Mr. CASEY. Yes; I agree with you.

Mr. SPRINGER. Just one more, Mr. Chairman, and I am through.

Apparently this is a matter—and I want to be sure of whether it is clear or not—you say you had a letter there from Senator Eastland with reference to subpoenaing documents or materials that is in an investigatory stage?

Mr. CASEY. No; I quoted a statement that Senator Eastland made in the hearing on the confirmation of the Attorney General. This is a statement he made at that hearing. He said, "I certainly don't think

that any file that has to do with an investigation should be given to any congressional committee." I can give you the reference to that.

Mr. SPRINGER. Will you repeat that again? I didn't quite hear it, Mr. Chairman.

Mr. CASEY. Senator Eastland stated: "I certainly don't think that any file that has to do with an investigation should be given to any congressional committee."

Mr. SPRINGER. Well, now, Senator Eastland is sure on a collision course with what this committee is doing today.

Mr. CASEY. He was talking about FBI files.

Mr. SPRINGER. Well, talking about FBI files, I suppose he could subpoena them, too, but I think there is a fundamental difference probably between the approach of this subcommittee and Senator Eastland, but at least on the record it does show that there is serious legal opinion in two committees of this Congress, one the Judiciary over here, and one the Interstate and Foreign Commerce, as to exactly what ought to be done with files while they are still under investigation; so this is not as clear as I thought it was when we started this hearing.

Mr. CASEY. We are in a difficult position because we have a responsibility to the Executive on enforcement, and we have a responsibility to the Congress in its oversight capacity. We have to balance it.

The CHAIRMAN. Mr. Blanton?

Mr. BLANTON. Thank you.

There is one thing that I think is outstanding here, and I want to ask a couple of questions to lead up to it. Does this committee or does it not have routine access to files that you have under investigation?

Mr. CASEY. No, it does not have routine access.

Mr. BLANTON. Well, I have been led to believe that we do.

Mr. CASEY. Maybe it is a matter of semantics. We have to make a decision with respect to each request, and we usually, except in the case of open files, we usually grant the request.

Now, there have been some generalized requests which we have approved in general, and I understand that in working with the staff that our staff has opened up files, that they have been opened and made available, files that may have been open.

Speaking as one Commissioner, if I had known about that, I would have opposed it, but there is no routine access.

Mr. BLANTON. Well, two things you are saying then. There are things going on at the Commission that you don't know about——

Mr. CASEY. You can say that again.

Mr. BLANTON (continuing). Because your staff is allowing our staff access to files that are under investigation.

Mr. CASEY. On certain occasions; not routinely. On certain occasions I am told that they have, and I have no reason to dispute it. I don't know of my personal knowledge.

Mr. BLANTON. Well, we know that there have, and, of course, our committee staff isn't interested in all the investigations that you have, but what I am wondering is why this one is so different from the others that they have been allowed to examine, and in this case it is particularly set apart.

Mr. CASEY. Because we had a specific request about a specific case on which we are working up a criminal reference. Any other occasion in which the issue is so presented I am sure the answer would have been

the same, and as I understand the Commission's traditional position as stated by Judge Budge, that is the way the Commission as such has always responded to requests for information from open investigative files.

Mr. BLANTON. But the reason that the chairman had to make the specific request was because your staff refused our staff access to the files on the premises, right?

Mr. CASEY. No, no; it always had been initiated with a request and the Commission always acts on the request.

Mr. BLANTON. But it is routine for our staff to review files on your premises without removing them; is that correct?

Mr. CASEY. Well, I wouldn't say it is routine, but it does happen. We usually accommodate them in that way when we feel there is no question of impairing the rights of other people or when there is no question of jeopardizing an enforcement action.

Mr. BLANTON. Well, someone had to send word down to the staff not to allow our staff access, isn't that right?

Mr. CASEY. No, Congressman, it didn't work that way. We would have to send down to the staff an order to allow access. They would not allow access without the approval of the Commission. The request has to come to the Commission. The Commission acts on it.

Mr. BLANTON. You said that half of your investigatory files go to Justice Department for possible criminal action?

Mr. CASEY. No; I said I am informed that over the last 6 months half of the cases which were referred to Justice for criminal action were referred without a criminal reference report. They were in effect referred informally, as this one was.

Mr. BLANTON. And you don't think it was an exception that this one did not have a criminal reference report?

Mr. CASEY. No. I said half of the files we sent over didn't have a criminal reference report. This case did have a memorandum which I think served the same purpose as the criminal reference report, so I think we are dealing with a matter of semantics here.

Mr. BLANTON. Was it Justice? Who sent out that memorandum?

Mr. CASEY. If I understand your question, are you asking whether the Justice Department sent out a request?

Mr. BLANTON. The 10-page memorandum you keep referring to from the Justice Department.

Mr. CASEY. Yes, that was sent out by the Justice Department to all the departments and agencies of government on September 28.

I wonder if I might just add something to my last answer, Mr. Blanton.

Mr. BLANTON. Yes.

Mr. CASEY. The criminal reference reports are used with respect to securities law cases where the Justice Department doesn't know anything about securities law or about the case. It is not normally used in a matter involving perjury or obstruction of justice, which is naturally in the purview of the Justice Department. That is one distinction in the practice here.

Mr. BLANTON. You keep referring to the request of the Justice Department to comply with its memorandum on cases that involve possible obstruction of justice.

Now, since you did the investigation, then your Commission had to decide that there is a possibility of obstruction of justice; is that correct?

Mr. CASEY. Oh, yes.

Mr. BLANTON. Then you had decided this?

Mr. CASEY. Yes.

Mr. BLANTON. And that is why you made the decision?

Mr. CASEY. The way that happened, the staff came for permission, and said, we think this should be continued to see whether there is a possible obstruction of justice here. We authorized it. As I said, we discussed this with the Department of Justice at the staff level over several weeks before your request came in.

Mr. BLANTON. You think the SEC did an adequate job in their investigation, though?

Mr. CASEY. Well, an adequate job in that matter is done when it gets to the point where the Justice Department will take it and carry it on because it is their responsibility. The purpose of our investigation is to get enough information to interest them in it. As soon as they become interested, we are glad to give it over to them. It is their responsibility. They have got to handle it. The sooner they take it, the better it is.

The CHAIRMAN. I just want to remind the chairman that an awful lot of talk has been going on and, in fact, I want to remind him that while one of your lawyers was questioning a witness, he was called out into the hall and informed that the files were being sent over to Justice and that the case was stopped.

Mr. CASEY. I don't know anything about that.

The CHAIRMAN. Well, you had better find out about it; I will tell you, Mr. Chairman.

Mr. CASEY. I think you can get that information from one of the other men, Mr. Chairman.

The CHAIRMAN. I know you can. It's easy to get because we have had it, and this thing of being stopped in the center of what was being done is a matter of record.

Continue, Mr. Blanton.

Mr. BLANTON. I have no other questions of the Commissioner. I will have some other questions later.

The CHAIRMAN. Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman. I have a few clarifying questions of the previous testimony given.

I was rather interested to hear your response and your referral to your responsibility to the Justice Department, but somewhat disappointed not to hear any mention of the responsibilities of your Commission to the Congress.

Would you care to clarify that? Do you feel that the Commission has any responsibility to Congress, as a Commission?

Mr. CASEY. Mr. Shoup, I certainly do. We have always recognized that and are always glad to come over and explain ourselves, to provide information about our operations, about our decisions, about our policy. I have said, however, that when we have an open investigative file in the course of a matter, we do have a problem of balancing our responsibility to the Congress, and the responsibility that they have given us to cooperate with the executive in enforcement, and we have to

balance those considerations, and the Commission has traditionally balanced them in the way expressed by Chairman Budge and the way we have followed that policy in this matter.

Mr. SHOUP. Mr. Casey, it would seem to me, considering your work with the Justice Department and in this particular case, that you have very good constant communications with the Justice Department and yet it seems quite evident that those same good communications are lacking with the Congress, particularly this committee. Otherwise, we wouldn't be sitting here at this time.

I only have a comment, not a question, on this. I would suggest perhaps we could investigate this a little bit more in order to have better communications.

Mr. CASEY. I would just like to say, Mr. Shoup, that I think we did communicate on this matter to the Congress. You have to distinguish between communicating and agreeing. We answered the letters and stated our position in great depth. We walked over and saw Chairman Staggers. I walked over and spent an hour with Congressman Moss, who had expressed an interest in this. We discussed all the pros and cons. We didn't agree. We didn't agree. It's a proper thing—

Mr. SHOUP. But apparently there is some confusion—at least in my mind there is—as to what you are speaking about.

You spoke of your reluctance to release material that you had subpoenaed from ITT and others because of infringing on their rights.

Now, is there not other material within these files which you had not subpoenaed?

Mr. CASEY. Oh, yes. There are transcripts.

Mr. SHOUP. Then I ask you, is this available to us if we ask for it?

Mr. CASEY. We would not give it to you. We don't think you should get information from an open investigative file. You didn't—

Mr. SHOUP. May I ask your reasoning behind this? Your reasoning that you gave us why you didn't release it was not to infringe on the rights of others because you had the primary subpoena on it that we should then follow with our subpoena to keep yours clear. Then what is the reasoning for that material that is not subpoenaed, for not being released?

Mr. CASEY. I believe it is our view that exactly the same principle applies to testimony, to transcripts. We bring in a witness to take his testimony. It is just the same as providing information, just as though he is providing documents for the subpoena, and premature publicity or inability to raise objections would have the same applicability there as in the case of subpoenaed documents.

Mr. SHOUP. Did you explain this to the chairman when you met with him? Did you offer to release these and not contest the subpoena when you met with the chairman?

Mr. CASEY. No, no. We weren't going to face that until we had the subpoena.

Mr. SHOUP. Perhaps this points up a lack of communication.

Mr. SPRINGER. Will the gentleman yield?

Mr. SHOUP. Yes.

Mr. SPRINGER. I want to be sure, because I think my colleague from Montana might have misunderstood your answer.

I sure don't want to leave any doubt in this record from what you said any time that the subpoena is sent down there, you will answer that subpoena.

Mr. CASEY. Oh, yes. Of course.

Mr. SPRINGER. What you have said is where you are given a question of policy decision to make, it is your policy you don't believe that a matter under investigation at the time should be released to this subcommittee if there is a possibility of criminal action. Is that it?

Mr. CASEY. That is correct.

Mr. SPRINGER. But if a subpoena is sent down there, you will answer that subpoena in full?

Mr. CASEY. Yes.

Mr. SPRINGER. Is that correct?

Mr. CASEY. Yes.

Mr. SPRINGER. All right. There is a difference then between the request and the subpoena?

Mr. CASEY. I understood Mr. Shoup was talking about papers we have subpoenaed. If you subpoena us, you can have anything you want.

Mr. SPRINGER. No. My question—I will say it again—is that this explanation you just gave to Mr. Shoup on your policy, that when you met with the chairman and explained to him that the Commission would not, would not release this material voluntarily, did you explain to him that if you were subpoenaed, you would send it up, though?

Mr. CASEY. No, I didn't explain it at that time.

Mr. SPRINGER. Perhaps again we are coming to a lack of communication.

Mr. CASEY. Well, I didn't see any need to face that question until I had to. Subsequently I think the members of the Commission, we determined that we would honor a subpoena, but I couldn't speak for all the Commissioners.

Mr. SHOUP. Mr. Casey, one more question. When you are speaking of knowledge, and the question has come up that you brought up the question of turning over the files to the Justice Department, you spoke of who initiates this. Did I understand you to say that both you and the Justice Department were investigating the same matter?

Mr. CASEY. Yes; we were investigating the obstruction of justice aspects of the ITT affair.

Mr. SHOUP. Now, may I ask, do you have knowledge of where they received their initial information to get involved in this, in their investigation?

Mr. CASEY. Well, as I understand it, Senator Eastland requested them to study the record of the transcript of the Kleindienst confirmation hearings to see whether there had been any perjury there.

Mr. SHOUP. You did not instigate their investigation?

Mr. CASEY. No, no.

Mr. SHOUP. It was an ongoing investigation on their part?

Mr. CASEY. That is right.

Mr. SHOUP. Normally when you are in your routine investigation or surveyal of the securities business, and your investigators turn up a matter which is obviously a criminal type, do you notify the Justice Department and recommend that they investigate?

Mr. CASEY. Yes, and the Justice Department sent out this letter requesting it, that would be the procedure. We do it at some stage. The stage at which we do it is a matter of judgment, and normally determined by the staff working on the case.

Mr. SHOUP. Then primarily their knowledge of any criminal doing in this matter would be from you?

Mr. CASEY. Well, they might have their own sources. That happens frequently.

Mr. SHOUP. Perhaps I could ask, is there anything unusual in the matter of you calling the Justice Department and informing them or asking them to investigate this matter, that there was criminal—

Mr. CASEY. No. I think it is an obligation in a matter that is being developed which they will have to ultimately be responsible for, to keep them informed on all developments.

Mr. SHOUP. But you do initiate this yourself at times?

Mr. CASEY. Yes.

Mr. SHOUP. In this normal procedure?

Mr. CASEY. Yes. Normally it is done at the staff level, yes.

Mr. SHOUP. Then you are not alarmed by the fact that you are accused of contacting the Justice Department on this matter?

Mr. CASEY. Not at all. I think it is my responsibility to keep them informed on matters like this.

Mr. SHOUP. Again, if I may ask you, in this particular case you did not?

Mr. CASEY. In this particular case they learned about it by talk between the staff and they contacted me.

Mr. SHOUP. This happened in October, the first part of October?

Mr. CASEY. Yes. I got one call in the first part of October.

Mr. SPRINGER. Just a moment, Mr. Chairman. I want to clarify this timetable. As I understand, the two of you knew that each was working on this investigation?

Mr. CASEY. Yes.

Mr. SPRINGER. And then what was the nature, or why was the call made between you and the Deputy Attorney General?

Mr. CASEY. Well, he'd have to tell how he came to make the call. There was obviously—and this was known—there were people talking at staff level and elsewhere who were confronted with the question of how to handle this. The lawyers from ITT had complained—they complained around January, I believe, that they shouldn't be called to respond to two separate investigations. That was one of the things that was on the table.

Mr. SPRINGER. It was then the Commission's decision to stop all investigation and give it to the Justice Department?

Mr. CASEY. It was our decision to refer the case to the Justice Department. We were available to help them. We work with them and give such help as they call for.

Mr. SPRINGER. Thank you, Mr. Casey.

The CHAIRMAN. I'd like to clarify one statement that when the Chairman was in my office there was no indication from him or Mr. Herlong that they would not give us the material. You had written to me before and said you wouldn't, but then, when you came to see me and we talked about it, you said you'd go back and see what was what. If you'd have given me any indication that day that you would not give us the files, I would have given you a subpoena then and there, and you know it.

Mr. CASEY. Mr. Chairman, we said we'd go back and reconsider.

The CHAIRMAN. That is right, and you know you would have gotten a subpoena before you left the office if you had said no.

Mr. CASEY. I didn't know who was authorized to subpoena. I didn't know what the subpoena process is. I still don't.

The CHAIRMAN. I think you had better find out.

Mr. CASEY. Well, you give me a subpoena and I will be right there.

The CHAIRMAN. Mr. Pickle has a couple of questions here.

Mr. PICKLE. What was in the Executive order of September 28 to which you referred, that triggered your sending all the files over to the Justice Department?

Mr. CASEY. Well, that didn't trigger it. What triggered it was the Justice Department request. But I am pointing out that Justice had apparently made a decision sometime in the past that they ought to pull together the obstruction cases, obstruction of justice and perjury.

Mr. PICKLE. What is the date of that document?

Mr. CASEY. September 28, 1972.

Mr. PICKLE. Now I want to ask you for an opinion: Why do you think that the Justice Department issued that new order?

Mr. CASEY. Well, they explain it in here. They explain that there has been a lot of confusion, there have been problems where perjury and obstruction of justice cases have not been sufficiently pursued. It's caused confusion in the administration of justice. They say from now on the FBI will undertake any investigations—

Mr. PICKLE. All right. That means then that anytime there is an investigation going on in any department of government that pertains to obstruction of justice, then all files will be sent from any regulatory agency over to the Justice Department. Is this the new policy of our Government?

Mr. CASEY. Well, that is what the Justice Department requests, yes. It says the FBI will now investigate all obstruction of justice and perjury violations except those of Secret Service, Internal Revenue—

Mr. PICKLE. Do you think that there is—and I hope that I am appearing sincere to you with this question—Do you think there is any connection between the publicity and the "heat" of the ITT case, and the September 28 order?

Mr. CASEY. Of course, I don't know. I would not think so.

Mr. PICKLE. The order was issued on September 28—2 days after we made a request for information from you.

Mr. CASEY. Look. If you read this, Mr. Pickle, you will see this is a policy determination that was developed over a period of time. I don't think a 10- or 12-page policy statement is whipped up just like that. You will have to ask the Justice Department.

Mr. PICKLE. That is a fair observation, but to me it seems unusual, whenever there is an investigating matter of this nature in any department, the FBI or the Justice Department gets the file, and Congress is cut off.

Is that a good policy in your judgment?

Mr. CASEY. I don't know that Congress is cut off. I don't know what happens if Congress subpoenas the Justice Department. They have subpoenas, too.

Mr. PICKLE. Why didn't you, as a matter of policy, in view of Chairman Staggers' visits and requests, after you got this order from the Justice Department on the 28th, 2 days after you had visited him, why didn't you call the chairman of our committee and say, "We are going to have to refer this over and we are sorry, but this is a new order"?

Mr. CASEY. Mr. Pickle, I have been charged with this before. I take the view that where I have responsibilities and authority I ought to step up and make the decision, and we made it in this case. We felt it was our responsibility and our authority to determine what to do with this matter.

Mr. PICKLE. Wait a minute.

I don't believe you answered my question.

My question is: Why didn't you call the chairman? Now what is your reply?

Mr. CASEY. Because I didn't think it necessary.

Mr. PICKLE. Or important?

Mr. CASEY. No. We were prepared to make the decision. We thought it was our obligation. We know we disagreed as to what should be done, and we did tell him right away. I put it in a letter and sent it right over.

Mr. PICKLE. Well, this would "take you off the hook," and therefore you were relieved of responsibility.

Mr. CASEY. I never thought I was on a hook. I don't know what you mean when you say, "take me off the hook."

Mr. PICKLE. Well, we had asked for the information——

Mr. CASEY. This——

Mr. PICKLE. This relieved you of the responsibility of giving us the information.

Mr. CASEY. You asked for the information, and we told you we wouldn't give it to you.

Mr. PICKLE. Then that took you off the hook.

Mr. CASEY. If that is the way you want to put it. We made the response that we thought was proper and appropriate.

The CHAIRMAN. Mr. Blanton wants to ask a question here.

Mr. BLANTON. Yes. In the beginning you only quoted from the memorandum saying in cases that referred to obstruction, possibility of obstruction of justice. Now you bring in a new word that was in that memorandum. You said possible perjury cases.

Mr. CASEY. Well, perjury is a form of obstruction of justice. It's the same thing. Obstruction is a broader category.

Mr. BLANTON. Is it not true in fact that this same company is involved with a possibility of a member of the Justice Department in perjury, and yet you turned the files over to them?

Mr. CASEY. I don't follow you. I don't know about any such possibility, and they are the appropriate authority to pursue it. There is no other authority to pursue it.

Mr. BLANTON. All right. One question more.

At any other time in your service on the Commission that you have sent files to the Justice Department, have you sent them the complete set of files with retention of absolutely no records or no copies?

Mr. CASEY. I don't know that.

Mr. BLANTON. Any of those times?

Mr. CASEY. Mr. Blanton, I don't know that, because I did not know what was being sent them in this matter. I don't know what the general practice is. I am given to understand that the general practice is to send the whole file over; not to retain copies.

Mr. BLANTON. Well, could you submit to the record anything that you can recall that would substantiate the statement that you just made?

Mr. CASEY. I don't know what you mean.

Mr. BLANTON. Well, it amounts to you don't know what is going on.

Mr. CASEY. Oh, that is not true at all. I know a great deal of what's going on. Anybody here can tell you that. But that doesn't mean I know all the operations in an organization of 1,600 people.

Mr. BLANTON. This is not important to you as a Commissioner as to whether copies of documents, in important cases like this, are retained in SEC?

Mr. CASEY. It's a practice that the Commission has developed over a period of time. I have had a committee investigation on our enforcement procedures. They haven't made any recommendations on that. I have confidence that the people in charge of enforcement are doing it properly. I don't go and check everything that happens.

Mr. BLANTON. This is not going to do it. We are talking about—

Mr. CASEY. Well, it's a practice of ours in the execution of our enforcement function.

Mr. BLANTON. No further questions, Mr. Chairman.

Mr. SPRINGER. Mr. Chairman. I want to be sure about this, Mr. Chairman, because this raises a serious question to the subcommittee, and I want to be sure that we don't have any misunderstanding.

Now, at each step—I don't care what is done—we have a sort of an outline here of what took place and a schedule of events with reference to this committee and its relation to you, with reference to requests that were made by you. At each one of these steps a policy decision was made by the Commission, itself, and a record was made. Am I right on that?

Mr. CASEY. Yes.

Mr. SPRINGER. So what you have done through this entire proceeding is to make policy decisions. Whether we agree with that or not, you have made a policy decision of the Commission, and that is what has been entered in the record at each one of these stages. Am I right?

Mr. CASEY. What we believe we were required and authorized to make in discharge of our responsibility.

Mr. SPRINGER. Mr. Chairman, to be sure, this record has to be clear. I would like to ask Mr. Loomis and Mr. Owens, are you going to testify?

Mr. Owens?

I'd like Mr. Loomis and Mr. Owens—they are the other members of this Commission who are physically able to be present at this hearing.

Do you, Mr. Loomis, agree with the statement which the chairman has just made with reference to policy?

Mr. LOOMIS. I didn't hear it because he wasn't talking to me, but as I understand it, he was saying that whenever the Commission was called upon to make a policy decision, it did so, and it was unanimous in each case.

Mr. SPRINGER. Is that your understanding, Mr. Owens?

Mr. OWENS. Yes, sir.

Mr. SPRINGER. I just want to be sure. We have the Commission here, and there are only three members available, and we have got that on the record.

Mr. PICKLE. Mr. Chairman, in view of Mr. Springer's question, I want to make plain that we are not questioning you individually, Mr.

Casey. I don't think you made a decision by yourself without counsel with your Commission, and I think the record was clearly made at the beginning by your statement that the Commission acted unanimously. The questioning has confirmed that, so we don't question that.

I think it is proper, though, to ask you—and I do so just for the record. Did you call anyone at the Justice Department and suggest, or request, that Justice call all these files over from the SEC to their Department?

Mr. CASEY. I received a call from the Justice Department asking me to come over and meet with Erickson. I met with him—

Mr. PICKLE. I thought Erickson called you.

Mr. CASEY. I said I received a call.

Mr. PICKLE. Then you went over and talked to Mr. Erickson?

Mr. CASEY. That is right. And we discussed the whole status of the matter.

Mr. PICKLE. I am trying to establish, did Mr. Erickson call you and ask you to come over and talk to you about the case?

Mr. CASEY. Yes.

Mr. PICKLE. And at his request, and that request from Mr. Erickson as far as you know came only from him and that no one on your staff, or member of the Commission to your knowledge, suggested that this call was to be made?

Mr. CASEY. Not to my knowledge.

Mr. PICKLE. Now, when you made this decision and the Commission made the decision that these files should go over to the Justice Department, did you make any call to any member of the White House staff that this action was pending, requesting some kind of guidance or raising questions about it?

Mr. CASEY. Mr. Whitman and Mr. Cook, I believe, and subsequently I discussed the matter with John Dean.

Mr. PICKLE. John Dean?

Mr. CASEY. John Dean. He's a counsel to the President. I believe he is an expert in the executive department on—

Mr. PICKLE. Who does Mr. Dean work for specifically?

Mr. CASEY. As far as I know he worked for the President.

Mr. PICKLE. I know, but under what section at the White House?

Mr. CASEY. I don't know who he reports to.

Mr. PICKLE. Well, just as a matter of fact, so we don't have to be coy about this, who is his immediate superior down at the White House, Mr. Dean's?

Is he a lone operator?

Mr. CASEY. I believe he is counsel to the President. I suppose he works for Mr. Haldeman or Erlichmann. I don't know.

Mr. PICKLE. You knew who he was, but you didn't know for whom he worked?

Mr. CASEY. He comes out of the Justice Department. He is the man who has done most of the work and is most informed.

Mr. PICKLE. Do you know whether Mr. Dean contacted anyone else on the White House staff about this case?

Mr. CASEY. I don't know.

Mr. PICKLE. Do you think he probably did?

Mr. CASEY. Any member of the staff, could you comment on that?

Mr. PICKLE. None of you know?

Mr. CASEY. Mr. Whitman says——

Mr. PICKLE. Who is Mr. Whitman?

Mr. CASEY. He is my executive assistant.

Mr. WHITMAN. He worked for Mr. Bradford Cook.

Mr. CASEY. Mr. Cook, I believe, at that time was general counsel.

Mr. PICKLE. All right. You had no contact with anybody at the White House, but your staff did?

Mr. CASEY. I talked to Mr. Dean, too.

Mr. PICKLE. What was Mr. Dean's suggestion?

Mr. CASEY. Mr. Dean, he confirmed my views, which is what I wanted, to have my views checked out, confirm my views in this kind of information in an investigative file.

Mr. PICKLE. What were your views?

Mr. CASEY. The views which the Commission had expressed.

Mr. PICKLE. That you should not turn the files over to this subcommittee?

Mr. CASEY. That is right.

Mr. PICKLE. But that you should turn the files over to Justice?

Mr. CASEY. Yes.

Mr. PICKLE. You have indicated there wasn't any question about that, prior to this time. Previously, you said you didn't intend to give it to us. Didn't you say that?

Mr. CASEY. Didn't intend to unless I had to, unless I was subpoenaed.

Mr. PICKLE. But in talking to Mr. Dean, you asked him what was his opinion and Mr. Dean confirmed your views that you shouldn't give it to the subcommittee but that you should give it to the Justice Department?

Mr. CASEY. That is right.

Mr. PICKLE. Now, your conversation with Mr. Dean, was that prior to the time the Commission met to decide whether or not to send the ITT files over to Justice?

Mr. CASEY. Yes; it was.

Mr. PICKLE. Do you think your contacting the White House had any influence on the Commission?

Mr. CASEY. No; I don't think so.

Mr. PICKLE. Why was the call to the White House made then?

Mr. CASEY. The call was made because we were trying to determine from the experience of other Government agencies and the policy Government-wide what the appropriate response should be.

I talked to Chairman Burch on this matter of the FCC to get his experience. I talked to Chairman Nassikas of the FPC to get his experience and policies. I wanted to make sure that the policy we had arrived at—we considered this very carefully—was not out of line with policy that other people in the same situation were making.

Mr. PICKLE. I think these actions were understandable. I can appreciate that.

Mr. CASEY. And I asked Mr. Whitman and Mr. Cook to make similar inquiries.

Mr. PICKLE. Do you think it would be reasonable to assume that Mr. Dean talked to Mr. Erlichman or Mr. Colson about the matter?

Mr. CASEY. He could well have. I don't know.

Mr. PICKLE. Do you think that he did?

Mr. CASEY. I don't know that he did.

The CHAIRMAN. I would like at this time just to set the record straight before we turn this over to the counsel. I believe you stated that you had said to this committee that you definitely would not turn over these files; that you made it clear before you turned them over to the Justice Department.

Now let me set the record straight. After you were in my office, I had no further communication from you, by telephone, by letter, or anything else, until you informed me you had turned them over to the Justice Department, Mr. Casey.

Mr. CASEY. Correct.

The CHAIRMAN. And when you left that office, you said, "give us until tomorrow to reconsider and work this thing out" and you would let me know.

And you knew, I think you knew then, that if you didn't, you would have gotten a subpoena right then. But instead of that, you went down and made your calls to the White House, made it to other places, and came to a decision, and went into the meeting, took 10 minutes, made your decision, and went ahead.

Then, the next thing I knew I received a letter from you saying you had turned all the files over to Justice Department. Now, that is the next communication I had from you. Is this correct?

Mr. CASEY. Well, it is substantially correct. Neither Commissioner Herlong nor I said we were going to respond to you tomorrow. We said we would ask the Commission to reconsider. And I went out of town. I had a trip to New York to make a talk to an enforcement conference, a real estate conference. I went to Denver and talked to the American Institute of CPA's, and I got back. That is how the time elapsed, and meantime the Commission and the staff were considering an appropriate response.

The CHAIRMAN. But you were back in order to make the decision, but you didn't let the chairman of this committee or any member of this committee know, and you'd promised to let us know the next day, and you didn't let us know until you had completed this act, made several calls, gotten advice from people, and bundled these all up in a big hurry and got them out of there.

Then you notified us that they were gone.

Mr. CASEY. Mr. Chairman, I told you we would reconsider. The process of reconsidering involved all the steps I described. It took longer than a day, and when we made a decision, we made it and notified you.

The CHAIRMAN. Well, I just wanted the record to stand corrected here, because you had not informed me that you were not going to give them to us until after you had transferred the files over.

You had said once before in a letter that you wouldn't, that you couldn't, because it was policy, but you came to see me, to talk over the thing because you knew I was going to subpoena you.

Mr. CASEY. In all deference to you, I told you all the reasons I shouldn't.

The CHAIRMAN. And those reasons weren't sufficient. I told you that we represented the people of America and the people of America need to know what has been going on. It doesn't matter where it is, that you are only an appointed official of an agency that we set up. I told you that day, and when we keep anything from the people of this Nation—

I don't think you have the right, as the gentleman on my right says here, to keep anything from this committee except something that has to do with national security in any way.

I don't think you do have the right.

We are the ones who are elected, not you. If this thing continues the way it is going now, you of the fourth branch of Government are the ones who are going to be making the decisions, and not the Congress.

We are elected by the people to do their business; and it ought to be our jurisdiction and our decision. We have not appropriated, or in any way disrupted or given out any information we have received from your office; not one single bit. We didn't on this until after you released the fact that you had sent it over to the Justice Department.

I think I gave you that assurance unequivocally in the office that day that it would not; that it would be treated in the highest way, and in a way that would be in the interest of America. There were things in there that needed to be known, and didn't have to do with Justice. I am elected to serve the people, and we are elected to help to run this Government, to make the laws, to set up the agency, and you are down there to direct it.

Now I think this—and I think I explained this in the office that day—that was our jurisdiction and that was a mandate to us, for if we didn't do that we didn't fulfill our job.

Does the counsel have any questions?

Mr. MANELLI. At the commencement of this hearing, you tendered some files to the subcommittee with the caution that there should be no improper disclosures of their contents because there might be the potential of damaging someone's rights—or cutting off the rights that a potential defendant might wish to assert.

Was that not exactly the position that you were in on September 21, when the Chairman requested these other documents? What is the difference in treatment in access to the documents that were requested on September 21, without tendering and without asking for any assurance, and today you are tendering documents which, from what you have said, have the same potential for misuse, if that is the criteria that you are using? What is it?

Mr. CASEY. The difference, Mr. Manelli, is that as of September 21 you had made a request that we were free to reject. As of now you have made a request that we would appear here to testify before you. You have asserted the full power of the committee. We are not prepared to resist that and we are, therefore, reluctantly turning them over.

Previously, all I had was a letter from the Chairman. I didn't know what authorization lay behind it.

Mr. MANELLI. The only reason that you submitted these this afternoon is another letter from the Chairman, this one dated December 11.

Mr. CASEY. Once we come here we are in the same position as if we received a subpoena, as I understand the law.

Mr. MANELLI. You are saying that the letter from the Chairman of December 11, which requested you to provide these materials—you take it that is the same as a subpoena?

Mr. CASEY. No; I am not saying that at all. That is not the same as a subpoena. I am saying once I appear here to testify and the members of this committee ask me questions, I feel I am in the same position as though I had a subpoena, but I don't feel that way about the letter.

Mr. MANELLI. You mean that if the Chairman had written on September 21 and instead of asking access to the file, if he had written you as he did on December 11 and said, "Appear at a hearing with all documents subpoenaed from ITT," would you have brought them in?

Mr. CASEY. We would have first made clear to the Chairman that we didn't think he should put us in that position, that we thought it was a bad precedent, but if he insisted we would have come over and done it.

Mr. MANELLI. I don't want to curtail your answer, but I want to conclude my questioning as rapidly as I can. So if you can, give me a "Yes" or "No," and then explain afterward.

Mr. CASEY. All right, if I can say "Yes" or "No."

Mr. MANELLI. I asked you: If the Chairman had asked you on September 21 to appear at a hearing and present the ITT documents, would you have done so? Do you say "Yes"?

Mr. CASEY. We would have done so only after we asked him to withdraw his request.

Mr. MANELLI. That is understood. Just as you did today when you were asked by the letter of December 11 to appear and present these documents.

Mr. CASEY. Yes.

Mr. MANELLI. You have made the proper—

Mr. CASEY. If we had come here, we would have given them.

Mr. MANELLI. That seems to me to be a somewhat different statement than you made when Chairman Staggers was questioning you; that you did not deem it proper to surrender the materials which might be misused, in the absence of a subpoena.

Mr. CASEY. We don't deem it proper now, but we feel now we were in exactly the same legal position as if we had received a subpoena. Now that is what my lawyers advised me, that I am here in exactly the same legal position as if you had issued a subpoena. You have taken the responsibility of putting me in that position and we are going to respond.

Mr. MANELLI. Would that not have been exactly the same position if you had acceded to the Chairman's request on September 21?

Mr. CASEY. No; because we have a long history of not acceding to such requests.

Mr. MANELLI. The only difference that I can see is that the one request was to appear at the Commission and to examine the documents, and the second was that you bring them here to the hearing.

Mr. CASEY. At the Commission we are free to say "No" to you. Before this committee I don't think we are free to say "No."

Mr. MANELLI. Let me move on to another subject. I don't want to keep reploting this particular point with you, but we want the record to show that we are talking about records which have the same potential for misuse, according to the statements you made, and the same potential for improper disclosure.

These documents that we have here on the desk you brought in in response to the Chairman's letter of December 11. The documents that were sent over to the Justice Department were not tendered as the Chairman asked on September 21.

Am I fairly stating your position when I say that the only difference you assert is that in the one case it was in conjunction with the hearing, and in the other case it was not?

Mr. CASEY. We think we are now under legal compulsion. We did not consider we were under legal compulsion as a result of the Chairman's request by letter.

Mr. MANELLI. At another point in the Chairman's questioning of you, he asked you if it was not true that individuals and personnel at the Justice Department had expressed some dismay and surprise when they realized that you had sent over all the documents in this case, and you indicated that perhaps it might have been a janitor or shipping clerk.

That is not the case; is it? These were attorneys who were conferring with your staff; weren't they?

Mr. CASEY. Well, they were obviously lower down attorneys.

Mr. MANELLI. Do you know the identity of the individuals?

Mr. CASEY. No; but I know that the Deputy Attorney General could not have expressed dismay or surprise, because he requested it.

Mr. MANELLI. You said also that it was not the Deputy Attorney General who specified that all the files were to be transported, and it was not he who specified that no records were to be retained by the Commission. That is true; isn't it? You did say that?

Mr. CASEY. He asked that the case be referred and the Commission staff did what they thought appropriate in referring the case.

Mr. MANELLI. You mean he asked for all files?

Mr. CASEY. No; he didn't specifically ask for all files. He asked that the case be referred.

Mr. MANELLI. He had no interest in whether you kept copies or not?

Mr. CASEY. No.

Mr. MANELLI. Whose decision was it, first of all, that all the files without exception should be sent over?

Mr. CASEY. I guess that decision was made in the Enforcement Division.

Mr. MANELLI. Which individual would have made that decision?

Mr. CASEY. I would imagine that Mr. Sporkin probably made that decision.

Mr. MANELLI. So you think, in looking back on the situation, that it was probably Mr. Sporkin who decided that all the files would be sent over? You didn't decide that?

Mr. CASEY. I gave no such instructions, issued no such instructions.

Mr. MANELLI. Did you issue any instructions that no copies were to be retained?

Mr. CASEY. No.

Mr. MANELLI. Do you have any idea who might have given that instruction? Would that have been Mr. Sporkin also?

Mr. CASEY. I understand that is the practice.

Mr. MANELLI. The question is: Did you give the instruction?

Mr. CASEY. I gave no instruction; no.

Mr. MANELLI. Do you know who did?

Mr. CASEY. No, I don't.

Mr. MANELLI. You said, in answer to a question by Mr. Pickle—when he was asking you about transfer of Hartford, ITT and Mediobanca—I thought that he had asked you something about that sale and you had corrected him, saying that was not a sale. Is that what you said?

Mr. CASEY. Well, he asked me about that sale. I guess I said the Internal Revenue Service had decided it was not a sale and when we

looked into it we felt it was a sale for registration purposes. That is why we brought the action.

Mr. MANELLI. I asked you that question because it is a matter of some importance, isn't it, whether it is deemed to be a sale or not?

Mr. CASEY. We took the position—

Mr. MANELLI. Excuse me. Could you answer that "yes" or "no," and then explain it; just so the record will be clear.

Mr. CASEY. Yes.

Mr. MANELLI. It is vitally important?

Mr. CASEY. Yes, it is a matter of importance.

Mr. MANELLI. Now, I don't want to cut off the rest of your answer.

Mr. CASEY. Yes.

Mr. MANELLI. You are saying that you have determined, and the Commission, that it was a sale for registration purposes?

Mr. CASEY. Yes.

Mr. MANELLI. Has the Internal Revenue Service decided officially whether or not it was a sale for tax purposes?

Mr. CASEY. I don't know. They decided in the first instance it was not a sale for tax purposes, but there is no reason why a transaction cannot be a sale for one purpose and not be a sale for another purpose.

Mr. MANELLI. But in any event, you did not mean to indicate that you do not consider it a sale?

Mr. CASEY. I have no view on that for tax purposes.

Mr. MANELLI. For security purposes?

Mr. CASEY. It was a sale for security purposes.

Mr. PICKLE. May I interrupt?

The whole purpose of the transfer or sale from ITT to the brokerage firm in New York to Mediobanca back to the Dreyfus Fund all was for the purpose of avoiding a tax on the exchange of ITT stock for Hartford stock; is that correct?

Mr. CASEY. Yes, I think that the Internal Revenue Service understood that.

Mr. PICKLE. And yet you state the transfer of the \$92 million Hartford stock was not a sale for tax purposes.

Mr. CASEY. Let's get this clear. I am trying to reconstruct from my history as a tax lawyer, which is a long way back, what they would have had to determine. I never read their opinion. I guess they determined that there was, in effect, a disposition so that a merger could be tax-free and they therefore had to say that the sale occurred at the time the stock was turned over to Mediobanca.

We took the position that Mediobanca merely held the stock pretty much as an agent for ITT and that the sale occurred later. That was our position, so it was inconsistent with the Internal Revenue position.

We were both looking at it from two different vantage points and I considered it a very close question. I had some difficulty to agreeing to the position we did finally take, but I did feel that we should take that position to protect the registration provisions of the act.

Mr. MANELLI. Chairman Casey, you mentioned several calls you had made to Mr. John Dean at the White House. Could you tell me how many calls you made and when they were made?

Mr. CASEY. Well, as I remember, Mr. Cook and Mr. Whitman had talked to him the latter part of the week of September 29, when I was out of town, to discuss the problem and the whole position. I was in

Denver October 1, October 2, I came back October 3, and I guess I stopped by and had a talk with him on the afternoon of October 3.

Mr. MANELLI. What did you say was the purpose of your conversation with Mr. Dean again? Why were you consulting with him on this particular point?

Mr. CASEY. Because this was a matter that involved a decision that had to be made by us as between our obligations and the executive, and our obligations and the Congress. I discussed the matter with Congressman Moss and Congressman Staggers, and I felt I ought to discuss it there.

Mr. MANELLI. Would this be an unusual situation?

Mr. CASEY. Oh, oh. I have testified before the Congress on many policy matters—

Mr. MANELLI. No, no, you misconstrued my question. Is it a usual matter that you would involve the White House in a situation of this kind? Is this unusual?

Mr. CASEY. No; it was not unusual.

Mr. MANELLI. Not unusual?

Mr. CASEY. This was a matter of executive responsibility and privilege.

Mr. MANELLI. Well, let me ask you this first: Were there any other people at the White House you talked to on this?

Mr. CASEY. No.

Mr. MANELLI. You say "executive responsibility and privilege," and perhaps I am misunderstanding it, because I thought underlying this whole thing was a desire to protect the rights of possible defendants in this case. Was that not the basis?

Mr. CASEY. Yes, but it is a responsibility of the executive to bring any prosecutory action, and in the course of that it is necessary to protect the validity of the action and the rights of the defendants.

Mr. MANELLI. Chairman Staggers in his questioning asked you about this point—about the improper publicity and prejudicing the rights of third parties. First of all, I am correct, am I not, that what we are talking about is conferring a defense on somebody?

Mr. CASEY. What?

Mr. MANELLI. Conferring a defense. Obviously, if there were some improper publicity the defendant could recall that at the trial and the judge could rule whether he had a defense.

Mr. CASEY. That is one consideration. The other consideration is whether you deprive a citizen of his right to protest against the submission of documents.

Mr. MANELLI. So it really was not a question—

Mr. CASEY. If you subpoenaed directly, as you could have, anybody who had an interest in the possible criminal action could have gone to a court and asked for a protective order. If we simply turned them over, we would have cut him off from that right, and we didn't feel we should take that responsibility.

Mr. MANELLI. Have you cut people off from rights by turning over the documents that you turned over earlier?

Mr. CASEY. We may have. You forced us to do that and we made that clear.

Mr. MANELLI. You think you may have cut off individual rights since you turned these over? Even if there is no improper publicity or improper disclosure?

Mr. CASEY. I think those are our documents, those are our notes, and maybe nobody has a proprietary interest in them, but I think that any citizen who might be affected in a pending criminal action ought to have a right, and they have a right, to go to a court and ask that the documents which might increase their exposure or expose them to publicity before they have gone through a grand jury, before there has been an indictment, they can go to a court and ask for a protective order that these documents be kept in the court's custody.

We have deprived them of that right; yes.

Mr. MANELLI. That is what you were discussing with Mr. Dean, and with Mr. Whitman, discussing how best to preserve the rights of these possible defendants?

Mr. CASEY. We all agree we had an obligation to preserve those rights. The question was how far we could go in undertaking to do that and at what point we have to submit.

Mr. MANELLI. Did Mr. Dean indicate to you that he would talk to Justice about this case?

Mr. CASEY. Yes; he did.

Mr. MANELLI. He did. Did Mr. Dean advise you that you should transfer the files to the Justice Department?

Mr. CASEY. No. He knew that Justice was conducting another investigation and that the two were related.

Mr. MANELLI. Well, can you recall the date on which Mr. Dean informed you that he would be talking to Justice about this?

Mr. CASEY. Well, October 3.

Mr. MANELLI. October 3?

Mr. CASEY. Yes.

Mr. MANELLI. That would have been the day before the meeting of the Commission.

Mr. CASEY. Yes; that is right.

Mr. MANELLI. You have indicated that you were not the one who gave the order that all the documents be sent, and that you were not the one who decided that there would be no copies. And you also stated that no one at the Justice Department had imposed those kinds of conditions either.

I just wondered, are you at all disturbed by the fact that all the files have been sent and no copies have been retained?

Mr. CASEY. I understand that is a normal procedure.

Mr. MANELLI. It is the normal procedure?

Mr. CASEY. Yes. You don't make copies of the voluminous files. The files are transported back and forth. It is not as though they are passing out of our hands; we have access to them. If we feel there is a need for copies, we make them. We don't make copies for the sake of having copies.

Mr. MANELLI. Do you have access to those files as a matter of permission from Justice now? Or do you think you have a right to ask for them back if you wish?

Mr. CASEY. I don't think we ever thought about that. Our working relationship with Justice, we are both working on the same case, we both have the same purpose, and they give us access as we would normally give them access, because we are in the same business together in this matter.

Mr. MANELLI. What would your opinion be, just offhand, if you were to conceive of a situation where you would ask for the files

back from Justice, or some of them? Do you feel you would be within your rights to expect they would be sent back?

Mr. CASEY. We are certainly within our rights to expect to get them back. As to what they would do, I don't know. It is their responsibility now, and it was their responsibility in the beginning, in the nature of things.

Mr. MANELLI. Again going back to the previous questioning, Mr. Blanton asked you if the staff of this subcommittee was not routinely granted access to Commission files, and you said you thought the staff over at the Commission, your staff, might have perhaps approved it and you would not have known it.

I will state for the record my understanding is that these requests for access are always made by personal letter from Chairman Staggers to you, so you would know about it.

Mr. CASEY. Well, I said that—

Mr. MANELLI. Are you saying there are instances—

Mr. CASEY. The requests are made to me and I take it up with the Commission. I put it on the Commission calendar, the Commission acts as a commission. We authorize it, but I don't know what the staff does in selecting the particular files.

Mr. MANELLI. I thought you said that you learned that there were instances where access was granted where you, if you had known about it, would not have approved it. Do you have anything specific in mind there?

Mr. CASEY. Yes; the one Chairman Staggers cited to me in his letter.

Mr. MANELLI. What one is that?

Mr. CASEY. I have to find the letter.

Mr. MANELLI. The review of broker dealers' records?

Mr. CASEY. What?

Mr. MANELLI. The review of broker dealers' records.

Mr. CASEY. Yes, that is the one. You say, "During the fall and winter of 1970"—and the subcommittee study was conducted during 1970-71—"the Subcommittee was permitted access to nonpublic files, including those pertaining to continued investigations in which the Commission subsequently took enforcement action."

Now what happened there, as I reconstruct, we authorized letting the committee staff look at our broker dealer files. If I had anything to say about it, I would have excluded those which were open and still pending enforcement action.

Mr. MANELLI. But we had something to say to you.

Mr. CASEY. We gave general authorization. We made a general authorization, and the way the staff carried it out was one with which I would not have agreed if I had known about it, but I agree with the general authorization because that was a clear oversight investigation.

Mr. MANELLI. That is all I have at the moment.

The CHAIRMAN. Mr. Casey, if you will step aside for a little while and stay with us—

Mr. CASEY. Mr. Chairman, I told you I have to get a 4 o'clock plane to New York.

The CHAIRMAN. Wait just 1 minute now.

Are there any further questions anyone wants to ask Mr. Casey before he leaves?

I would say this to you. Would you be available—I am sure you would be—at a future time if we need you?

Mr. CASEY. Mr. Chairman, I am always available to you.

The CHAIRMAN. Fine. Have a pleasant trip to New York.

Mr. CASEY. Fine, Mr. Chairman.

Do I stay or may I leave?

The CHAIRMAN. What time is your plane?

Mr. CASEY. I am getting a 4 o'clock plane.

The CHAIRMAN. You'd better go. We are not trying to hold you up or deter you in any way.

Mr. CASEY. You know my phone number.

The CHAIRMAN. Yes, sir; I think we do.

Mr. Whitman, would you take the stand, please.

Identify yourself again for the record.

TESTIMONY OF CHARLES S. WHITMAN III

Mr. WHITMAN. Charles Seymour Whitman III, executive assistant to Chairman Casey, SEC.

The CHAIRMAN. Mr. Manelli.

Mr. WHITMAN. If you like, Mr. Staggers, I thought I might try to clarify the transaction for the benefit of Mr. Pickle and Mr. Manelli if that is still up in the air.

The CHAIRMAN. What is that?

Mr. WHITMAN. The problem was raised: Is it a sale? And so on. I think we can explain that.

The CHAIRMAN. I think we will get to that in a few minutes.

Mr. WHITMAN. Fair enough.

The CHAIRMAN. Mr. Manelli.

Mr. MANELLI. Mr. Whitman, you are Chairman Casey's executive assistant?

Mr. WHITMAN. That is correct.

Mr. MANELLI. Let me ask you if you were in any way involved in packing up or arranging for the transfer of the files that we have been talking about.

Mr. WHITMAN. Not absolutely directly. If I could explain, the Commission met and the Commission came out of the Chairman's office where they had the Commission meeting, and I think it was the Chairman that told me that the Commission had voted and what action had been voted. I called up Mr. Sporkin and told him that the Commission had voted to transfer the files to Justice and would he get on it.

That was on Wednesday afternoon, the 4th of October. On the 5th, I had a conversation with Mr. Sporkin about the timing. Mr. Sporkin explained to me that the staff was digesting and indexing the documents to go over, that they had had to inform certain defendants whom they were interviewing at that time that the reference had been approved so that they would not be giving them a double jeopardy claim, but that it would probably go over sometime that afternoon—that is, the afternoon of Thursday, October 5.

Mr. Casey was off to Detroit to give a speech, so I was alone in the office up there.

Later on that afternoon, Mr. Sporkin called me and told me that the indexing had not been completed and that the documents could not go over on Thursday. I went around to the Executive Director's

office to see if there would be anyone to help out in getting the documents over.

I didn't realize how extensive the file was. As you know, it turned out to be 34 boxes of various items.

After I had been assured that the thing would go over—

Mr. MANELLI. Could I stop your narrative here?

Mr. WHITMAN. Yes, certainly.

Mr. MANELLI. You say that Mr. Sporokin advised you that the indexing had not been completed. You then tried to see who else might be available. Could I ask you why not simply let him continue to index it until it was complete? What was the rush?

Mr. WHITMAN. When I was told to get the documents over, I tried to do it as quickly as possible.

Mr. MANELLI. Were you given any time limit?

Mr. WHITMAN. No.

Mr. MANELLI. Go ahead. I interrupted you.

Mr. WHITMAN. I came in at 8:30 in the morning on Friday, October 6 and found that the documents still were not ready to go over. I talked to Mr. Ferrara, who was still indexing, and I asked how long it was going to take, and he gave me an estimate. He also showed me all the boxes and I realized it was going to involve more than one person.

I went upstairs and asked Mr. Mallory, who was the only person in the executive director's office at the time, to assist Mr. Ferrara in getting the documents over to the Justice Department.

I also called up Mr. Erickson's secretary to find out where the documents should be taken, that is, which entrance of the Justice Department. Subsequent to that, I received a phone call from Mr. Flug, referred to earlier, stating Senator Kennedy desired Casey not to do anything about the matter until he had talked to him. Mr. Casey was not in the office.

Mr. MANELLI. Let me stop you again for a second.

Mr. WHITMAN. Yes.

Mr. MANELLI. He didn't quite ask that nothing be done, he asked that the status quo be preserved by one of two means: Either holding up the transfer until Senator Kennedy could talk with Chairman Casey, or, in the alternative, making sure that the SEC retained copies of what went over.

Mr. WHITMAN. If that is Mr. Flug's recollection, I don't remember exactly, but I do remember he did call.

Mr. Casey was not there, and I considered what to do. He was still in Detroit, he was due back that morning, but had not yet arrived. The documents were just about on the way over, and I decided to let them go.

Mr. MANELLI. Are you through with your account?

Mr. WHITMAN. Let me see.

Well, I think that is all I can say on that.

Mr. MANELLI. You say no one gave you any time limit as to when these documents were to go over, but that you, in the natural course of things, like to dispose of a job or an assignment as rapidly as possible. And it is on this basis that you decided that you would not wait to transmit Senator Kennedy's message to Chairman Casey, and that you would send the truck over.

Mr. WHITMAN. I had been asked by the Commission to turn the thing over 2 days before. I considered that I had somewhat blown my job by not getting them over on Thursday night.

Mr. MANELLI. Let's go back to where you are standing outside the room, and the Commissioners come out from their meeting: you are advised, you say, by Chairman Casey that the Commission had decided the files are to be transferred to Justice.

Mr. WHITMAN. Yes.

Mr. MANELLI. He did not tell you that there was any particular urgency in the matter, did he?

Mr. WHITMAN. No; Not that I recall.

Mr. MANELLI. And he did not tell you that all the files were to be sent over, did he?

Mr. WHITMAN. He certainly didn't say that. I think he and I both believed and still do believe that our general practice is that when a reference is made, the entire file goes.

Mr. MANELLI. And he did not say anything to you about keeping copies?

Mr. WHITMAN. None whatever,

Mr. MANELLI. You received no particular instructions other than that the files were being transferred?

Mr. WHITMAN. Right.

Mr. PICKLE. Could I interrupt?

Did you not know at that time that the decision apparently had been made that the files were to be transferred?

Mr. WHITMAN. I knew after I was told on Wednesday afternoon after the meeting.

Mr. PICKLE. As I understood the question earlier when the chairman had testified that you had talked to Mr. Dean of the White House—

Mr. WHITMAN. That was a long time before, Mr. Pickle.

Mr. PICKLE. Sir?

Mr. WHITMAN. That was a long time before. My talk with Mr. Dean was part of a fact-gathering operation that I made on behalf of the chairman to try to find out what all the other executive agencies of the Government do when they are presented with this problem.

Mr. PICKLE. Prior to the Commission meeting?

Mr. WHITMAN. Two weeks prior.

Mr. PICKLE. The White House had confirmed the view of Chairman Casey, so that it came as no surprise to you that the decision to transfer the files would officially be made by the Commission.

Mr. WHITMAN. That is not the point, Mr. Pickle. I was not present at the conference Mr. Casey discussed. My conference with Mr. Dean dealt only with legal rights. Mr. Dean is the White House expert, and perhaps the Washington expert, on executive privilege and the preservation of files. He had written a number of memorandums when he was in the Justice Department 2 years ago on this point.

I also consulted with the General Counsel of the Trade Commission, the Power Commission, the Communications Commission. I have gotten documents from the AEC and I have gotten all the documents surrounding the unfortunate experience of Mr. Hyde with this committee.

I was trying to assist Mr. Casey, who asked me to check and to find out the policy of other agencies when presented with this particular problem. That is what my conference with Mr. Dean was all about.

Mr. MANELLI. Mr. Whitman, you say Mr. Dean is an expert on retention of files and executive privilege?

Mr. WHITMAN. Yes.

Mr. MANELLI. In reverse order. Retention of files: did you and Mr. Dean discuss title 44, United States Code, section 3101, which pertains to record retention by Federal agencies?

Mr. WHITMAN. If you would quote it to me or show me a copy, I perhaps could recall. We mainly discussed the testimony of present Mr. Justice Rehnquist at his confirmation hearings where he made a large submission on this point. Mr. Rehnquist was Mr. Dean's boss in the Justice Department, and prior to his departure was the Justice Department expert on privilege and that kind of thing.

Mr. MANELLI. In what way is executive privilege involved in this case?

Mr. WHITMAN. We decided ultimately that executive privilege was not involved in this case.

Mr. MANELLI. What made you think it might be?

Mr. WHITMAN. Well, Mr. Casey pointed out to you that the Commission when acting in its enforcement capacity is acting more as the executive arm of the Government than the legislative arm. I don't think that executive privilege has ever been asserted by anything but the executive branch.

Furthermore, all the Presidents since Mr. Kennedy have signed a promise that they would not assert executive privilege except by personal signature of the President. This was Congressman Moss' pet campaign.

In the long run, it was decided, therefore, that probably the Commission did not have executive privilege with regard to these documents.

Mr. MANELLI. Again, I don't want to curtail any of the relevant part of your answer; but to have a clear record I would like to have a "yes" or "no" answer, if possible.

Mr. WHITMAN. If I can, I will.

Mr. MANELLI. If you can limit your discussion somewhat, it will be helpful, too.

Mr. WHITMAN. I think my discussion is relevant.

Mr. MANELLI. If you think it is relevant.

Mr. Chairman, at this point in the record, just so the record might be complete, I would like to introduce title 44 United States Code, section 3101. It is entitled "Record Management by Agency Heads, General Duties," which I will just read briefly.

(The material referred to follows:)

§ 3101. Records management by agency heads; general duties

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

Mr. MANELLI. I don't want to ask you for an off-the-cuff opinion on the applicability of that statute to any of the records you sent.

Did you discuss that statute with Mr. Dean when you talked with him?

Mr. WHITMAN. I did not. It does not sound relevant to me.

The CHAIRMAN. It does not sound relevant?

Mr. WHITMAN. Not the way I understood it from your reading. It means keeping adequate files just on what you do. That is not the question raised here. These files have not been sent off into oblivion: they still survive. When the enforcement action is completed they will be available to anyone. That appears to be the purport of that statute, it seems to me.

Mr. MANELLI. Mr. Whitman, our information is that the files left the building around 10 o'clock in the morning. That is correct; isn't it?

Mr. WHITMAN. I am not sure, since I had delegated that.

Mr. MANELLI. You did testify that, in deciding whether or not you would honor Senator Kennedy's request, you decided in order to get the job done quickly—

Mr. WHITMAN. As I say, I was a little embarrassed having missed it by a day.

Mr. MANELLI. Do you recall receiving a memorandum from Mr. Sporkin of the SEC staff—that would have been dated on or about August 31, 1972—in which Mr. Sporkin made two recommendations: First, that certain aspects of the ITT matter be referred to Justice, and the second recommendation that the SEC itself proceed to investigate other aspects?

Mr. WHITMAN. It is dated August 31, and I received it. It is one of the memoranda that you asked us to submit to you.

Mr. MANELLI. Mr. Chairman, I would like to ask that the pertinent portions of that memoranda be inserted in the record. I understand there are portions that would not be pertinent. I would like to make a limited introduction.

Mr. SPRINGER. Mr. Chairman, what are we going to insert in the record?

Mr. MANELLI. This would be a memorandum from Mr. Sporkin, dated August 31, which recommends that certain aspects of the ITT matter go over to Justice, and that the SEC itself proceed to investigate other separate issues.

Mr. SPRINGER. Is that all that goes in? Are any names mentioned in this?

Mr. MANELLI. I believe there are names mentioned in the portion of the memorandum which would not be pertinent to that particular point. What I am saying is that I would not ask that the entire text of the memo be inserted, but that only the pertinent portions be inserted and any names be excluded.

Mr. SPRINGER. I don't want to be technical, but could I see this, please?

Mr. MANELLI. I might add that it was at the Commission's request that we suggested that the whole document not be put in. I don't think it is necessary.

Mr. SPRINGER. Would you mark this as an exhibit?

Wait a minute. We don't have it marked yet.

The CHAIRMAN. He said just part of it.

Now go ahead and question the witness.

Mr. MANELLI. Mr. Whitman, was Mr. Sporkin's memorandum brought to the attention of Mr. Casey?

Mr. WHITMAN. It was brought to the attention of the full Commission.

Mr. MANELLI. What action was taken on his recommendations?

Mr. WHITMAN. The Commission voted to allow the staff to continue the investigation thus accepting the second of his two suggestions. You pointed out there were two suggestions.

Mr. MANELLI. Yes.

Mr. WHITMAN. The staff of the Enforcement Division felt that the Commission should decide whether it was fruitful to continue work on the case. On August 31 the Commission met and decided to authorize additional work and I was directed to send a short memo to Mr. Sporkin saying, "Go on with this case," which I did send.

Mr. MANELLI. There was not an alternative, was there; it was that both things be done?

Mr. WHITMAN. Both aspects of the case to be investigated; right.

The CHAIRMAN. Circumstances dictated both things; is that right?

Mr. WHITMAN. I am sorry.

The CHAIRMAN. Circumstances dictated both actions; is that right?

Mr. WHITMAN. I am not sure. I think Mr. Sporkin's memo suggested that he was reluctant to carry forward the investigation without some guidance from the Commission as to whether they wished it pursued. The Commission gave him that guidance.

The CHAIRMAN. I think probably Mr. Sporkin was right, but somebody else made the decision not to do something. When we want the files here, then there is another decision made right quick.

Mr. WHITMAN. This was on August 31.

The CHAIRMAN. You know that I know that. You don't have to repeat that to me.

But you do know, too, that the decision was made right quick and that right the next day, you got busy. Do you always do everything the next day?

Mr. WHITMAN. I try to do it the same day, Mr. Stagers.

The CHAIRMAN. You do?

Mr. WHITMAN. Yes.

The CHAIRMAN. Big things like these?

Mr. WHITMAN. What?

The CHAIRMAN. Big things like this—you try to do the same day?

Mr. WHITMAN. I didn't realize there were 34 boxes of stuff.

The CHAIRMAN. You didn't realize it?

Mr. WHITMAN. No.

The CHAIRMAN. Why didn't you?

Mr. WHITMAN. The staff has all the material, sir.

The CHAIRMAN. But you found out right quick, though.

Mr. WHITMAN. Yes.

The CHAIRMAN. And you got it done, though.

Mr. WHITMAN. Yes.

The CHAIRMAN. You were directed to get it done?

Mr. WHITMAN. I was directed to get it done, yes.

The CHAIRMAN. You are pretty efficient on some things.

Mr. WHITMAN. I think if you check with some of my colleagues they will say I am pretty quick.

The CHAIRMAN. Pretty quick.
Go ahead, Counsel.

Mr. SPRINGER. Mr. Chairman.

Dan, what do you want? There are names mentioned in here.

The CHAIRMAN. Only the pertinent part and no names.

Mr. MANELLI. Excluding the names and including only the pertinent part.

Mr. SPRINGER. Can we discuss this off the record?

The CHAIRMAN. Sure; we can wait until afterward, or even do it now.

(Discussion off the record.)

The CHAIRMAN. On the record.

Mr. MANELLI. Could I change that? I would like to offer for inclusion in the record the pertinent portions of the memorandum—which I will have to identify for you once I read it carefully—excluding any names, and with the understanding that if the remaining information still seems to cast an unfavorable light on any identifiable person that we would exclude that portion, too.

The relevancy that I see is that one of the Commission's officers recommended that a dual approach be followed, that some of the files be sent to Justice and some be retained by the SEC. That is the relevance and that is why I would like it in the record.

Mr. SHOUP. Would the gentleman yield?

Mr. SPRINGER. Yes.

Mr. SHOUP. Dan, could you not accomplish the same thing with the gentleman who wrote this memorandum? Will he be on the stand?

Mr. MANELLI. Yes.

Mr. SHOUP. Could we not accomplish the same thing in the record if he would agree that what you have said is correct, and this would negate the necessity of putting this in the record?

Mr. MANELLI. Well, I think that I will just have to defer to the chairman on this point.

The CHAIRMAN. Let's take it off and he will ask the questions.

Mr. SPRINGER. All right; that is the only objection I have.

The CHAIRMAN. We can get it in the record by him asking questions; go ahead.

Mr. MANELLI. Mr. Whitman, again—since Mr. Sporkin recommended that the SEC should proceed to develop one aspect of this investigation—why in that case were all the files transmitted to Justice without copies being retained, if you know?

Mr. WHITMAN. I don't; I understand again as the chairman pointed out to you before—

Mr. MANELLI. If you don't know, I think we will have to curtail your answers just a little bit. Do you have any direct information?

Mr. WHITMAN. I have no direct information.

Mr. MANELLI. Did Mr. Sporkin or anyone else bring to your attention that the transfer of all the files would preclude any further inquiry along the lines that Mr. Sporkin had suggested?

Mr. WHITMAN. Mr. Sporkin pointed out not only that, but also that the current witnesses being taken on that very day would have to be given *Miranda* warnings, which would curtail our investigations also.

Mr. MANELLI. He advised you of that?

Mr. WHITMAN. Yes.

Mr. MANELLI. Did he advise Chairman Casey of that?

Mr. WHITMAN. I don't believe so, but I don't know.

Mr. MANELLI. Did you relay his caution to Chairman Casey?

Mr. WHITMAN. I did not.

Mr. MANELLI. Didn't you think you should?

Mr. WHITMAN. The Commission had voted.

Mr. MANELLI. Do you think the Commission had that before it when it voted?

Mr. WHITMAN. I don't think so.

Mr. MANELLI. Don't you think it would have been helpful?

Mr. WHITMAN. I found out subsequent to the Commission's decision. The Commission's decision was not based upon prejudice to those witnesses, it was based upon a request of the Justice Department, and therefore—I can't speak for the Commissioners—I doubt that it would have made any difference.

Mr. MANELLI. But since the Justice Department, according to Chairman Casey, did not specify that you were not to have copies, nor did they specify that they wished to have everything that you had, why is it that there were no copies kept and you did send over all the files, despite the fact that Mr. Sporkin warned you that that would cause curtailment, or the cessation, of the Commission's own efforts in this investigation?

Mr. WHITMAN. We sent over the whole file. I was asked to just relay to—

Mr. MANELLI. Why didn't you think that was worthwhile going back to Chairman Casey?

Mr. WHITMAN. On this point?

Mr. MANELLI. If it would affect his decision, or since you had received no specific instructions as to whether copies were to be kept, that you would at least go back to find out if he wanted copies kept for Mr. Sporkin's work?

Mr. WHITMAN. Mr. Manelli, I just took my orders and I gave my instructions to Mr. Sporkin. I did not carry any of this information—

Mr. MANELLI. Now that you think back on it—granting that you carried out your orders—do you think it might have been a good idea to advise Chairman Casey that if we do not separate out the files we need, the investigation or inquiry which Mr. Sporkin has recommended and which the Commission has acceded to—

Mr. WHITMAN. I believe they were aware of that. That was the thing they had to weigh against the transfer.

Mr. MANELLI. You are aware that some of the files in question were contained in a separate folder, and they were kept under lock and key in Mr. Sporkin's file cabinet?

Mr. WHITMAN. I am aware of that.

Mr. MANELLI. They were particularly sensitive, weren't they?

Mr. WHITMAN. I thought so.

Mr. MANELLI. You had occasion, did you not, to remove those documents from Mr. Sporkin's file cabinet? And you brought them either to your own office or to Chairman Casey's?

Mr. WHITMAN. Not to Chairman Casey's; my own.

I also read them once in Mr. Sporkin's office.

Mr. MANELLI. You examined the documents?

Mr. WHITMAN. I did.

Mr. MANELLI. How long were they in your possession?

Mr. WHITMAN. They were in my possession on two occasions, I believe.

Mr. MANELLI. When?

Mr. WHITMAN. I don't remember the first time. The second time I wanted to refresh my memory as to what they said.

Mr. MANELLI. I didn't ask that. You say you examined them on two occasions. Now can you recall the dates?

Mr. WHITMAN. I cannot recall the dates.

Mr. MANELLI. Either one?

Mr. WHITMAN. No.

Mr. MANELLI. Do you remember how long you examined them?

Mr. WHITMAN. Ten minutes.

Mr. MANELLI. Ten minutes each time?

Mr. WHITMAN. There are not too many of them.

Mr. MANELLI. Ten minutes each time?

Mr. WHITMAN. Yes; I think so.

Mr. MANELLI. You say Chairman Casey did not review the documents?

Mr. WHITMAN. Chairman Casey has never seen them.

Mr. MANELLI. Did you discuss the documents with him?

Mr. WHITMAN. Well, in a general sort of way I described the documents. Chairman Casey told you he knows about the documents, as he said.

Mr. MANELLI. He has not seen them?

Mr. WHITMAN. He has not seen them.

Mr. MANELLI. Have you not told him what is in the documents?

Mr. WHITMAN. No, of course not, because then you could get me up here and say he knew what was in the documents.

Mr. MANELLI. Excuse me, could you repeat that?

Mr. WHITMAN. Mr. Casey did not wish to know what was in the documents.

Mr. MANELLI. He specifically told you that?

Mr. WHITMAN. No.

Mr. MANELLI. How do you know that he didn't wish to know that?

Mr. WHITMAN. Well, I didn't think he should know what was in the documents.

Mr. MANELLI. Why did you think that the Chairman of the Commission should not know that?

Mr. WHITMAN. I just thought it would not be useful.

The CHAIRMAN. That is a strange thing to me, that you are working for the Chairman and you just don't think that he ought to know what is going on. I don't believe you ought to be working down there at all for anybody, under anyone.

Mr. WHITMAN. That is your privilege, Mr Stagers.

The CHAIRMAN. Well, that you would not report to your superior something that you thought should not be reported—

Mr. WHITMAN. I was instructed to handle this myself, and I did.

The CHAIRMAN. You were instructed by whom?

Mr. WHITMAN. The Chairman instructed me to handle this myself. I did not report back to him what was in the documents.

The CHAIRMAN. You saw them long before he saw them?

Mr. WHITMAN. I don't understand.

The CHAIRMAN. Yet you didn't tell him. Boy, I tell you, what is going on in this Government today is something strange.

Go ahead.

Mr. MANELLI. Mr. Whitman, I want to make sure the record is clear on this. I thought when I asked you if you had discussed it with Chairman Casey you said "No," and that you said, "I thought that he did not wish to know what was in the documents." I asked you then how you knew that, and then you said, well, you had decided that—

Mr. WHITMAN. I am not exactly sure, Mr. Manelli. I am a little confused here, but the point is that my purpose is to shield the Chairman from problems, and this is one of the things that I chose to shield him from. This was a joint decision.

Mr. MANELLI. You also said, I thought, that the instructions were to "handle it myself"—I think you said that?

Mr. WHITMAN. Yes.

Mr. MANELLI. That was given to you by Chairman Casey, right?

Mr. WHITMAN. It was.

Mr. MANELLI. So you interpreted that to mean that you were to examine these files in Mr. Sporkin's locked file cabinet, but that you were not to tell him what was in them?

Mr. WHITMAN. Yes.

Mr. MANELLI. That is the way you interpreted that instruction?

Mr. WHITMAN. That is right.

Mr. MANELLI. Do you think that is what Mr. Casey meant when he told you to look at it yourself?

Mr. WHITMAN. Yes.

Mr. MANELLI. To look at the files but not tell him what was in them?

Mr. WHITMAN. Yes.

Mr. MANELLI. But you did discuss them in a general way?

Mr. WHITMAN. Yes.

Mr. MANELLI. How did you manage to do that without telling him what was in the files?

Mr. WHITMAN. I don't know how to define what "a general way" is. I said there are sensitive documents.

Mr. MANELLI. I am just trying to get your testimony clear in the record.

Mr. WHITMAN. There were sensitive documents, and they were called to my attention by Mr. Sporkin. I thought that they were politically sensitive.

Mr. MANELLI. Politically sensitive?

Mr. WHITMAN. Yes.

The CHAIRMAN. What do you mean by "politically sensitive"? That is what I would like to know. I thought you were handling the public's business, not politics.

Mr. WHITMAN. I am handling the public's business.

The CHAIRMAN. That does not sound to me like it with your answer there.

Mr. WHITMAN. As part of this file which relates to the enforcement action on the part of the public, we acquired some documents that might have some interest in a political context. These documents also had relevance to a possible case for obstruction of justice.

The CHAIRMAN. You didn't mention that. You said "political."

Mr. WHITMAN. That is both, sir.

The CHAIRMAN. Not to me. I think when we get into this angle, you and I, either one of us—

Mr. WHITMAN. I am sorry. I didn't understand what you said.

The CHAIRMAN. I said when either you or I get into the position of saying the public interest is a political interest, we are both wrong.

Mr. WHITMAN. I didn't say that.

The CHAIRMAN. That is what you inferred.

Mr. WHITMAN. If I inferred that, I apologize. What I mean to say here is that the first request for documents we had from the Senate side indicated a concern with these documents not for genuine oversight capacity or anything else, but rather to reveal their contents to make political scandal as a result.

Mr. PICKLE. Whose opinion was that?

Mr. WHITMAN. That was my personal opinion, sir.

Mr. PICKLE. You said "we"; but you mean "I"?

Mr. WHITMAN. I mean "I."

Mr. PICKLE. And therefore you didn't think the chairman ought to know?

Mr. WHITMAN. I didn't think he should be concerned with it.

Mr. PICKLE. You mentioned earlier that you thought this was a small matter?

Mr. WHITMAN. Sir?

Mr. PICKLE. You mentioned just a few minutes earlier that you were of the opinion that this was something that Congressman Moss was involved in and—

Mr. WHITMAN. Congressman Moss is interested in executive privilege, sir.

Mr. PICKLE. But you mentioned his name.

Mr. WHITMAN. Yes.

Mr. PICKLE. Would you repeat again why you mentioned Congressman Moss?

Mr. WHITMAN. He has gotten the Presidents down through the years to write a letter to him declaring that they will not declare executive privilege except under their own signature. They will not permit agency heads to claim executive privilege on their own hook: they have to have an Executive order signed by the President before executive privilege can be invoked.

Congressman Moss is very proud of it, he has all the letters in his office.

The CHAIRMAN. Go ahead.

Mr. MANELLI. Mr. Whitman, you indicated, back at the start of my questioning, that when you were told to send the documents over you proceeded only on the general feeling that you ought to do this as quickly as possible. But now you have discussed documents that were in Mr. Sporkin's locked file cabinet which you thought were politically sensitive.

Mr. WHITMAN. Yes.

Mr. MANELLI. So much so that you took it on yourself not to brief the Chairman of the Commission as to their contents, at least not in detail. Was that not also another factor which lent some urgency and haste to your efforts to get these files out of the building?

Mr. WHITMAN. Sir, when I am instructed to do something, I do it.

Mr. MANELLI. The question was, was this political sensitivity not also very much on your mind as you tried to rush these files over to Justice?

Mr. WHITMAN. It was in the course of doing my job.

Mr. MANELLI. Would you answer "yes" or "no," and then explain? It was, was it not?

Mr. WHITMAN. I think it was on my mind; yes.

Mr. MANELLI. And that also was on your mind in deciding whether or not you would pass on to Chairman Casey the request of Senator Kennedy, that you either hold the truck or not move the files, at least, or in the alternative, make copies? You did neither one of those.

Mr. WHITMAN. It was unclear whether I could stop the truck at that point, and I decided not to. I really don't think that was much on my mind, no.

The CHAIRMAN. You didn't think enough to say anything to the Chairman about the request?

Mr. WHITMAN. I told the Chairman about the request when he arrived from Detroit around 11:30.

The CHAIRMAN. And the files were gone. You didn't think to tell any of the other Commissioners?

Mr. WHITMAN. No.

The CHAIRMAN. You just conveniently let them go then?

Mr. WHITMAN. Yes, sir.

The CHAIRMAN. Excuse me.

Mr. MANELLI. These files we are talking about now have always been kept separate, haven't they? They are in their own particular manila folder or container of some kind?

Mr. WHITMAN. I believe so, but Mr. Sporkin can tell you more about that.

Mr. MANELLI. When you looked at them and when you took them from Mr. Sporkin's file cabinet, that is the way they were?

Mr. WHITMAN. Yes.

Mr. MANELLI. And that is the way they were sent over to the Justice Department?

Mr. WHITMAN. I believe so.

Mr. MANELLI. Are you aware that Mr. King Mallory, of the Commission staff, personally drove his automobile over to the Justice Department with those particular documents in the car, and personally delivered those to the office of Deputy Attorney General Erickson?

Mr. WHITMAN. I believe that was done, but that was up to Mr. Mallory.

Mr. MANELLI. Was that done on your instructions?

Mr. WHITMAN. No; Mr. Mallory decided to do that.

Mr. MANELLI. How did Mr. Mallory get involved in this project to move the files?

Mr. WHITMAN. Mr. Mallory knew those files were sensitive. I didn't tell him to go and take them separately, it was up to him if he wished to do it that way.

Mr. MANELLI. It is unclear on the record who had the prime responsibility for seeing that the files were moved.

Mr. WHITMAN. I had the primary responsibility for seeing that the files were moved over.

Mr. MANELLI. Did you just let Mr. Mallory come in and move the files some place else?

Mr. WHITMAN. He didn't take them some place else, he took them to the Justice Department.

Mr. MANELLI. Some place else in the building. The 34 boxes were sent down, I presume, to the loading dock and the packet of sensitive materials we are talking about was hand-carried to the office of Deputy Attorney General Erickson.

Mr. WHITMAN. You will have to ask Mr. Mallory about that.

Mr. MANELLI. You know it was done?

Mr. WHITMAN. I know it was done.

Mr. MANELLI. But you didn't know at the time?

Mr. WHITMAN. No.

Mr. MANELLI. Weren't some of those documents part of the total that you were supposed to move out of the building?

Mr. WHITMAN. They were.

Mr. MANELLI. I guess I am repeating the question, but how is it that Mr. Mallory would come in and take custody of part of the documents which you have testified you were trying to—

Mr. WHITMAN. I had no idea how the documents were going to be transported. As I told you, I only knew there were a lot of them. I assumed Mr. Mallory and Mr. Ferrara would take the documents together at the same time. As it turned out, Mr. Mallory went separately. That was up to him, and I think it is perfectly OK to do it that way.

Mr. MANELLI. To conclude my questions, I have to go back to this politically sensitive material and make sure that your testimony is clear here.

You did not apprise in any kind of detail either Chairman Casey, or any other member of the Commission, as to what those files contained?

Mr. WHITMAN. That is correct.

Mr. MANELLI. And you did that by deliberate choice?

Mr. WHITMAN. Yes.

Mr. MANELLI. And that deliberate choice was your interpretation of instructions that had been given to you by Chairman Casey?

Mr. WHITMAN. That is correct.

Mr. MANELLI. It was Chairman Casey's wish that you look at the files and that you not tell him what was in them and that you not tell any other Commissioner. Is that what you are saying?

Mr. WHITMAN. Indirectly, but of course, as I say, I described summarily what the documents contained.

Mr. MANELLI. You described summarily?

Mr. WHITMAN. To Mr. Casey.

Mr. MANELLI. Well, yes, but my question was whether or not your failure to describe in great detail, either to him or to any other Commissioner, was that not in accordance with Chairman Casey's instructions to you?

Mr. WHITMAN. I believe so.

Mr. MANELLI. Is this a common occurrence, where you are told to look at files but not to advise Chairman Casey as to what is in them?

Mr. WHITMAN. I don't believe so; no.

Mr. MANELLI. Has it ever happened before?

Mr. WHITMAN. Not before—I have only been in the Commission a year and a half.

Mr. MANELLI. In your time there, this is the only time this ever happened

Mr. WHITMAN. That is correct.

Mr. MANELLI. Was your examination of these files—again the ones that we are talking about here—did you examine them shortly after they arrived in the building?

Mr. WHITMAN. I don't recall. Mr. Sporkin can probably refresh my memory on that. Should I ask him now?

Mr. MANELLI. No. We will be talking to him in a minute.

Mr. WHITMAN. Fair enough.

Mr. MANELLI. Those are all the questions I have, Mr. Chairman.

Chairman STAGGERS. Mr. Pickle.

Mr. PICKLE. What were your instructions when the Board voted that these files were to be sent to the Justice Department?

Mr. WHITMAN. The instructions of the Commission which were conveyed to me by Chairman Casey was that the Commission had voted to comply with the Justice Department request and refer the files to the Justice Department. That is all.

Mr. PICKLE. You used a different phrase a few minutes ago when you commented that Chairman Casey had come out of the meeting room, and said that the Commission had decided to send the files over. You said Chairman Casey told you to do what?

Mr. WHITMAN. You will have to look at the record, Mr. Pickle. As far as I know—

Mr. PICKLE. As I recall, you said Mr. Casey told you "to get with it."

Mr. WHITMAN. Maybe I am embellishing. I may have said, "get on it."

Mr. PICKLE. I think the transcript will say that you added something that indicated "to do it immediately."

Mr. WHITMAN. Indicated haste, yes. I mean I think probably that is an add-on from me rather than from them, in that when I am told to do something I tend to do it with a certain amount of haste; yes.

Mr. PICKLE. So your testimony is that to do it in haste was your decision, and not the Board's decision?

Mr. WHITMAN. Well, the Commission did not specify.

Mr. PICKLE. The Commission made no comment about "getting with it" or "behind it"?

Mr. WHITMAN. What?

Mr. PICKLE. They made no comment at all?

Mr. WHITMAN. No, no comment.

Mr. PICKLE. Secondly, why would any of these files be kept separately? Why would some files be kept in some boxes and some "for limited access only"?

Mr. WHITMAN. That was a decision of the Enforcement Division.

Mr. PICKLE. Are separate files a normal practice?

Mr. WHITMAN. I don't believe so, but you would have to ask Mr. Sporkin.

Mr. PICKLE. You knew some documents were in one place and some in another?

Mr. WHITMAN. Yes.

Mr. PICKLE. Were you surprised that there were 34 boxes?

Mr. WHITMAN. Yes.

Mr. PICKLE. Did you know that the SEC had secured additional files once an injunction had been filed against ITT and after the Jack Anderson column disclosure of the Dita Beard memo?

Mr. WHITMAN. Was I surprised?

Mr. PICKLE. Yes; were you aware of these additional files?

Mr. WHITMAN. Well, I don't know when I discovered this. I think Mr. Sporkin came and told me about it at some point. I don't know when it happened.

Mr. PICKLE. It is a fact that it happened, but you did not know when or why it happened?

Mr. WHITMAN. I don't remember; no.

Mr. PICKLE. All right.

Mr. WHITMAN. I know I was informed.

Mr. PICKLE. Now, why would you decide that you should not tell the Chairman that certain ITT documents were "politically sensitive"? Tell us that again.

Mr. WHITMAN. I am unsure again, Mr. Pickle. Could you clarify what you want me to say?

Mr. PICKLE. You stated that you didn't inform the chairman of all the information in the "politically sensitive" files because you didn't think Chairman Casey should know about them.

Mr. WHITMAN. Mr. Sporkin and I jointly informed the chairman that files existed and then Mr. Casey told me to take care of them.

Mr. PICKLE. Did you tell him what was in the documents?

Mr. WHITMAN. I summarized the contents after I had read the documents.

Mr. PICKLE. Then you did inform Chairman Casey of the political sensitivity of the documents?

Mr. WHITMAN. But he did not read the documents earlier.

Mr. PICKLE. I hope I didn't misunderstand you, but you stated, and the transcript will show it, that when the Chairman wanted you to handle the documents he indicated that he wanted not to know what was in those documents.

Mr. WHITMAN. For him not to be concerned with it, that is correct.

Mr. PICKLE. Well, is this not a way for the Chairman to say, "I will wash my hands and you handle it"?

Mr. WHITMAN. I think in this situation there is nothing irregular about that.

Mr. PICKLE. You don't?

Mr. WHITMAN. No.

Mr. PICKLE. If you didn't tell the Chairman because you don't want to bother him about details—

Mr. WHITMAN. It is not a bother about details, it is acting as a shield, which is what my job is.

Mr. PICKLE. I see. Now, since you are a "shield" for the Chairman, and that is a judgment matter, why didn't you tell Mr. Mallory what was in these files and that they were politically sensitive?

Mr. WHITMAN. I told him that these files existed, yes.

Mr. PICKLE. That was not my question.

Mr. WHITMAN. Why didn't I tell him?

Mr. PICKLE. Yes, that is my question.

Mr. WHITMAN. The more people that know about something, the more likely it is that it will get spread around. It should be kept quiet.

Mr. PICKLE. You were "shielding" Mr. Mallory?

Mr. WHITMAN. I suppose you could call it that. I am not shielding Mr. Mallory really, no. He had no need to know what was in those files, and the less people that knew about it, the better.

Mr. PICKLE. Then are you saying that you want to take the responsibility for what information was or was not revealed to the proper authorities? That is your decision and nobody else's?

Mr. WHITMAN. If this committee had subpoenaed them, of course, the committee has the responsibility, but the fewer people that know about the files, the less problem there is about possible leaks.

As you might recall, we had an awful lot of leaks going on about what we were doing in the ITT case at the time we brought it. In fact, you know Mr. Kondracke's article was based on information he obtained from the Commission not officially, so that there was a great concern about information that was picked up in the halls and corridors of the Commission by newsmen.

Mr. PICKLE. One last question. When you say "the fewer people who know about something," then by retaining that information yourself you think it is—

Mr. WHITMAN. I was not the only person that knew about it.

Mr. PICKLE. Withhold it and not tell the Chairman or the Congress or the Justice Department or anybody else?

Mr. WHITMAN. I am sorry. I got the end of the sentence but not the beginning. You asked me if I assumed the responsibility for holding it back from everybody?

Mr. PICKLE. Yes.

Mr. WHITMAN. Yes.

Mr. PICKLE. Thank you.

The CHAIRMAN. Even though it was something that was criminal activity and everything, but you are going to keep it from your superiors whose duty it is to do their job for this land of ours? And you are going to keep it from Congress; you are going to keep it from responsible people?

Mr. WHITMAN. When the responsible people were doing the investigation at the time. When it comes to the Commission for criminal reference—

The CHAIRMAN. You didn't answer my question.

Mr. WHITMAN. I am trying to.

The CHAIRMAN. No, you are telling me that some other subordinates are doing something, but you didn't feel it important to tell people who were in charge to do things. I don't want that kind of people working for me in the Government at all. I feel that they ought to tell things that are going wrong to responsible people.

Mr. SPRINGER?

Mr. SPRINGER. I don't know whether we are getting confused here, but there are an awful lot of questions being asked in one context. You used the words "politically sensitive," and what were your other words?

Mr. WHITMAN. Well, it all relates to the obstruction of justice cases.

Mr. SPRINGER. All right; I want to be sure that that is in that question, not the words "politically sensitive" which have been emphasized, that there was a public interest in what you were doing; am I right?

Mr. WHITMAN. I believe so; I would not have done it if there had not been.

Mr. SPRINGER. I want to know, first of all, were you instructed by the Commission to do this job?

Mr. WHITMAN. To send the thing over?

Mr. SPRINGER. Yes.

Mr. WHITMAN. Yes, I was.

Mr. SPRINGER. And you were instructed on one day; is that correct?

Mr. WHITMAN. Yes.

Mr. SPRINGER. Did you send it that day or the next day?

Mr. WHITMAN. I sent it 2 days later, as it turned out. I was instructed on October 4 and I gave them to Mallory on the 6th, 2 days later.

The CHAIRMAN. Excuse me; I just want to say, you were instructed to send it the same day?

Mr. WHITMAN. No, I was not given a time, Mr. Staggers. I was instructed on the afternoon of Wednesday, October 4—

The CHAIRMAN. I thought from his question you said you were to do it the same day.

Mr. WHITMAN. No, no, no; I was instructed to get them over there, and as I have described in the beginning of my testimony, I was endeavoring to get them over there as quickly as I could.

Mr. SPRINGER. Now is 2 days in the normal course of business for you?

Mr. WHITMAN. Well, this is something I had not done before. I would imagine this is—well, it is an extraordinary event in the sense that I have not been involved in a criminal reference before.

Mr. SPRINGER. Did you do it promptly?

Mr. WHITMAN. Yes.

Mr. SPRINGER. And with the instructions of the Commission?

Mr. WHITMAN. I tried to.

Mr. SPRINGER. And your instructions were to send all those papers over there, period.

Mr. WHITMAN. My instructions were to tell Mr. Sporkin to send all those papers over there.

Mr. SPRINGER. What was that again?

Mr. WHITMAN. Here is the thing. I was instructed to oversee the files going over, but Mr. Sporkin is in charge of the Division of Enforcement, and he had the files under his jurisdiction.

Mr. SPRINGER. Did you do what you were told to do?

Mr. WHITMAN. I believe so.

Mr. SPRINGER. All right; was there any reason that you should not have done it?

Mr. WHITMAN. I don't believe so.

Mr. SPRINGER. Is there any reason why you had to report back to the Chairman except to tell him that the job had been done?

Mr. WHITMAN. No.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Blanton?

Mr. BLANTON. Mr. Chairman.

In Chairman Casey's testimony he testified that Mr. Dean with the White House staff had been in contact with Mr. Whitman and Mr. Cook. Now we didn't really establish who initiated the contact. I

think that is most important before this committee, as to how the contact was initiated.

Mr. WHITMAN. For Mr. Cook and me to go and see Mr. Dean?

Mr. BLANTON. Mr. Dean, yes.

Mr. WHITMAN. This was, as I say, in part of our program to try and find out what other agencies were doing. I believe we called him.

Mr. BLANTON. We want to clear this point up.

Mr. WHITMAN. I am almost positive—

Mr. BLANTON. Didn't Mr. Dean call you?

Mr. WHITMAN. No, Mr. Dean did not call me.

Mr. BLANTON. He did not call you or Mr. Cook?

Mr. WHITMAN. I believe Mr. Casey called Mr. Dean and said in the course of the conversation: "We are investigating what we do on this; will you see Mr. Whitman and Mr. Cook?"

I was not present at the conversation, but I believe that is what happened.

Mr. BLANTON. Mr. Dean did not call you first?

Mr. WHITMAN. I don't think so. He didn't call me first, no.

Mr. BLANTON. But you believe that Mr. Dean called Mr. Casey?

Mr. WHITMAN. No, I believe Mr. Casey called Mr. Dean first.

Mr. BLANTON. Oh, you believe Mr. Casey called Mr. Dean?

Mr. WHITMAN. I do.

Mr. BLANTON. Did Mr. Dean, in fact, really have a phone conversation with Mr. Cook, to your knowledge?

Mr. WHITMAN. With Mr. Cook?

Mr. BLANTON. Yes.

Mr. WHITMAN. I don't know.

Mr. BLANTON. Do you know Mr. Cook?

Mr. WHITMAN. I know Mr. Cook.

Mr. BLANTON. What is his position with the Commission?

Mr. WHITMAN. He was at that time the General Counsel of the Commission, he is now Director of the Division of Market Regulation of the Commission.

Mr. BLANTON. In your conversation with Mr. Dean of the White House staff, did you inform him that there was material that was politically sensitive or did he inform you of that?

Mr. WHITMAN. I informed him, I believe. I don't recall the conversation that well. I do recall we talked about rights of committees to subpoena documents and what happens, that sort of thing.

Mr. BLANTON. Now this is most important. This was the real conversation as to whether we got the evidence, or whether it went to the Justice Department, correct?

Mr. WHITMAN. No, sir; the question was: Did the Commission have a legal right to refuse Mr. Stagers' request? We wanted to get agency practices in connection with this. That was the subject of our discussion.

Mr. BLANTON. You were discussing this with Mr. Dean?

Mr. WHITMAN. With Mr. Dean.

Mr. BLANTON. As to whether this committee should have the evidence or not; is that correct?

Mr. WHITMAN. No; the question was: What were the rights of a committee of Congress, any committee of Congress, to obtain documents out of an open investigatory file? It was a legal question. I am

a lawyer, I was trying to get some help in getting up memorandum, to discover where our legal position on this issue was.

As Chairman Casey has explained to you, subsequently the Commission has firmed up its position, and its position is that open investigatory files should be kept inviolate.

Mr. BLANTON. Is Mr. Dean an authority on this?

Mr. WHITMAN. He is.

Mr. BLANTON. By what?

Mr. WHITMAN. I think he is generally recognized to be an expert in this area.

Mr. BLANTON. And he advised you that you should not give us the files, you should give them to Justice?

Mr. WHITMAN. He gave me a number of materials that he had gotten up when he was in the Justice Department relating to similar questions, not to this question, and gave me his opinion that the Commission was right to insist on the inviolability of its open investigatory files.

Mr. BLANTON. Did you accompany Chairman Casey when he went over to the Deputy's office to discuss this?

Mr. WHITMAN. I did not, neither to Mr. Dean's nor to Mr. Erickson's.

Mr. BLANTON. Don't you think it is unusual for a chairman of a commission to go to a lesser echelon, to visit his office, rather than him come visit the chairman's office?

Mr. WHITMAN. Who is the lower echelon, sir?

Mr. BLANTON. The Deputy in the Justice Department.

Mr. WHITMAN. The Deputy Attorney General, you mean?

Mr. BLANTON. Yes.

Mr. WHITMAN. I think we are confused. You mean Mr. Dean in the White House?

Mr. BLANTON. No; we are talking about going to the Deputy.

Mr. WHITMAN. Mr. Erickson?

Mr. BLANTON. Yes.

Mr. WHITMAN. I believe Mr. Erickson outranks the chairman on the protocol list, if that is the test. It is certainly not irregular to go there or to come to the Commission for either Justice Department officials or White House people.

Mr. BLANTON. No further questions, Mr. Chairman.

The CHAIRMAN. I just would like to follow up one thing there. The fact that you talked this over with Mr. Dean as to whether they should give us the files or let us look at them, we didn't ask for the files. We asked to come down there with staff to look at the files. We were not interested in taking any files or subpoenaing them or anything else. We just asked for cooperation. He said then that we didn't have a right to do this?

Mr. WHITMAN. Mr. Stagg, honestly, our discussion was more on the real legal question of what was our power.

The CHAIRMAN. What did he say?

Mr. WHITMAN. We came to the determination that we had the power to resist a Commission request of this kind.

The CHAIRMAN. And you just got rid of them right quick. If you had the power to resist, why did you get rid of them?

Mr. SPRINGER. Just a minute. He didn't get rid of them.

The CHAIRMAN. I know.

Mr. SPRINGER. This man is only an errand boy; he was under instructions from the Commission. He didn't do this. He has not denied that. The inference that he took this and rammed it down to the Department—he has nothing to do with it; he is an errand boy. If you are going to find fault, let's find it with the Commission, not with this boy.

The CHAIRMAN. He says he is a shield, and I want to try to get behind the shield.

I will say this to you. I want to know about your conversation with Mr. Dean and then the subsequent actions that happened. If he said that you had the right, why then do you say they rushed these things off right away?

Mr. WHITMAN. I have no desire——

The CHAIRMAN. But he did say you had the right to keep them.

Mr. WHITMAN. Mr. Dean's conclusion was we had the right to keep it, right?

The CHAIRMAN. And we didn't have the right to look at them?

Mr. WHITMAN. That absent a subpoena, you didn't have the right to look at them.

The CHAIRMAN. With the subpoena, we could have?

Mr. WHITMAN. That was an open question also. There is not any precedent.

The CHAIRMAN. I would be led to assume that in other conversations there was a doubt about the subpoena so "we'd better get rid of these things right quick." Would that not be a natural conclusion then?

Mr. WHITMAN. I suppose it might be.

The CHAIRMAN. That is all.

Mr. Springer.

Mr. SPRINGER. Mr. Chairman.

I just want to get this straight about what your job is. Are you an administrative assistant to the chairman?

Mr. WHITMAN. That is correct.

Mr. SPRINGER. What do you do besides assist him in carrying out his duties? Anything else?

Mr. WHITMAN. That is all.

Mr. SPRINGER. Then when he tells you to do something, do you have a right to do anything else about it?

Mr. WHITMAN. No. If I do, I will get fired, I assume.

Mr. SPRINGER. Well, I am just trying to find out. I assume from some of these questions you have a right to do something else.

The CHAIRMAN. He said he was a shield.

Mr. SPRINGER. Just a second. Everybody in this Congress has somebody in the front office as a shield. I think you know that.

The CHAIRMAN. Not anybody that comes to my office. I don't think there is anybody that you could find that comes to my office that doesn't get to see me.

Mr. SPRINGER. Then you are one, and I will take your word for it.

Let me ask you this, because I think this is awfully important.

What is, then, the chain of command from you on down?

Mr. WHITMAN. It does not go from me. The chain of command is the chairman to the staff, and I just transmit the chairman's orders.

Mr. SPRINGER. Well, now, let me ask you this. You talked with Mr. Dean down at the White House?

Mr. WHITMAN. Yes.

Mr. SPRINGER. Who, you say, is an expert in this field?

Mr. WHITMAN. He is.

Mr. SPRINGER. He is in the executive?

Mr. WHITMAN. He is.

Mr. SPRINGER. The chairman also came down with Mr. Herlong, and he came to see Mr. Staggers?

Mr. WHITMAN. Yes.

Mr. SPRINGER. And he came to see me and to consult with us as to what our views are. I take it, then, you consulted both the legislative and the executive, is that right?

Mr. WHITMAN. The chairman consulted you, and I was not consulting the executive not on the question of what the Commission ought to do but rather on the question of what other agencies do in this area. My question was more theoretical.

Mr. SPRINGER. Now let me get this straight. From what the chairman said this afternoon—I don't want any misunderstanding about this—that a subpoena you recognize down there is the legal power of this committee to get papers from you. There is no misunderstanding about that now, is there?

Mr. WHITMAN. No.

Mr. SPRINGER. Thank you.

Mr. BLANTON. One question, if the gentleman would yield.

Let's clarify this gentleman's position. We almost reduced him to errand boy for 1 minute, but a few minutes before that he was at a level where he could discuss policy with the White House staff.

Mr. WHITMAN. I cannot discuss policy. Again, as I pointed out—

Mr. BLANTON. You were discussing whether you could turn over the files to this committee or not, and that is policy, so he is at the policy-making level.

Mr. WHITMAN. Mr. Chairman, I can't object more. That is not true. I prepared a memorandum that discussed the legal issue here. The Commission makes policy, and the Commission only.

Mr. BLANTON. Then why were you discussing this with Mr. Dean of the White House?

Mr. WHITMAN. Mr. Dean was not doing it in the sense of making administrative policy. Mr. Dean was consulted as an expert in the area of investigative files and executive privilege, something I know very little about, but now I have learned plenty more.

Mr. BLANTON. Now one question. You follow orders. Did, in fact, the orders come from Mr. Dean of the White House to do this?

Mr. WHITMAN. Which orders?

Mr. BLANTON. To turn over the files to Justice.

Mr. WHITMAN. Certainly not.

Mr. BLANTON. You have testified to that fact?

Mr. WHITMAN. Yes.

Mr. BLANTON. Mr. Dean did not request that?

Mr. WHITMAN. Mr. Dean said nothing of the kind.

Mr. BLANTON. I have no further questions. We just wanted to get that on the record.

Mr. WHITMAN. OK.

The CHAIRMAN. Mr. Shoup.

Mr. SHOUP. Mr. Chairman, just very briefly.

It seems that we have been around and around in circles and hearing mostly hearsay. I am rather surprised at you, being an attorney, for some of your replies and am rather disappointed. It seems to me we have wandered far afield.

If I may get back to Mr. Springer's question and your answer, you were instructed to have the files delivered to the Justice Department, and you did that and just that?

Mr. WHITMAN. That is correct.

Mr. SHOUP. You were given no timetable on which to do it?

Mr. WHITMAN. I was not.

Mr. SHOUP. When you finished the job, did you report back?

Mr. WHITMAN. I did.

Mr. SHOUP. Did Mr. Casey have any comments after that?

Mr. WHITMAN. Not that I remember.

Mr. SHOUP. I have no further questions.

The CHAIRMAN. I just have one.

Since you were instructed to do all this, that you would let the files be divided up and have one man take a highly sensitive envelope and deliver it in person to somebody else in an automobile and not keep it with the rest of the files, why did you do that?

Mr. WHITMAN. I didn't do that.

The CHAIRMAN. Then you didn't do your job.

Mr. WHITMAN. No, I asked Mr. Mallory to assist Mr. Ferrara in getting whatever files were going over.

The CHAIRMAN. Why did you let him take a separate group of files?

Mr. WHITMAN. The files were not under my control, sir.

The CHAIRMAN. But you had the instructions to see that they got there.

Mr. WHITMAN. To see that they all got there, and they did all get there.

The CHAIRMAN. Yes; but it was by a devious way, one man taking a sensitive group and delivering them personally. Now you knew that.

Mr. WHITMAN. I found out afterwards.

The CHAIRMAN. You knew it then.

Mr. WHITMAN. I did not. I thought they all went over in the same truck.

The CHAIRMAN. Let me ask you the same thing again. Do you mean to tell me that you didn't know that Mallory delivered those things themselves?

Mr. WHITMAN. I did after he did it, yes.

The CHAIRMAN. And you didn't know ahead of time that he was going to do it?

Mr. WHITMAN. I assumed that he would oversee the delivery, including those.

The CHAIRMAN. You are not answering my question.

Mr. WHITMAN. I assumed that he would see that they all got there.

The CHAIRMAN. Then you knew that he had those documents, you knew that they were sensitive?

Mr. WHITMAN. Yes.

The CHAIRMAN. There was a connection.

Mr. WHITMAN. I am not trying to deny it.

The CHAIRMAN. I just wanted that to be clear.

Does counsel have another question?

Mr. MANELLI. Going back to the point where you were told by Chairman Casey to handle these sensitive files yourself, you looked at them, you decided they were politically sensitive, and you—

Mr. WHITMAN. Also directly relevant to our action.

Mr. MANELLI. And you briefed him in a general way. Did you provide him with the names of the personalities involved in those files?

Mr. WHITMAN. I don't recall. I think I did.

Mr. MANELLI. Did you give him the dates and the particulars of the events?

Mr. WHITMAN. I gave him the summary of what they were all about.

Mr. MANELLI. Well, in what way did you not discuss them in detail then? You have testified before that Chairman Casey really does not know what is in the files because you really did not tell him except in a cursory way.

Mr. WHITMAN. In a summary way.

Mr. MANELLI. In a summary way. But you did mention the names and dates and the particulars. I think the record is kind of confused on that point. Does Chairman Casey know what is in those files?

Mr. WHITMAN. He knows what I summarized for him. He also knows what is in the summaries that we gave to you. Those summaries have the names, dates, particulars, and they are fairly good summaries. Mr. Ferrara made them. I assume now Mr. Casey knows everything you can know about those papers without actually having looked at them.

Mr. MANELLI. Does this material you submit this morning contain summaries of the sensitive documents we are talking about here?

Mr. WHITMAN. It does.

Mr. MANELLI. Sufficient to provide the subcommittee with the same information that Chairman Casey had?

Mr. WHITMAN. Yes.

Mr. MANELLI. From you?

Mr. WHITMAN. Yes. More so.

Mr. PICKLE. Why hadn't you delivered those files or those summaries earlier to the committee?

Mr. WHITMAN. Because they are so detailed. Frankly, I didn't know they existed myself. The summaries, because they are so detailed, could substitute for the documents. I assume—again, I think maybe I ought to be more of a lawyer. Mr. Shoup has rebuked me already.

I didn't know they existed. I don't know what the Commission would have done if they knew they did exist.

Mr. MANELLI. Mr. Chairman, I would like to ask that the witness be asked to submit a copy of this memorandum outlining the legal issues on the right of the SEC to withhold these files from inspection and the alternative legal issues. He made mention of that.

Mr. WHITMAN. It is in sort of yellow pages and typed form. Would you like me to have it finalized and get it in for you?

Mr. MANELLI. Whatever you had reference to when you spoke of a memorandum you prepared, that is what I would like to have inserted in the record.

Mr. WHITMAN. I have a huge file of cases and so on.

The CHAIRMAN. I think this would be very good for the committee in the future so we would know what your thinking is in the Commission, and maybe it will pertain to other commissions.

Mr. WHITMAN. Fine. I will be happy to submit it, Mr. Chairman. (The documents referred to are being retained in the subcommittee's files.)

Mr. MANELLI. Your testimony is that, underlying this entire effort—that when the request for the files—or for access to the files—was made, you called the White House, you conferred with the Justice Department, and you say you got submissions from the Federal Power Commission and from others.

This whole effort was made because of a feeling that possibly somebody on this subcommittee might mistakenly or improperly make mention of the contents in such a way as to prejudice the rights of some defendant or confer a defense on someone who might later appear in court. Was all this undertaken just for that?

Mr. WHITMAN. I don't know. The Commission made that decision.

Mr. MANELLI. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Is Mr. Mallory here?

Mr. MALLORY. Yes, I am here.

The CHAIRMAN. Mr. Mallory, if you will take the stand, please.

Mr. MALLORY. Thank you, sir.

TESTIMONY OF CHARLES KING MALLORY

The CHAIRMAN. Identify yourself and your position for the record if you will, please.

Mr. MALLORY. My name is Charles King Mallory. I am Acting Executive Director of the Commission.

The CHAIRMAN. Acting?

Mr. MALLORY. Acting Executive Director of the Commission.

The CHAIRMAN. Mr. Counsel.

Mr. MANELLI. Mr. Mallory, did you, in fact, take the manila folder with the sensitive documents over to the Justice Department in your car, and personally deliver it to the office of Assistant Attorney General Erickson?

Mr. MALLORY. Not as a whole. I took it over there. I did not go in my own personal car, as has been testified. I supervised the loading of all the boxes onto the truck, and then, because there was not room in the truck, I got a car and took the manila envelope, along with a letter to Deputy Attorney General Erickson that was attached to the manila envelope.

Mr. MANELLI. There was not room for you in the truck, or the file?

Mr. MALLORY. For me in the sitting part of the truck.

Mr. MANELLI. Under whose instructions were you acting when you did this?

Mr. MALLORY. Mr. Whitman had come by my office around 8:30 in the morning or so.

Mr. MANELLI. He told you which files you were to personally take?

Mr. MALLORY. He asked me to supervise the transmission of the files over there.

Mr. MANELLI. Did he do more? Just to get to the heart of the question, didn't he do more than that? Didn't he tell you that you were to take these particular files and bring them to Mr. Erickson's office?

Mr. MALLORY. He told me what they were and told me to see that they got over there.

Mr. MANELLI. He did not specify that you were to hand-deliver them to Mr. Erickson?

Mr. MALLORY. He said there are so many boxes of files, there is a box that has sensitive material and a letter attached to it. The files go to the Justice Department, and the letter and the manila envelope go to Mr. Erickson's office.

Mr. MANELLI. That is all I have.

The CHAIRMAN. I am very happy for your testimony, because I think this clears up an awful lot. I just remind you, you are under oath, all of you, and I think your testimony does clear up a lot of things.

Mr. MALLORY. Thank you, sir.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Just a matter of inquiry, you are the Acting Executive Director; I wonder why you were not ordered to supervise these boxes to see that they were packed and transferred. Why would the AA or whatever we call him do that?

Mr. MALLORY. At the time, I was the Assistant to the Executive Director, who has since left, Mr. Yorke. My recollection of the reason why I ended up involved in this is that on Friday morning, I believe it was, Mr. Whitman arrived and said that he had discovered that there was a great deal more bulk, 34 boxes of these things, we would need a truck.

Now, the Executive Director's Office functions to handle the management and administrative end of this thing, and he asked me to be sure that it got over there, and I made arrangements for a truck to be rented.

Mr. PICKLE. Did you read the documents or the material in this envelope?

Mr. MALLORY. No.

Mr. PICKLE. You didn't look at any of the materials?

Mr. MALLORY. I looked at the envelope that said "Deputy Attorney General Erickson."

Mr. PICKLE. Did you flip through the files to see who some of the correspondence was from—memoranda?

Mr. MALLORY. No.

Mr. PICKLE. You did nothing to discover what was in the files?

Mr. MALLORY. No, sir.

The CHAIRMAN. Mr. Springer.

Mr. Shoup.

Mr. SHOUP. I have no questions. I would like to compliment the witness, though, as you have, for being very brief and to the point, and I am sure it has cleared up many questions.

Mr. MALLORY. Thank you, sir.

The CHAIRMAN. Mr. Blanton.

Mr. BLANTON. I have only one question. In Mr. Whitman's testimony, he testified that he told you some of the names of the people who were involved in the sensitive file.

Mr. MALLORY. I don't recall that in his testimony. He did not, in fact, do it.

Mr. BLANTON. Content of the file?

Mr. MALLORY. He told me there were 34 boxes and one file of sensitive material, and we had had sensitive material.

Mr. BLANTON. He did not give you a single name of the persons involved in the sensitive material?

Mr. MALLORY. No, sir; I was just told that one group of files—

Mr. BLANTON. We will find that Mr. Whitman did say he informed you as to some of the names that Mr. Manelli was questioning in this file.

Mr. MALLORY. That is not my recollection, Congressman Blanton.

Mr. BLANTON. No further questions. We can read the transcript.

Mr. MANELLI. You took the cartons to a different location or you had the truck deliver them?

Mr. MALLORY. Yes.

Mr. MANELLI. Who told you where to send those?

Mr. MALLORY. My recollection is that they were told to go to an entrance on—

Mr. MANELLI. Somebody directed you where to send the truck, right?

Mr. MALLORY. Mr. Whitman may have. Subsequently, I went over there, and they had some trouble getting in the gate.

Mr. MANELLI. This is really not relative to the question. You cannot recall who it was?

Mr. MALLORY. My recollection is that it was Mr. Whitman, but I am not terribly sure of that.

The CHAIRMAN. I just have one question: You were directed by Mr. Whitman to deliver this sensitive material personally to the Assistant Attorney General?

Mr. MALLORY. No, sir; he just said that one batch was to go one place and the other directly to Mr. Erickson's office and the other was to be delivered to the 12th Street entrance, as I recall, of the main Justice building.

The CHAIRMAN. And not to be delivered to any man?

Mr. MALLORY. Pardon?

The CHAIRMAN. And the sensitive material was not to be delivered to any person?

Mr. MALLORY. There was a letter attached to a manila envelope and addressed to Mr. Erickson.

The CHAIRMAN. You delivered it to him personally?

Mr. MALLORY. To his secretary in Justice.

The CHAIRMAN. You were not instructed to deliver this personally?

Mr. MALLORY. No, sir; I was not.

The CHAIRMAN. How did you expect it to get there?

Mr. MALLORY. I was instructed to get it over there, so I decided to take it over.

The CHAIRMAN. So you then were instructed?

Mr. MALLORY. I was instructed that it all go to Justice, that the main batch go to the 12th Street entrance, and there was an envelope and letter to go to Mr. Erickson, and would I get it over there.

The CHAIRMAN. Then the assumption is that he did ask you to go to Mr. Erickson's office, since he gave you that instruction and said, that is where it had to go?

Mr. MALLORY. I decided to do it. He didn't say specifically, but I took it over to Mr. Erickson's office.

The CHAIRMAN. He gave you instructions to get the material delivered?

Mr. MALLORY. Yes, sir. I supervised the loading of the truck.

The CHAIRMAN. I would assume, then, that he gave you the responsibility of seeing that the sensitive material was delivered, too.

Mr. MALLORY. I assumed the same thing.

The CHAIRMAN. Thank you very kindly.

Mr. MALLORY. Thank you, sir.

The CHAIRMAN. If you will stand by. We may need you.

Mr. Sporkin, if you would, please.

TESTIMONY OF STANLEY SPORKIN

The CHAIRMAN. Mr. Sporkin, would you give your full name and your occupation?

Mr. SPORKIN. Yes. My name is Stanley Sporkin, and I am Deputy Director of Enforcement of the Securities and Exchange Commission.

The CHAIRMAN. Fine; thank you. Mr. Manelli; the counsel, will have questions.

Mr. MANELLI. Mr. Sporkin, in Mr. Whitman's testimony, we talked of these sensitive documents that were contained in the separate folder. You are familiar with those, too, aren't you?

Mr. SPORKIN. Yes.

Mr. MANELLI. They were locked in your filing cabinet?

Mr. SPORKIN. They were locked in a filing cabinet. We have an office—Mr. Pollack has an office on one side of the corridor and I have an office on the other side, and we have this filing cabinet that has a lock on it.

Mr. MANELLI. They were locked up and they were secure, right?

Mr. SPORKIN. Yes.

Mr. MANELLI. How did these documents come into the possession of the SEC?

Mr. SPORKIN. What happened here was that after the so-called Dita Beard incident broke, I think I talked to the staff people that were working on the ITT case and I asked them: Would that document have been covered by the subpoena? The indication was that it would have been.

I then phoned Mr. Flom, who was the attorney for ITT in connection with our investigation. I said to him, "I have just learned of this Dita Beard document. How come it was not produced pursuant to subpoena?" He said to me that he does not have access to the Dita Beard document.

I then said to him, "Well, would you please make another search of your records to determine whether there are any other records that would be covered by our subpoena which had not been so produced?" He said that he would and that he would be getting back to me shortly.

I take it a few days later he came to my office. He met with me. He said that there are a group of documents that might be considered to come within our subpoenas, there might have been more than one, that he would like to have us look at those documents so that we could satisfy ourselves.

He told me it was his opinion that they did not fall within the subpoena but, in any event, he would want us to look at them and to satisfy ourselves.

I asked him whether that meant: Would we be able to retain copies of them? He said: Well, he thought that the best way to proceed would be to have us examine them and that he didn't think that we had to have copies. I told him that that was not the way that we carried out our functions and that we wanted to have copies and that we were requesting the copies. He then produced those copies.

Mr. MANELLI. And you accepted the copies when he produced them?

Mr. SPORKIN. Absolutely.

Mr. MANELLI. Did you attach any conditions to the receipt of these documents other than the retention of copies?

Mr. SPORKIN. I did, sir.

Mr. MANELLI. What was that?

Mr. SPORKIN. During the course of our discussions, when he was, in effect, explaining the documents, he did not explain the contents of them but he said there are some documents along the lines of the Dita Beard document. I said to him that we at the Commission did not want to get embroiled in any kind of problem with a congressional committee. At that time, a congressional committee was holding hearings on the confirmation of Mr. Kleindienst.

I said that I would suggest that at any time that he would tender documents to us, that a similar tender should be made to the committee of the Congress. He said that he would do that. This was before I knew anything about those documents.

Mr. MANELLI. Then he subsequently came back to you and tendered the documents. Do you know that they were tendered to the Senate Judiciary Committee?

Mr. SPORKIN. Well, I only know what Mr. Flom told me. At some time later, when he was down, representing one of these people in our investigation, I asked him the question, and he advised me that they had been tendered to the Senate committee, yes, sir.

Mr. MANELLI. I think that the answer to my next question is probably obvious, but I will ask it. I would take it that, since you required Mr. Flom to tender these documents to the Senate Judiciary Committee, you yourself did not deem that in doing so he would be prejudicing the rights of any potential defendants, or doing anything that would improperly affect the potential defense that somebody might raise in court?

Mr. SPORKIN. I think, Mr. Manelli, that the reason for that was that I could not have made that judgment, because I did not know what was in the documents. In other words, I said, before I had seen those documents, and I just did not want to get involved in a situation where we are going to get some records and our investigation was going to be held up or in some way lengthened because we would have been having a problem with the committee of Congress. I just don't want to get involved in that.

I said, "If you deem these are important enough to turn them over to us and they have relevance to what we are doing and they involve the general subject, then you ought to turn them over so we will not get involved in it."

Mr. MANELLI. At any time prior to the transfer of files to Justice on October 6, did you have occasion to confer with people at the Justice Department concerning this case?

Mr. SPORKIN. I did.

Mr. MANELLI. Was it your recommendation that the Justice Department consider certain aspects of this matter?

Mr. SPORKIN. It was actually my recommendation that they consider all of the aspects. I know that memorandum that was written perhaps was not as articulate as it should have been. My view was that the Justice Department should have had this matter, yes.

Mr. MANELLI. Well, was it your view that they—let me defer that until later.

Did the Justice Department agree with your recommendations at the time when you first made them?

Mr. SPORKIN. They did not.

Mr. MANELLI. As a matter of fact, it is true, isn't it, that the people at the Justice Department that you spoke with indicated to you that they would prefer that the SEC complete its investigation before the Justice Department take up any aspects of this case? Is that a correct statement?

Mr. SPORKIN. I think that the answer was not put in that formal way, saying, "We ought to complete." Their answer was: They were engaged in an aspect at that time and that involved the review of many hundreds of pages of testimony and that they just were not ready really to accept our matter at that time.

Mr. MANELLI. When, approximately, was that kind of a communication made to you? Maybe it was made on more than one occasion. When was the last occasion it was made to you?

Mr. SPORKIN. Well, I think it was at least two occasions. The last occasion was on September 21. The earlier occasion was around August 24 or 25.

Mr. MANELLI. On September 21 personnel at the Justice Department—and I presume these are people who are in the decisionmaking capacity there—

Mr. SPORKIN. Yes.

Mr. MANELLI. Am I correct so far, that the people you are talking about are fairly high up?

Mr. SPORKIN. Yes, I think they are fairly high up, yes.

Mr. MANELLI. On September 21, they are telling you that they would prefer not to take up this case at the Justice Department, they have adequate materials on hand to work with, themselves, and they would just as soon you complete your efforts and, at some later time, send the matter over?

Mr. SPORKIN. I have got to recollect now what happened on September 21. On September 21, early in the morning, I was over in the Justice Department on another matter, a very important matter. I thought that while I was over there I would attempt to see the people that were involved in this aspect of the case, I would like to see if they would be interested in it again.

I then visited with Mr. Peterson, and he was on his way to North Carolina to make a speech. I think I learned either at that time or at some time prior to that—I guess it had to be at that time, otherwise

I would not have broached it to him—that he had recused himself from the case because he had been a witness at the confirmation hearing.

I was told that I ought to discuss that with Mr. Shapiro, who was his deputy. I did discuss it with Mr. Shapiro. My recollection at this time is I don't know whether I got an answer from Mr. Shapiro at that time or whether he called me back, whether I called him or he called me.

Mr. MANELLI. Eventually you did come to understand from him that, as far as he was concerned at least, the Justice Department didn't have any pressing desire to see those files on September 21, they had no desire to see them?

Mr. SPORKIN. Yes. When you say "they had no desire," I think that is a conclusion.

Mr. MANELLI. No immediate desire?

Mr. SPORKIN. Pardon?

Mr. MANELLI. No immediate desire?

Mr. SPORKIN. No immediate desire to combine our aspects with their aspects.

Mr. MANELLI. I think you have answered that.

As far as your knowledge goes, your immediate knowledge, the transfer of files on October 6 came without any previous request by the Justice Department to have custody of the SEC files in this matter? Your immediate knowledge now.

Mr. SPORKIN. I am just wondering when I heard that. At least I was advised that a request had been made, and I don't know whether it was—

Mr. MANELLI. It was not made to you?

Mr. SPORKIN. No.

Mr. MANELLI. So as far as your personal information goes, their situation over there had not changed up to the time that the files were actually transferred?

Mr. SPORKIN. So far as my knowledge.

Mr. MANELLI. During the week following the transfer of files—the transfer took place on October 6, which was a Friday, I believe—the following week, you and Mr. Borowski met with lawyers at the Justice Department?

Mr. SPORKIN. I did.

Mr. MANELLI. And they were there, too?

Mr. SPORKIN. I met with them. Prior to that meeting, I met with certain other Department of Justice lawyers separately.

Mr. MANELLI. Who was at this meeting with yourself and Mr. Borowski—from Justice?

Mr. SPORKIN. Mr. Shapiro was there from the Justice Department. I don't know whether Mr. Burke was there. I know Mr. Keeney was there. I believe Mr. Barnes was there.

Mr. MANELLI. Did not these people from the Justice Department at that meeting clearly express to you that they were surprised that the SEC had sent over such a large volume of raw data?

Mr. SPORKIN. I think you have got to understand that whatever that expression was, it was an expression by only certain members there. The others that were there could not have made that expression, because they were clearly advised by myself personally 2 days before, so they could not have been surprised.

Mr. MANELLI. Were they advised 2 days before that they should anticipate the 34 cartons of files?

Mr. SPORKIN. No.

Mr. MANELLI. Did they not express surprise at the fact that you had such a large volume of material there, you had all these boxes?

Mr. SPORKIN. I am not familiar with that. I don't think that was at the meeting that you are talking about.

Mr. MANELLI. Did you have another meeting or another discussion subsequently with anybody from the Justice Department where that kind of surprise was expressed to you?

Mr. SPORKIN. I just don't recall that. I think the question that was raised at the meeting with Mr. Keeney and Mr. Barnes was that they wanted to assure themselves that the matter had been referred over to the Department of Justice. That was their concern. I don't think the concern there was with the question of the amount of records. That is my recollection.

Mr. MANELLI. What do you mean—"they wanted to be satisfied that the matter had been referred to the Department of Justice"?

Mr. SPORKIN. They raised a question as to whether there had been a reference of the matter. I told them there had been a reference of the matter.

Mr. MANELLI. Did they have reference then to a criminal reference memorandum?

Mr. SPORKIN. No; I think it was whether the matter was properly before them. As a matter of fact, I had been advised that within a day they called back to say it is properly there, they had checked it out.

Mr. MANELLI. You mean they were surprised or they were unaware that this material was going to be sent over?

Mr. SPORKIN. No.

Mr. MANELLI. I don't think it is clear on the record what you mean by "they were surprised; they questioned whether there had been a reference." The fact that the material is there indicates it has been sent.

Mr. SPORKIN. You understand there are different levels at the Justice Department and apparently some of the people are not in the same offices. Some of them have an office over on G or H Street. The people that were brought into this meeting—Mr. Barnes and Mr. Keeney, who are in the fraud section and would be conducting the investigation—they were raising a question as to whether the matter was properly before them.

The other people in the Justice Department, who operate out of the main office—Mr. Shapiro, Mr. Burke—and those are the only people I spoke to—there could be no question about the matter being before them, because they had been so advised.

Mr. MANELLI. Didn't some of the Justice lawyers also question the appropriateness and the usefulness of sending over this raw data from an investigation that you had not completed over at SEC?

Mr. SPORKIN. There was a question as to what this was all about and whether it could be explained to them and whether there was a memo that would explain it to them.

Mr. MANELLI. And there was not any at the time?

Mr. SPORKIN. There was a letter, as I recall, that the chairman had sent over which pretty much laid out the areas of our interest, which

were really two, and I thought that they were pretty easily spelled out.

Mr. MANELLI. When they asked you for an explanation, didn't you at one point respond, "See your superior about this"?

Mr. SPORKIN. That goes to the point as to whether there was a reference, and, again, I was getting a little bit disturbed that apparently the word had not filtered down to them. I said: I know there has been a reference, I have been advised there has been a reference, and I talked to his superiors. I didn't understand. There might have been a failure of communication.

Mr. MANELLI. I asked Chairman Casey if he himself had given the directions that all of the files were to be removed and that no copies were to be kept—if he had done that. He said no; he had not and he thought maybe you had. What involvement did you have in transferring the files, and, specifically, did you make arrangements that all the files would go and no copies would be kept?

Mr. SPORKIN. Well, what happened was that I learned about the reference on Wednesday afternoon.

Mr. MANELLI. October 4?

Mr. SPORKIN. Would that be October 4?

Mr. MANELLI. The Wednesday before they went?

Mr. SPORKIN. Yes. We are usually very busy in our office, and somehow I did not communicate the instructions down the line until the next morning. There was just, I guess, a goof-up on my part, but I advised my people the next morning that the case had been referred, and I advised them that they should make the preparations.

I was aware at that time that we had our own investigation taking place at that time. The question was raised as to whether we were to continue the investigation and as to whether we had to advise these people about the criminal reference. My answer was yes on both parts, that, No. 1, out of fairness, we should advise these people that the matter had been referred, but, No. 2, we should continue with the investigation.

Mr. MANELLI. By "these people," you mean the people the SEC was attempting to question to get more evidence to develop its case?

Mr. SPORKIN. That is correct.

Mr. MANELLI. All right.

Mr. SPORKIN. I also was asked what records were to go over. Remember, what happened, there were several phases of this investigation. I think I talked to Mr. Pollack, but I don't know whether it was Mr. Pollack or who it was, but I think the decision was made there on our own that all the records ought to go over, records on both phases of the case.

The question was: What about our own notes? And my answer there was that they should stay where they are. I also instructed that we ought to keep control over these documents, and I instructed my people to make an index of the documents so that we would know what records were sent over in case we had a retrieval problem or in case we had to know what they were. That was done.

There is a note I have here from the prior testimony about something being abruptly stopped. I think that is not correct, that the investigation was not abruptly stopped because of any instruction we received.

What happened here was that the decision was made to go on. What later happened is that these persons refused—meaning the people who were witnesses—refused to continue once they learned that the case had been referred. That is what stopped the investigation.

Mr. MANELLI. Well, the transfer, as a practical matter, had the effect of terminating your inquiry, didn't it?

Mr. SPORKIN. We had some discussions, and these people decided they did not want to go on.

Mr. MANELLI. Which was a direct consequence of sending the material to Justice, was it not?

Mr. SPORKIN. They chose that as a reason; yes. It didn't have to be that way.

Mr. MANELLI. Why, since it was your recommendation that the SEC proceed with its own inquiry—well, why, in that case, were no copies kept?

Mr. SPORKIN. Well, I think the question came up as to how we were to continue our investigation, and I think the decision was made—whether I made it or somebody else, I don't know, but I was present—that what we would do would be make notes as to what these key documents stated so that we could use them as a basis of questioning, and that, I take it, was done.

Now, I think you have to realize that it was my instructions that I did not want these documents floating around.

Now, by the way, these were not the only so-called sensitive documents. That whole lock-and-key file started not with the bringing in of these ITT documents but it started when we received from the Justice Department at a much earlier stage the so-called McLaren documents, and these came into my possession, and I decided at that point I wanted to keep security over those documents and that was when the decision was made, to put them in this file outside my room, and, therefore, when these other documents came, they were received in the same place.

Mr. MANELLI. Do you agree with Mr. Whitman when he says those documents are "politically sensitive"?

Mr. SPORKIN. Do I have to respond to that question? I mean, I look at myself as being a civil servant. I have been at the SEC now for some 11 years, and I try to do my job without political concern, quite frankly, and I think we have done a pretty good job.

Mr. MANELLI. I think that was something that Mr. Whitman volunteered, and I will withdraw my question to you since you prefer not to answer it. I don't think it is essential for our purposes.

That is all.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. What is your title, Mr. Sporkin?

Mr. SPORKIN. My title has changed in between. Do you want to know what it is presently? Deputy Director of Enforcement, No. 2 man in the Division.

Mr. PICKLE. Are you an attorney?

Mr. SPORKIN. I am an attorney.

Mr. PICKLE. You wanted to make some statement before my questions? Did you want to add something to the previous statement?

Mr. SPORKIN. Yes. I think there is a question raised here, Mr. Pollack reminded me, about the question as to all the files going over.

It is just not so. I would not like the record to remain that way. There are files at the Commission; for example, all the transcripts of testimony—which is the real bulk of this investigation anyway—are at the Commission.

We always keep the—what we call the hard copies, and in addition to which, we have what I mentioned before, the notes, the digests, and my own personal file and, I take it, the personal files of the other people working on the case.

Mr. PICKLE. Did you, as an attorney in charge of the Enforcement Division—did you read the files?

Mr. SPORKIN. I am Mr. Pollack's No. 1 deputy.

Mr. PICKLE. Did you read those files? Are you familiar with the case?

Mr. SPORKIN. Absolutely.

Mr. PICKLE. So you have seen most of the documents involved?

Mr. SPORKIN. I have seen all the documents that were in that file, yes, I have. Now, I have not seen a lot of other documents. Remember there is testimony here that there are a number of cases and boxes, and I would not want to testify that I have read every document.

Mr. PICKLE. Have you seen any document in that file that came from any kind of a memorandum from the White House?

Mr. SPORKIN. As I recall, these were all correspondence going the other way, and I would prefer not to be tested on their contents. I think you have a list and a summary of those documents which you can determine. I just can't recall that. Remember, these were ITT documents, copies of correspondence.

Mr. PICKLE. When you received your instructions from Mr. Whitman to transfer the documents to the Justice Department, what did he tell you to do?

Mr. SPORKIN. He simply told me that the case had been referred and that we should get all the records over there, get the records over there. I don't want to put the word—

Mr. PICKLE. Did he say: "Get the records over immediately?" What were his instructions to you?

Mr. SPORKIN. He said to get them over. My problem is that if he had said to "get them over now," I think I would not have waited until the next day to tell my people. I think he said: Let's get the records. Now, on the next day, as he has testified, that he did make a call or several calls to me to ask me the status, and that is when I told my people that they would have to try to get this thing moving.

Mr. PICKLE. And the instruction to you to transfer those documents was of such a routine nature that it just slipped your mind?

Mr. SPORKIN. Well, nothing in this case is routine, Congressman. I can't say that. Why it slipped my mind, I don't know. I just had a lot of things on my mind.

Mr. PICKLE. What did Mr. Whitman say to you the next day, when he found that the documents had not been moved by 8:30 in the morning?

Mr. SPORKIN. No; that was the third day, I think. The second day was when I advised my people of the reference. It was the next day that they were moved over. On the next day, when I came in—I guess I might have been a few minutes late but, as I understand, the things were really pretty much moving at that point in time.

Mr. PICKLE. As an attorney and representing the Commission, what does it mean to you when the SEC issues an injunction against a company dealing in securities? What does that mean?

Mr. SPORKIN. It means several things. It means, first of all, that if these people in the future engage in violations of the Securities Act pertaining to that aspect of the act, that they will be subject to the contempt powers of the court. Also it could mean a disqualification of these people from engaging in the securities business. There is a publicity value which these cases have. Nobody likes to be named in an SEC lawsuit, particularly firms with a reputation like Lazard, Freres or ITT.

I think that this case was an extremely important case and it was a case where I think that the Commission should look very well, and I am proud of the enforcement conclusion of this case. This was not an easy case; it was a difficult case.

Mr. PICKLE. Do you agree that there was merely an exchange of paper from the brokerage firm to Mediobanca, or was there a sale at that time, or was the exchange from Mediobanca Bank to the Dreyfus Fund classified a sale?

Mr. SPORKIN. Well, by the way, this was an issue that really had never been litigated. We have an extremely talented lawyer working for us, Mr. Borowski, who came up with this theory which I had not seen and apparently a lot of high-priced lawyers had missed, but it was our theory that when these shares got into the public domain—and that was through the sale of Dreyfus and others, because the sale to Dreyfus alone would probably not have been enough, but there was a sale to Dreyfus and others and that when ITT received about 99 percent of the proceeds, that was similar to their having sold these securities in a public offering and registration was required.

When Mr. Borowski presented that theory to me, I thought it was a workable theory, I thought it was a good theory, and I thought it was a theory that if we did not pursue, that others could do similar things like this, in effect, warehouse their stock somewhere and then have this arrangement to obtain the proceeds from their ultimate sale and then they would never have to register. So I thought it had a tremendous value to make that point of law.

Now, if you are asking me whether the original transaction between ITT and Mediobanca involved the sale of securities, we ignored that, we said we don't care whether it was or was not, but, in view of the fact that they did participate in the ultimate sale by receiving most of the proceeds from it, that did require registration.

Mr. PICKLE. You did determine that was a sale?

Mr. SPORKIN. Yes.

Mr. PICKLE. And subject to tax?

Mr. SPORKIN. We didn't decide the tax question.

Mr. PICKLE. But when you decided that it was a sale, then, I would assume, that IRS would say that the sale was subject to tax. Have they so decided—the IRS?

Mr. SPORKIN. I just don't know that. I think if I can explain it a little bit—and I am not a tax lawyer—I think that the tax question was not that question because, as I understand it, any taxes that had to be paid by ITT itself would have been paid. They didn't avoid those taxes.

The problem on the tax question, as I recall it, was whether the merger—whether, when the people that held Hartford stock—and these are little people, a lot of them—when they received ITT stock, whether that would be considered to be a tax-free exchange or whether they would have to pay taxes.

And, as I understand it, what the Internal Revenue people told the ITT people, was: Since you went into the marketplace and owned 9 percent of Hartford, somehow that taints the transaction and that everybody involved in this transaction is going to have to pay a tax. These are shareholders.

ITT said therefore, what we have to do is get rid of this 9 percent that we own, and that is when they arranged this transaction with Mediobanca. I think that is the taxing aspects as I understand them, Congressman.

Mr. PICKLE. But you don't know whether there has been a requirement issued by IRS that they do pay tax on the sale?

Mr. SPORKIN. I don't know. My only question would have been the first transaction. I don't think there is any question that the second question would have been a taxable event.

Mr. PICKLE. During the proces of this maneuvering, I am advised that there was some indication that there was inside trading, and I believe the gentlemen mentioned were Mr. Howard Abel and Mr. John Navin, who were both officers of ITT.

Mr. SPORKIN. That is correct.

Mr. PICKLE. Is there a case pending against those gentlemen?

Mr. SPORKIN. We sued them and they settled.

Mr. PICKLE. They admitted—

Mr. SPORKIN. They consented to an injunction decree which is similar to any antitrust consent decree.

Mr. PICKLE. Then what action followed?

Mr. SPORKIN. We also sued a subsidiary of ITT that sold securities at that time. Again there was a lot of talk in the newspaper about that aspect of the transaction. There is a lot of talk that all these people that sold at that time were in violation of the law, but that is not the law, and our investigation was a very careful one and one that proved that there were only certain aspects of the transaction that we believed to be in violation.

Mr. PICKLE. Are you satisfied with the way that this case has been handled?

Mr. SPORKIN. Absolutely.

Mr. PICKLE. Have you recommended to the Commission that you do not give us the files?

Mr. SPORKIN. Well, I didn't recommend that. My view was twofold. I did not understand what all this hassle about the files was for two reasons. One is, we had already requested that a tender be made to one committee of the Congress; and, two, there was a lot of talk, and that is contained in my memorandum that you have a copy of; and, by the way, I would prefer that that memorandum not get in the public record, because, in addition to not only naming names, there is something about a legal theory that I think would hurt our case.

Mr. PICKLE. Before you continue, is counsel familiar with the memorandum referred to by Mr. Sporkin?

Mr. MANELLI. Yes.

Mr. PICKLE. All right; please continue, Mr. Sporkin.

Mr. SPORKIN. People thought that we had documents that apparently had been shredded. That was not the case.

Copies of them had been retained by the company. The easiest way to have obtained these documents was a very simple thing, somebody should have called up the company or sent a subpoena to them and they could have had all the documents without at all compromising this Commission and somehow avoid this confrontation.

That was my view and when people asked me, that is what I would have told you people, and that is what I would have told anybody else.

Mr. PICKLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions, Mr. Chairman.

May I say that the witness is one of the better witnesses I have seen before this committee. At least he is direct and positive and understands what he is doing and what happened.

Mr. SPORKIN. Thank you.

Mr. SPRINGER. And he has the chronological events in order. I congratulate his excellent testimony.

Mr. SPORKIN. It is good to get a statement like that.

The CHAIRMAN. Mr. Shoup?

Mr. SHOUP. I have no questions.

May I add my own compliments to those of my colleague from Illinois?

On second thought, I do have one question.

You were here during the testimony of Chairman Casey?

Mr. SPORKIN. I was.

Mr. SHOUP. You have been here during the entire time?

Mr. SPORKIN. Yes.

Mr. SHOUP. I spoke, and others spoke to him regarding the status and the different things that are included in what is classified as the open file of the investigative file, the case when it is open is being investigated, this type of thing.

Mr. SPORKIN. Yes.

Mr. SHOUP. I was somewhat interested that you speak now that there are transcripts at the SEC of all of the hearings, and also I think you stated that this is really the crux of the case.

Mr. SPORKIN. I am saying that the key to any of these cases is really your testimony.

Mr. SHOUP. Well, I would agree with you. I am wondering though and somewhat confused, where does this differ from the subpoena, all of a sudden we have a third item here.

First we had those items that had been subpoenaed from ITT and then we had some other documents that the chairman spoke of as not wanting to release.

Now, we find we have a third set of documents. Now are these also considered by the SEC as being inviolate for us for our surveillance?

Mr. SPORKIN. I don't know if I am qualified to answer the latter question but my answer to you I think could be helpful. I don't think that those documents were ever requested of us and maybe I am wrong, Mr. Chairman.

The CHAIRMAN. That is right.

Mr. SPORKIN. I think that is the simple answer.

Mr. SHOUP. Again I ask for your opinion—your opinion only and not for the chairman's, you heard his statement on the other two items.

Would you say that this would also be a portion of this open investigative file?

Mr. SPORKIN. Obviously a portion of the open investigative file. These are key documents.

Mr. SHOUP. It is a portion of it. You would then hold with your theory that they should not be released?

Mr. SPORKIN. You are asking my personal opinion?

Mr. SHOUP. Yes, your personal opinion.

Mr. SPORKIN. I think that this would be dangerous to release it. Let me explain if I can for a minute. We had, as you know, the Penn Central matter which was under again Mr. Pollack's and my jurisdiction. We were receiving requests, maybe two a month from congressional committees; there were several committees.

If we had made piecemeal disclosures of those documents we would not have had as forceful a report as we were able to come up with. There were very sensitive documents in that case, very key documents—for example, the so-called Bevan diary which we had obtained. That is why I say in my answer to these questions permit us to develop a case unimpeded, permit us to do that.

I think we have a fairly good track record and I think if those documents would have come out and been released, we would not have had that kind of a document that we were able to come up with, and that is the thing I am really talking about.

I think that once you strip an agency of its investigative records, or you piecemeal it, I think you are really hurting its enforcement effort. That is my own personal view.

I am not a policy person in that respect.

Mr. SHOUP. Thank you.

Those are all the questions I have, Mr. Chairman.

Mr. PICKLE. Mr. Chairman.

In your opinion why was the information delivered to the Justice Department in two deliveries, that is, the 34 boxes and in this special envelope? Why did the special envelope go to Mr. Ralph Erickson?

Mr. SPORKIN. I didn't have anything to do with that. I did not give the instructions of who was to receive what. I imagine that those documents, as everybody has testified, were sensitive and that there was a transmittal letter to Mr. Erickson. I guess it was decided that not only would the transmittal letter but those files that I felt were sensitive enough to keep in a separate file should be transmitted separately and I assume the Justice Department people would have felt the same way.

Mr. PICKLE. Then you made a decision to separate this one file?

Mr. SPORKIN. No, it was already separated.

Mr. PICKLE. It was already separated?

Mr. SPORKIN. Yes.

Mr. PICKLE. How did it happen to be separated? Had you separated it?

Mr. SPORKIN. I had kept it in this file. By the way, those were not the only documents that were in that file. The so-called MacLaren documents were also in there.

Mr. PICKLE. But they were sensitive: whether you would call them politically sensitive or not, you felt they should be kept separate.

Mr. SPORKIN. Yes.

Mr. PICKLE. Was it your feeling to keep them separate because they were so sensitive?

Mr. SPORKIN. When the decision was made I went through my files. I kept my own notes and I had that folder and I said to somebody, whoever is taking this over, here is this folder.

Mr. PICKLE. Is it your opinion that this information could not have been relayed to a congressional subcommittee such as this?

Mr. SPORKIN. Could not have been relayed?

Mr. PICKLE. Or that Congress could not have seen them?

Mr. SPORKIN. As I mentioned, it was my opinion that I thought the better way to handle it would have been for the committee of Congress to obtain these documents directly. That was my opinion.

Mr. PICKLE. Thank you.

The CHAIRMAN. I agree with Mr. Springer. Did you transfer some of them or all of them to the Senate committee?

Mr. SPORKIN. I said that ITT lawyers ought to tender them to the Senate Judiciary Committee.

The CHAIRMAN. Did they do that, do you know?

Mr. SPORKIN. Mr. Flom had a conversation with me around April 21. Mr. Flom stated that he advised his clients of the suggestion and understood the documents were tendered to the chairman of the Senate committee but that the chairman of the committee responded that ITT need only produce records that have been subpoenaed by the committee.

That was his answer to me.

The CHAIRMAN. I think this is new and I want to again compliment you on your frankness and on your theory, as I gather it, of government, that we are all working together for a common cause; there is no one group just working here; nobody should be kept in secret over here.

With an elected form of government I think the elected people in that form of government are entrusted to and certainly have a right to oversee any action that goes on down below.

I gathered from your testimony that this is your theory when you said the evidence should go to the Senate committee as well as to yourself.

Mr. SPORKIN. Yes.

The CHAIRMAN. That is my theory and I am glad there is somebody in this Nation that agrees with me.

Thank you very kindly.

Mr. SPORKIN. Thank you.

The CHAIRMAN. Our next witness will be Mr. Borowski.

TESTIMONY OF IRWIN BOROWSKI

Mr. BOROWSKI. My name is Irwin M. Borowski, Chief Enforcement Attorney of the Division of Enforcement.

The CHAIRMAN. I will ask the counsel, Mr. Manelli, to start the questioning.

Mr. MANELLI. Mr. Borowski, you were working on the ITT investigation earlier this year?

Mr. BOROWSKI. Yes; that is correct.

Mr. MANELLI. In the course of your work you made use of various documents which had been obtained from ITT and from other parties by the SEC?

Mr. BOROWSKI. Yes.

Mr. MANELLI. Could you briefly tell us how you became aware of the fact that these documents were going to go over to the Justice Department?

Mr. BOROWSKI. I found out about it on Thursday morning when I was called in to Mr. Sporkin's office. He informed me that he thought the files were being referred over to Justice and that he was going to give me further information later.

I think at that point I told him we had a witness who was appearing and we discussed that and the decision was made to proceed with that witness at the time. I was left with the impression in the early morning that a final determination had not yet been made.

It was just an impression that I had, it had not been conclusively decided.

I went back and called out Mr. Ferrara who was with me examining the witness on the record and informed him of what had happened and we decided to proceed during that morning.

Most of the morning was spent with that witness trying to make sure that we had obtained all of the documents that we had requested from the witness and others.

There was no substantive examination of the witness at that time.

We broke for lunch, I went back to Mr. Sporkin's office and at that time he told me that we had to gather the files and put them together and send them over. There was some discussion of whether we could proceed with the witness under those circumstances.

I felt that in the absence of having the files with us that it would be really very difficult to examine the witness.

Mr. Farrar raised the point that he felt we had an obligation at that point to advise the witness that the criminal reference had been made and I expressed an opinion that the witness would refuse to proceed but we would try to proceed, and we did go back and advise the witness and his counsel chose not to proceed any further.

Mr. MANELLI. You say that it would be difficult to proceed without the documents. You could have copied the documents. Were you told that you were to send everything and you were not to copy anything?

Mr. BOROWSKI. I was informed that, yes; we were not to retain the documents. We were to make notes but not retain the documents.

Mr. MANELLI. What about making a Xerox copy?

Mr. BOROWSKI. I was told to turn everything in. In fact, I had copies that I was using with the witness and I submitted them to be sent to the Justice Department.

Mr. MANELLI. Did you question why you were not even going to be able to retain Xerox copies for your own work?

Mr. BOROWSKI. No, I didn't ask any questions. I didn't think it was necessary.

Mr. MANELLI. Who was the one that told you that the files were to be sent, that you were to send everything and keep no copies?

Mr. BOROWSKI. I can't tell you precisely who said what but it came up in the course of this conversation with Mr. Sporkin. Somebody else may have said it but it was in that context of how we were going to proceed.

Mr. MANELLI. So the records you were working with were sent over with the others and you had to go back and advise the witness that now the materials were going to Justice and that he was at liberty to break off the discussion if he chose?

Mr. BOROWSKI. No, we asked him to continue. We expressed the desire to continue. We also expressed the desire to obtain all of the documents that we had asked for in various subpoenas that we had issued.

The counsel insisted that they did not want to go ahead, they insisted that without the consent—

Mr. MANELLI. From all the background on it that you have given, would I be correct if I said that you actually were not through with those files and, had it not been for the instructions to bundle them up and send to Justice, you had further use for them, and you had planned to use them in the future at the SEC?

Mr. BOROWSKI. Yes.

Mr. MANELLI. You were present at the meeting which took place after the transfer over to Justice?

Mr. BOROWSKI. Yes.

Mr. MANELLI. Mr. Sporkin attended and Mr. Ferrara was there too?

Mr. BOROWSKI. Yes.

Mr. MANELLI. Don't you recall the Justice Department people there asking questions about the unusual procedures that had been followed, the volumes of the files, the absence of a criminal reference memorandum, the whole thing?

Mr. BOROWSKI. Well, I say this. My recollection is consistent with Mr. Sporkin's that they were not concerned so much with the amount of files. They were asking what is the case doing here.

As far as they knew there had been no referral of the case as a whole and I think Mr. Keane who was present at that meeting expressed some doubt whether it was appropriate that it be sent over, at that time.

Mr. MANELLI. By that he meant the SEC had not really finished its investigation?

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. No questions.

The CHAIRMAN. Mr. Shoup?

Mr. SHOUP. No questions.

The CHAIRMAN. It looks like you are not going to have many questions, but I would like to say that we appreciate your coming over and giving us your point of view.

Let me just make this statement because I believe this kind of closes up our hearing—rather it does not close it because we are keeping this open because of several different things that we might need to know.

It was with deep regret to me that we even had to call the meeting to hear anybody give their testimony or to get mixed up in any way. I feel that we are all trying to work for the common good of America, and that we are not to conceal or to keep things in a deep dark secret some place; and especially from the elected representatives—the members of the Government, because they represent the Government as well as the people.

When the elected representatives can't find out what is going wrong, I think there is something wrong in America and our Government is going downhill. We will fail in some way; it is bound to happen in the long run.

I think that it leads to a lack of confidence in our whole system of government.

I would like to say that during this last campaign one question that was asked me time after time after time in going over my district was: "Are things as bad in Washington as we hear?" "Are all the politicians and all the men who are involved in the executive branch as crooked as we hear?"

This was time after time after time—they included every politician, everybody that is connected with the Government. They think this Government is rotten—and that is wrong—when these things come about, that we are trying to hide things from the people.

I say that this committee in its jurisdiction had the authority to find out what was going on down there and I have tried to get it.

I am sorry the chairman is not here. I and one of the members of the committee tried to give them every assurance that to the best of our ability, if there was not something that should be revealed to the public, it would not be revealed; but that I thought it was our duty, and not only our duty but our responsibility as elected representatives, to know what is going on—more than rumors of what is going on.

That is the reason for this hearing today, and I say that it was with deep regret and reluctance that I called the hearing at all. But I think it has cleared up a lot of issues and it has shown to me a new avenue.

Mr. Sporkin has shown me different things that can be done and I think will be done. I can see no reason on this God's green earth that we should not know the particulars of this.

I want to thank you for coming and helping and all the rest of you that have come and helped.

Mr. SPRINGER. Mr. Chairman, I would like to say this: I have watched this very closely because I was wondering in the beginning what this was going to develop into and I think we have here today in this hearing made a pretty good record.

Everybody has had questions asked, we have a lot of information we didn't have before, but I don't believe there is a single line of testimony that will prejudice any defendant's rights if they are ultimately indicted by a grand jury and tried by the Department of Justice.

We have not had a single line of testimony all day that would infringe the Department of Justice or any department's right when they go to court.

I think I ought to compliment the staff, especially Mr. Manelli for giving this the most careful consideration when we got into it and there has been a good record made.

The CHAIRMAN. I want to thank the gentleman from Illinois not only for that statement but for the many, many contributions he has made to America and his service on this committee. I have watched him over the past 20 years—having served a little longer, 22 years, having served a couple years longer than he has.

He has been a great member not only for his State but for America and has supported every issue that was for the public interest. That is the only reason we are having the hearing today; the public interest.

I would say in support of what he said here that I would direct now that the counsel of the committee put under lock and key the material that was brought to us. It will not leak out in any way, but it will be known to members of this committee; we can go and get it, it will not be handed out to the public. I want to assure you and Mr. Sporkin of that. We are not witch hunting; we only want the facts; and we want to be square with the American people.

I think that from now on—and I hope that every agency of this Government understands this—that they better respond to a committee that is only searching for the truth and trying to get at the facts. That is all we are doing.

The committee is adjourned for the time being.

I see the gentleman on my right wants to make a statement.

We will hold the hearing open for the time being.

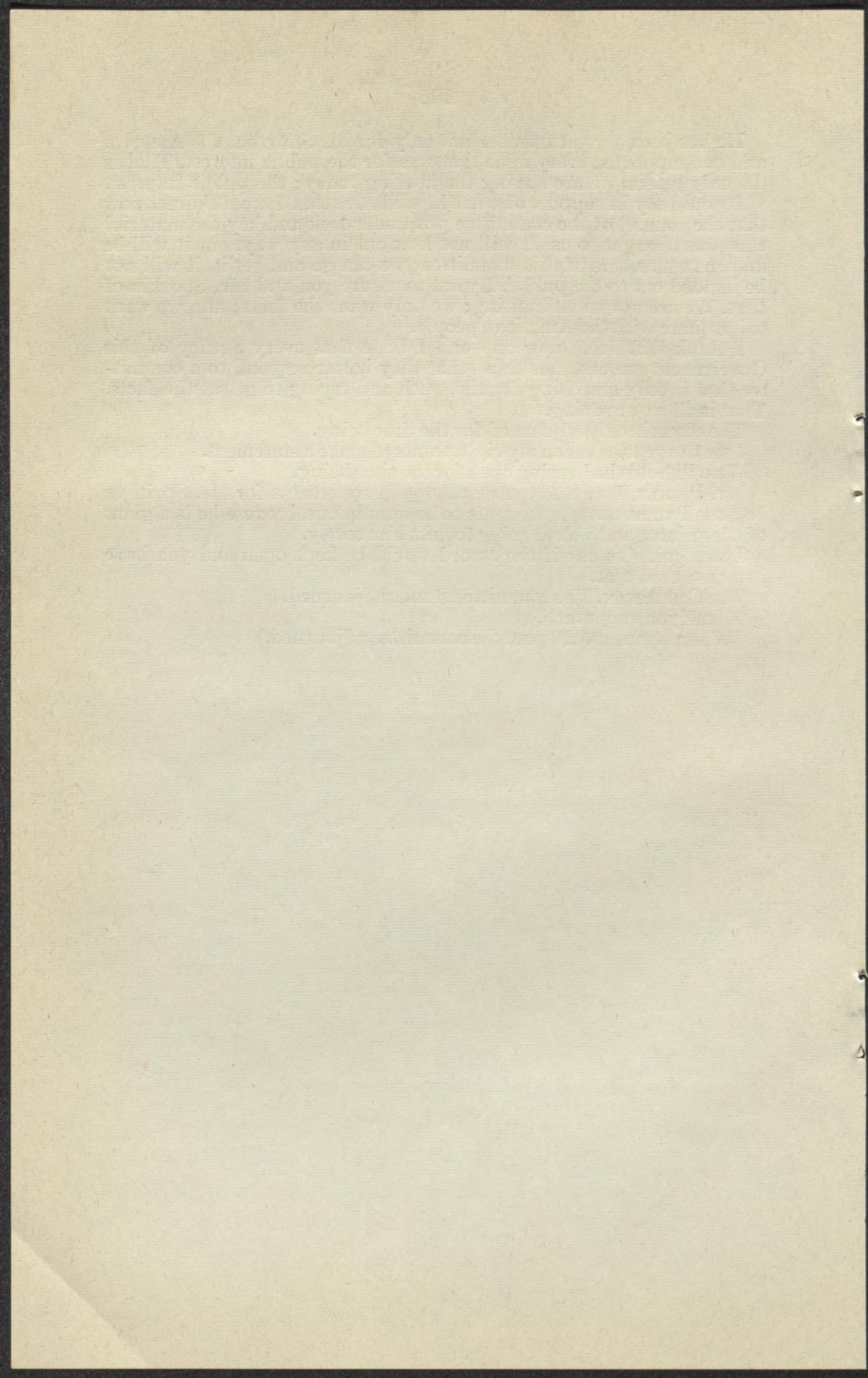
Mr. PICKLE. I wanted to first echo your statements for Mr. Springer because I want those sentiments to be unanimous, because he is a giant of a legislator and we are going to miss him sorely.

I was going to ask if the record would be kept open and you have just answered that.

The CHAIRMAN. The committee stands adjourned.

Thank you very much.

(Whereupon, at 5 :29 p.m. the committee adjourned.)



APPENDIX
RELATED CORRESPONDENCE

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., October 20, 1972.

HON. HARLEY O. STAGGERS,
*Chairman, Special Subcommittee on Investigations, Committee on Interstate
and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: I returned from a speaking engagement in the west to find your letter of October 13. As stated to you in my letter of October 6, the Commission has regularly kept in touch with the Justice Department in the current phase of the IT&T investigation and, in the course of this, I did convey to them the apprehension expressed in my letters of September 26 and October 6 to you. The Commission's action was taken at the request of the Justice Department; I enclose a copy of the relevant Commission minute on this matter.

Yours,

WILLIAM J. CASEY, *Chairman.*

MEETING OF THE SECURITIES AND EXCHANGE COMMISSION

WEDNESDAY OCTOBER 4, 1972, 3:00 P.M.

Commissioners present.—William J. Casey, Chairman, Hugh F. Owens, A. Sydney Herlong, Jr., Philip A. Loomis, Jr.

Consideration was given to a request from the Department of Justice that the Commission make available for review its investigative files in the matter of International Telephone and Telegraph Company (File HO-536) and Hartford Fire Insurance Company (File B-793).

The Commission determined to comply with the request and directed the staff of the Division of Enforcement, in transmitting the files, to: (1) specify to the Department the possible violations which should be considered, and (2) offer the assistance of those staff members familiar with the investigation in connection with the Department's review of the files.

The meeting was adjourned at 3:10 P. M.

RONALD F. HUNT,
Secretary.

By: SHIRLEY E. HOLLIS,
Recording Secretary.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., January 10, 1973.

HON. HARLEY O. STAGGERS,
Keyser, W. Va.

DEAR MR. CHAIRMAN: I was sorry to learn from Miss Furfari that you are down with a touch of the flu and hope that this finds you recovered and ready to return to Washington.

I wanted to express my desire to do what I can to resolve the issues and matters which concern you in the disagreement we have had about the documents in the IT&T files. As I see it, there is a clear conflict here between our obligation to the law enforcement process and our obligation to Congressional oversight. I am enclosing a statement which we prepared to put the Commission's decisions on this matter in what seems to us to be their proper perspective. You will note the United States District Court in the District of Columbia has adopted a rule which strictly enjoins prosecutors not to disclose matters prejudicial to a defendant. It seems to me this could put an official holding a prosecutory file in a position where he could be held in contempt by Congress if he refused to deliver evidence in that file, and by the court if he agreed.

I am enclosing copies of correspondence we have had with Senator Magnuson. You will note that, in his request, he recognizes that he may not be entitled to information from an active file. In any event, it does seem to me that we have here some kind of a conflict between the concept of the grand jury system and that of Congressional oversight, that this conflict has not really been addressed and should be. I want you to know that I should like to provide whatever help I can before I leave the Commission. I'll call on you when you're back in Washington.

Yours,

WILLIAM J. CASEY.

JANUARY 10, 1973.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your recent letter, requesting a copy of a Commission computer print-out concerning numerous SEC investigations and authorization for your Committee's investigative staff to inspect Commission files relating to certain, as yet unspecified, investigations disclosed in the print-out.

The Securities and Exchange Commission is anxious to assist your staff in its current investigation of the effects of organized criminal activity in legitimate commerce. In this connection, the Commission has directed the staff to make available to your Committee for inspection at our offices any Commission files you request as long as to do so would not violate the policies established to meet our law enforcement responsibilities. As you recognize in your letter, this would mean excluding all current investigative files. It would also exclude those files relating to cases referred to the Department of Justice for criminal prosecution. We must also exclude any reference to or information received from confidential sources.

In order to expedite this matter I suggest that your staff members contact Mr. Stuart Allen of our Division of Enforcement who will make the necessary arrangements. In the event I can be of any further assistance, please do not hesitate to call upon me.

Sincerely,

WILLIAM J. CASEY, *Chairman.*

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., November 28, 1972.

HON. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission, 500 North Capitol St., Wash-
ington, D.C.

DEAR MR. CHAIRMAN: In connection with the Committee's current investigation of the effects of organized criminal activity on legitimate commerce, Mr. Don Gray of the Committee's investigative staff recently provided to Mr. Wallace Timmany of SEC's Organized Crime Unit a list of names for a computer name and relation search.

I understand that this search has now been completed, and I would appreciate it if the Commission would make a copy of the print-out available to the Committee. I would also appreciate the Commission's authorizing the inspection by the Committee's investigative staff of such files as they may request as a result of their study of this print-out. I realize, of course, that the Commission may wish to exclude from such review, the files pertaining to currently active cases. I would also like to assure you that the Committee would consult with the Commission before making public any information obtained from SEC, which is not already a matter of public record.

Sincerely,

WARREN G. MAGNUSON, *Chairman.*

CONGRESSIONAL REQUESTS FOR DOCUMENTS FROM THE SEC'S INVESTIGATIVE
FILES ON IT&T

Documents which the Commission had subpoenaed from IT&T have been requested by the chairman of the Senate Judiciary Committee, the chairman of a Senate Judiciary sub-committee, and the chairman of a sub-committee of the Commission's oversight committee in the House of Representatives (Interstate

and Foreign Commerce). In each case the Commission responded by refusing to deliver documents from its investigative files. It has been the Commission's traditional position to keep strictly confidential its open investigative files. This was set forth in a letter from the Commission to Congressman Moss on December 17, 1969: "The Commission has consistently taken the position . . . that . . . it is inappropriate for Congressional Committees to be furnished nonpublic information pertaining to a pending investigation. . . . Any reluctance on the Commission's part to furnish information would be dictated by the impairment of pending investigations or the probable impact disclosure would have on third parties."

The Commission unanimously believes it to be its obligation to hold in strict confidence evidence which may be a basis for criminal prosecution and to deliver it only to the appropriate prosecuting authority, which has the obligation of determining whether there is no basis for prosecution or to submit the evidence to a grand jury. That is the way our system of criminal justice works and that is the way the Commission has always operated.

Nevertheless, the Commission took the request of the Chairman of its House oversight committee very seriously. Chairman Casey and Commissioner Herlong, a former member of Congress, called on Chairman Staggers and explained why the Commission had declined to accede to his request. Other members of Congress, other investigative agencies, other regulatory agencies and the counsel to the President were consulted in order to determine if the Commission's traditional practice was in line with prevailing practice. This review confirmed the validity of the Commission's traditional policy as indicated by the following:

1. No investigative agency contacted felt free to take documents, which might constitute evidence of a crime, out of an active file *except* to turn them over to a law enforcement agency.

2. The Chairman of the Senate Judiciary Committee had recently stated: "I certainly don't think that any file that has to do with an investigation should be given to any Congressional Committee." (Hearings on Kleindienst nomination, p. 282).

3. The United States District Court in the District of Columbia had recently adopted a special rule to guard against adverse publicity prior to criminal trials. Rule 100 of the rules of that court strictly enjoins prosecutors not to disclose matters prejudicial to a defendant.

These policies are deemed necessary for effective law enforcement and the implementation of every citizen's right to the protection afforded by the grand jury system. Our system of justice contemplates that charges and evidence detrimental to a possible defendant will not be disclosed until and unless a grand jury indicts.

While the Commission was still re-examining its position, the Justice Department, on October 4, 1971, requested that the IT&T case be referred to them. Conversations with the Justice Department indicated these four reasons for the request:

1. Justice had ultimate responsibility for the validity of the case in court and protection of the rights of possible defendants.

2. Attorneys for IT&T and its officers had objected to the propriety of submitting them and their clients to two separate investigations by two different agencies on the same set of actions.

3. Justice was, at the request of the Senate Judiciary Committee, reviewing the transcript of hearings on the Kleindienst nomination for possible perjury. The two inquiries were interrelated and it made sense to consolidate them.

4. On September 28, Justice had sent out a circular to all government departments and agencies, announcing a change in policy on handling of obstruction of justice cases and stating that the FBI would now investigate all such obstruction cases.

The request from Justice required the Commission to weigh its responsibilities to the executive in its law enforcement capacity against its responsibilities to Congress in its legislative and oversight capacity. The Commission, for the fourth time, unanimously rejected a Congressional request for documents from its executive file. The Congressional request before it was not to review the Commission's handling of any matter—a proper oversight function—but instead was for evidence from its files for unspecified purposes. The Commission believed that to permit access to evidence in an investigatory file would undermine the grand jury system, the rights of citizens and the effectiveness of law enforcement. The Justice Department is the proper agency for determining

whether the evidence which the Commission had accumulated should be presented to a grand jury. It alone has the obligation and the power to make this determination and it alone has the responsibility and the authority to handle any prosecution which might ensue.

The Commission determined on October 4 to accede to the request of the Justice Department. For some time, members of the Commission's enforcement staff had been discussing the possibility of a reference of the case with members of the staff of the Criminal Division of the Department of Justice. Stanley Sporkin, Deputy Director of the Division of Enforcement, had recommended that the case be carried forward by Justice and had been authorized to discuss this with appropriate personnel there. The objective of the Commission's enforcement staff was to get the Justice Department to undertake to determine whether prosecution was called for. The Justice Department's request that the case be referred achieved that purpose. The Commission clearly had the authority and the obligation to refer the case to the agency which could prosecute it. It exercised this authority unanimously as indicated by the following entry in its minutes:

Commissioners Present.—William J. Casey, Chairman, Hugh F. Owens, A. Sydney Herlong, Jr., Philip A. Loomis, Jr.

Consideration was given to a request from the Department of Justice that the Commission make available for review its investigative files in the matter of International Telephone and Telegraph Company (File HO-536) and Hartford Fire and Insurance Company (File B-793).

The Commission determined to comply with the request and directed the staff of the Division of Enforcement, in transmitting the files, to: (1) specify to the Department the possible violations which should be considered, and (2) offer the assistance of those staff members familiar with the investigation in connection with the Department's review of the files.

The case was referred to the Justice Department by a detailed letter specifying the possible criminal violations and offering the assistance of the Commission's staff in developing and prosecuting the case. The following extract from a letter from Deputy Attorney General Erickson to Chairman Staggers, dated October 26, 1972, clearly establishes that Justice requested the referral of the case:

As Chairman Casey advised you in his letter of October 6, 1972, the prior Securities and Exchange Commission investigation into International Telephone and Telegraph Corporation insider trading was continued by the Commission to determine whether there were involved any obstruction of justice violations. The Department of Justice was advised of this continuing phase of the investigation.

When it later appeared that possible violations of federal criminal laws might be involved, the files were forwarded to the Department of Justice to avoid jeopardizing any enforcement action. It was in this context of possible obstruction of justice violations that *we asked that the files be referred* so that a full investigation could be undertaken by our Criminal Division to determine if there were any criminal violations warranting prosecution (emphasis added).

The following extract from the same letter shows that the Justice Department takes the same position as the Commission as to the availability of documents in its files:

Under these circumstances, it would be inappropriate for us to make the materials available to your Committee. Indeed, any such action would jeopardize possible criminal prosecution as well as the rights of any potential defendant, if we were to make the materials available to anyone outside the Department.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.
Washington, D.C., January 18, 1973.

HON. WILLIAM J. CASEY,
Chairman,
Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I have read your letter of January 10, 1973 and the copies you furnished me of your letter to Senator Magnuson, Chairman of the Senate Commerce Committee. I gather you are trying to demonstrate that I am not the only chairman whose request for access to the files is refused.

The restrictions you are placing upon the Senate Commerce Committee's access to files are not acceptable. I respect the Commission's concern for meeting its law enforcement responsibilities. I strongly disagree that proper law enforcement and Congressional oversight are in conflict. Cooperation with the Subcommittee does not have to interfere with the Commission's law enforcement programs. I would expect that in any future instance when the House Commerce Committee or any subcommittee thereof must examine files of the Commission, we can accomplish this objective with minimum interference to the Commission and without fear of prejudicing the rights of any parties.

In your reply to Senator Magnuson, you indicate you would exclude from Congressional review "all current investigative files." This exclusion cannot be permitted. Those files are the sources from which the elected representatives of the people learn how well the appointed officials of government are fulfilling their public trust. The Sherman Adams-Bernard Goldfine affair involved then current investigative files of the SEC, as did the Dixon-Yates affair. We would be remiss in our duties as Members of Congress if we did not demand to see current investigative files. It is the easiest of artful devices to cloak any matter with the title "current investigative file." Simple broker-dealer inspections could fit into this category as well as any embarrassing scrap of paper the Commission so wished to classify.

The correspondence you gave me was accompanied by a memorandum entitled "Congressional Requests for Documents from the SEC's Investigative Files on ITT." I am not accustomed to "lint-picking," but certain points asserted in that memorandum cannot be permitted to pass without exception.

The memorandum states, "It has been the Commission's traditional position to keep strictly confidential its open investigative files." Exactly what is meant by "strictly confidential," I do not know. We both know the Commission has furnished portions of its open and active investigative files to the Trustees in Bankruptcy of Penn Central and WESTEC as well as to the accountants for Folger, Nolan, Fleming & Co., Inc. Under the circumstances, the rule seems to me to be that it is inappropriate to make materials available to Congressional committees but not to bankruptcy trustees and accounting firms. I do not disagree with making materials available to those or other parties. I do resent the fact that Congress, with a much greater public interest objective, is not even accorded as much courtesy.

I am also confused by the insistence on holding in strict confidence evidence which may be a basis for criminal prosecution and delivering it only to the appropriate prosecuting authority. The bankruptcy trustee in the WESTEC matter was furnished data, and that did not interfere with the subsequent prosecution of the chairman of the company for securities fraud. Commission personnel routinely exchange intelligence collected during investigations with other governmental agencies which are not involved in prosecuting that particular matter. It is fully possible to make data available to the Special Subcommittee on Investigations for legislative oversight purposes and still not impair any ultimate prosecution. We are prepared to keep appropriate confidences in the public interest as well as anyone in the Executive Department or a private citizen with a financial interest.

You have insisted on asserting that making files available on a legislative oversight basis will result in "adverse publicity." This insinuation that our interest was not for a valid legislative oversight purpose but for publicity's sake is not the fact and I have tried to tell you that we are concerned about the public interest and protecting the legitimate legal rights of everyone, but you have refused to accept my statements. Yet you cannot point to a single instance of bad faith on the part of myself, my staff, or the Members of the Subcommittee.

The objections from ITT attorneys to submitting to two investigations is a well-practiced legal ploy but does not prevent valid investigation. Many alleged crimes are investigated simultaneously by several governmental agencies. In this instance, there were two entirely different alleged crimes, one of which was primarily an SEC concern—the integrity of the Commission's subpoena. Less than two weeks earlier, and before our request had become known, the Department of Justice had refused to consolidate the investigations. This raises serious questions about the good faith in your claim that it made good sense to consolidate the two investigations.

The claim is being made that the Subcommittee's request "was not to review the Commission's handling of any matter—a proper oversight function—but, instead, was for evidence from its files for unspecified purposes." My letter of Sep-

tember 28, 1972 stated very explicitly that our interest was in legislative oversight. No further statement was necessary or appropriate at that time. On the basis of what had been our relations up to that point, I very naturally assumed that my statement would not be questioned and that I could look forward to the Commissioner's usual cooperation.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

JANUARY 22, 1973.

Mr. HAROLD SHAPIRO,
Deputy Assistant Attorney General, Criminal Division, Department of Justice,
Washington, D.C.

DEAR MR. SHAPIRO: This will confirm your discussion with Special Assistant Albert J. McGrath of this Subcommittee's staff on January 18, 1973 wherein you advised him of the scope of the obstruction of justice and perjury allegations which have been forwarded to the Federal Bureau of Investigation for investigative attention.

It is the Subcommittee's understanding that the matters so referred relate to the reported destruction of ITT records and the possibility that perjurious testimony was given at the Senate Judiciary Committee hearings concerning the nomination of Richard G. Kleindienst for the post of Attorney General. In this regard, it is further understood that the subjects of the aforementioned referrals were not connected with the government.

Pursuant to your request, a copy of the transcript of the hearings held on December 14, 1972 relative to the SEC's refusal to furnish requested documents concerning this matter to this Subcommittee will be furnished to you at an early date.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., January 30, 1973.

Hon. WILLIAM J. CASEY,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing before the Special Subcommittee on Investigations on December 14, 1972, you referred at several points in your testimony to a memorandum from the Attorney General dated September 28, 1972 and you submitted it for the record. The memorandum announces "new guidelines relating to the investigation of obstruction of justice and perjury allegations" and is directed to the heads of all Departments and agencies in the Executive Branch of the Government. In your prepared remarks at the outset of the hearing, you testified that there were four reasons the Department of Justice requested the ITT files, the last of which was the memorandum of September 28th.

As the record of the hearing and the facts in this matter now stand, certain points about the memorandum must be clarified. In this connection, your responses to the following questions are necessary:

1. When did you first learn of the existence of this memorandum? Under what circumstances and conditions?
2. Did you have this memorandum when the Department of Justice requested the files?
3. Did Deputy Attorney General Erickson refer to this memorandum when, on behalf of the Department, he requested the files?
4. Did you have any discussions with anyone in the White House or the Department of Justice about issuing a policy directive or other form of guideline before the September 28 memorandum was actually issued?
5. Before the memorandum of September 28th was issued, did you have any knowledge that this memorandum was under consideration for issuance? If the answer is other than no, describe the circumstances and conditions.

6. Did you have any discussions with anyone about the date this memorandum should or might reflect as the date of issuance?

7. Do you have any reason to believe that this memorandum was actually issued on any date other than September 28, 1972?

8. On what date did the Commission first receive a copy of this memorandum? Under what circumstances?

Your prompt responses to these questions will be appreciated.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., February 6, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: I am pleased to respond to the questions raised in your letter of January 30, 1973 as follows:

1. Stanley Sporin, Deputy Director of the Division of Enforcement, brought it to my attention sometime after he had sent the IT&T files to Justice. He pointed out to me that this memorandum set forth the policy on the part of Justice to request and take responsibility for obstruction cases.

2. No.

3. He did not refer to the memorandum. However, his discussion with me was in the context of the Department of Justice's obligation to pursue obstruction cases and the consolidation of our IT&T investigation with theirs. His discussion reflected the policy expressed in the document. I testified that "as I understand it, there were four reasons Justice requested the file" (transcript page 15). I used the qualification "as I understand it" to indicate that I was giving you my reconstruction of the considerations which led Justice to request the files. I included the memorandum on obstruction cases as what appeared to be a pre-existing written articulation of the policy which Deputy Attorney General Erickson had followed in making his request.

4. No.

5. No.

6. No.

7. No.

8. Irving M. Pollack, Director of the Division of Enforcement, recalls that the memorandum was delivered directly to the Division as part of a regular distribution of Justice Department circulars, sometime after the referral of the IT&T files. He called it to the attention of Mr. Sporin, who subsequently called it to my attention. Their records do not indicate the date of receipt by the Division.

Sincerely,

WILLIAM J. CASEY.

MARCH 6, 1973.

HON. G. BRADFORD COOK,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: On December 14, 1972, the Special Subcommittee on Investigations conducted a public hearing into certain matters relating to the Commission's disposition of violations of the federal securities laws by International Telephone and Telegraph Corporation, and others.

In connection with this matter, the Subcommittee desires copies of the following:

1. Any and all memoranda by the staff recommending enforcement action in this matter.

2. All other staff memoranda supporting such recommendations.

3. All injunctive papers and pleadings, as originally proposed and any proposed orders for administrative proceedings.

Your cooperation in this request will be appreciated.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

MARCH 14, 1973.

HON. RICHARD S. KLEINDIENST,
*Attorney General,
 U.S. Department of Justice
 Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: The enclosed resolution was passed unanimously by the Subcommittee at its meeting yesterday. The summaries which are the subject of the resolution were obtained by the Subcommittee from SEC Chairman Casey during his appearance before the Subcommittee on December 14, 1972. They pertain to corporate records of I.T.T. which were transferred to the Department from the SEC on October 6, 1972.

The Subcommittee has reviewed the summaries and determined that, in the absence of any compelling reasons for continued secrecy, they will be made available to the public on Monday, March 19, 1973.

Should the Department wish to offer any comment pursuant to the attached resolution, it would be appreciated if it would be furnished, together with supporting authority, as soon as possible so that the Subcommittee may consider it when it meets next Monday.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

[No response received from Department of Justice.]

MARCH 14, 1973.

HON. G. BRADFORD COOK,
*Chairman, Securities and Exchange Commission,
 Washington, D.C.*

DEAR MR. CHAIRMAN: The enclosed resolution was passed unanimously by the Subcommittee at its meeting yesterday. As you know from our telephone conversation of yesterday afternoon, the Subcommittee is disposed to make public the summaries of I.T.T. documents obtained from Chairman Casey during his appearance before the Subcommittee on December 14, 1972.

At that time, Chairman Casey requested that appropriate confidentiality be accorded to these materials. The Subcommittee has reviewed the documents and determined that, in the absence of any compelling reasons for continued secrecy, the files will be made available to the public on Monday, March 19th.

In view of your statement to me on the telephone yesterday, it appears that the SEC has no further recommendations on this question. Should you decide to offer any comment, please provide it to me, together with supporting authority, as soon as possible so that the Subcommittee may consider it when it meets next Monday.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

MOTION

I move that the Securities and Exchange Commission summaries of I.T.T. files, which summaries were received during the Subcommittee's hearing on December 14, 1972, be made available to the public on Monday, March 19, 1973, unless the Securities and Exchange Commission or the Department of Justice shall furnish to the Subcommittee, in writing, a clear and compelling statement that the disclosure of such files would prejudice the rights of any individual or firm; and that copies of this resolution be forwarded to the Securities and Exchange Commission and the Department of Justice.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., March 16, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: This is in response to your letter of March 14, 1973, concerning summaries we prepared and furnished to you in confidence of documents obtained by the Commission during its investigation of violations of the federal securities laws by IT&T and others. In your letter, you indicate that the publication of these summaries now seems appropriate to the Subcommittee, but

you state no reason for this conclusion. Instead, your letters seek to place the onus on this Commission to demonstrate whether there are any "compelling reasons for continued secrecy . . ." of these documents. In a telephone conversation we had on March 13, 1973, however, you indicated to me that the Subcommittee's present inclination to make these documents public was based on the apparent dissemination to unauthorized parties of the information contained in those summaries since the time we furnished them to the Subcommittee.

As you will recall, at the time you originally requested the materials in our open investigatory files, the Commission urged upon you its unanimous view that documents relating to such a file should not be exposed to anyone while the file is open and further enforcement action is possible, precisely because of the inherent risk that incipient enforcement actions and potential parties to such actions could be seriously prejudiced. Indeed, your Subcommittee was explicitly advised by then Chairman Casey that the publication of the information contained in the summaries could "seriously impair and undermine any court action which the Justice Department may decide to bring." In originally questioning the appropriateness of your Subcommittee's request for these documents, the Commission indicated that the entire problem of the release of these documents would be obviated upon the completion of our investigatory and enforcement efforts. We generally have been able to accommodate the interests of the Congress with our own enforcement responsibilities in such a manner.

Notwithstanding these views, your Subcommittee deemed it necessary to obtain these summaries immediately, and we acceded to your request to produce them at the hearing, upon explicit assurances that their confidentiality would be maintained. As you reiterated in your letter to Chairman Casey, dated November 1, 1972:

"You have expressed concern about the possibility that any enforcement action which may be necessary could be jeopardized by publicity . . . As I pointed out in my letter of September 28, 1972, 'any inference that the Subcommittee or any member thereof will misuse the materials in such a manner as to injure the rights of any parties . . . is to assume that we are unwilling to protect those rights. That is simply not the case.' We are concerned with the adequate and proper enforcement of the law and with protecting the legal rights of all parties. We both know that can be accomplished at the same time my staff conducts its examination."

And now, the very fear that the Commission had in furnishing the Subcommittee with this material has become reality.

As you know, the Commission delivered the actual documents in its investigatory files pertaining to this matter to the Department of Justice on October 6, 1972. That agency has, as it usually does, assumed the responsibility and obligation for any further investigation and possible criminal prosecution of these matters. Accordingly, the Commission is not aware of the current status of the matter or whether any enforcement actions are contemplated by Justice that would be prejudiced by the publication of the summaries we furnished to you. Only the Department of Justice can respond appropriately to your inquiry in that regard. I should like to point out, however, that we have no reason to assume that the posture of this matter—a posture that impelled us to seek, and you to undertake responsibility for, the confidentiality of the summaries furnished to you—has changed in any way since we turned them over to you. I can assure you, though, that no leakage of information about the underlying documents or the summaries has come from this Commission.

In light of the circumstances surrounding this matter which you have brought to my attention, I think it would be mutually advantageous for us to sit down together and formulate appropriate procedures for accommodating your Subcommittee's oversight functions with our important enforcement responsibilities.

Sincerely,

G. BRADFORD COOK, *Chairman.*

APRIL 2, 1973.

HON. G. BRADFORD COOK,
*Chairman, Securities and Exchange Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN. Pursuant to its legislative oversight responsibility, the Special Subcommittee on Investigations will conduct an overall review of the enforcement programs of the Commission.

This review will consist initially of an examination of all Commission files dealing with enforcement matters for the last three years. Two members of the General Accounting Office have been detailed to assist the Subcommittee staff in conducting this review. Appropriate office space in the Commission for two persons is requested beginning April 9. Any questions about this project can be answered by the Subcommittee's Chief Counsel, Mr. Daniel J. Manelli, at telephone 225-4441.

The Commission's cooperation with the Subcommittee will be appreciated.
Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., April 5, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am in receipt of your letter of April 3, 1973, indicating that the Subcommittee wishes to conduct a review of the enforcement programs of the Commission.

Your request raises serious policy considerations which the full Commission wishes to address. Due to previously scheduled commitments, the full Commission will be unable to address itself to your request until the week of April 9th. Accordingly, we expect to be able to respond to your request no later than April 17, 1973.

Very truly yours,

G. BRADFORD COOK, *Chairman.*

APRIL 9, 1973.

HON. G. BRADFORD COOK,
*Chairman, Securities and Exchange Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of March 16, 1973 concerning the proposed release by this Subcommittee of summaries of certain materials obtained by the Commission during its ITT investigation. Your views were considered by the Subcommittee at its meeting on March 19, 1973, before it voted to release the summaries. As you know, the Department of Justice did not offer any comment on the proposed release.

In view of some of your comments, I believe it would be useful to review the events surrounding the Subcommittee's action of March 19, 1973. The Subcommittee's initial request, of course, was for access to the documents themselves. We both know what disposition was made of that request. The materials were hastily gathered up and sent to the Justice Department by truck on the morning of October 6. Only after this had been accomplished did I receive a letter from former Chairman Casey advising me of the decision which had been taken by the Commission two days previously and implemented that morning. In passing, I want to strongly protest the lack of courtesy extended by the Commission in deliberately failing to advise me of this decision until after it had prejudiced the Subcommittee's rights. It was only after being presented with this *fait accompli* that the Subcommittee was, of necessity, forced to direct its attention to such staff summaries or digests that still remained with the Commission concerning the ITT documents.

In view of the above, I am particularly concerned with the assertion that the tender of these summaries was a voluntary action by the Commission undertaken in return for an unconditional promise of secrecy made by me on behalf of the Subcommittee. There is an underlying suggestion of a breach of trust, which I most emphatically reject.

The summaries in question were produced at our hearing of December 14 because, by letter to Chairman Casey on December 11, 1972, I requested him to have those materials with him. In delivering these summaries to the Subcommittee, Chairman Casey made clear that he did so because he deemed my request that he appear at the hearing with them to be tantamount to a subpoena. The Subcommittee, given the events which led up to the hearing of December 14, would have been within its rights to incorporate into the public record the materials obtained from Chairman Casey. Without having had an opportunity

to examine the materials, however, and in view of Chairman Casey's caution that publicizing the materials would jeopardize the rights of potential parties and compromise incipient enforcement actions, I directed that the materials be kept under lock and key. It was only after adequate review of the materials by the Subcommittee, and information coming to our attention concerning the enforcement efforts in progress, that the decision was reached that the unique circumstances of this case required release of some of the materials obtained from Chairman Casey.

Our review of the SEC staff summaries of the documents which were accorded such extraordinary treatment by the Commission, quite frankly, leaves little doubt that the Commission's resistance to Congressional scrutiny in this case was not the commendable concern that processes of justice not be compromised, but rather a concern that "politically sensitive" (to quote a Commission witness) information not come to the attention of the public's elected representatives.

This Subcommittee has always treated with such confidentiality as is appropriate whatever information comes into its possession, whether voluntarily or under compulsion of legal process. We have done so in this case. In your letter, and in the previous correspondence and testimony received from Chairman Casey, there has been not a single legal authority cited to support the assertion that the rights of potential parties could be prejudiced by the public disclosure which the Subcommittee voted on March 19th. The Department of Justice has likewise failed to present any legal support for the assertion. The publication, without comment, of materials obtained during an investigation will not result in prejudicing the rights of any potential parties to a subsequent prosecution. To say otherwise would make it impossible for an informed electorate to exist. Even in the most unfavorable circumstances, such as publication with improper comment immediately before or during a criminal trial, the courts have held that such prejudice can be cured by the passage of time.

This issue, of course, has been rendered somewhat moot by the voluntary and unconditioned tender of some of the original documents to this Subcommittee by ITT.

We have been continually assured that the investigation was ongoing when in fact it was not. The Subcommittee has satisfied itself as to the limitations on the scope of the obstruction of justice and perjury allegations which the Department of Justice forwarded to the FBI. This included, of course, the Commission's case as well as the request of the Senate Judiciary Committee made in June of 1972. The referral was not made until December 5, 1972, long after the files were spirited away. We had been assured the file transfer was made so the two cases could be consolidated as quickly as possible. We are also aware of the intentional limitations by the Department on the investigation of certain aspects of the matter.

Even the procedures in the memorandum dated September 28, 1972, which Chairman Casey introduced into the record and which he testified was one of the reasons the Justice Department requested the SEC files, have not been followed. Interestingly, this memo was not received by any agency which we have contacted until October 24, 1972.

Under these circumstances, it is not the Subcommittee which is open to criticism but rather the advocates of secrecy who failed to justify their position.

I am sorry that this particular matter is the first one which concerns us after your elevation to Chairman of the Commission. I would be happy to sit down with you to discuss the Subcommittee's oversight functions and your enforcement responsibilities. I think it should be understood, however, that the Subcommittee will not abrogate in advance its own prerogative to determine what is and is not appropriate for public disclosure. A legislative oversight subcommittee of the Congress must be free to obtain such information as it deems necessary in order to discharge its responsibilities. Furthermore, it must be free to bring information to the attention of the Congress, the collective representatives of the people, or the people directly. The reaching of such decisions requires an appropriate balancing of considerations. We believe we have done so in this case and will attempt to do so in the future.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., April 16, 1973.

Hon. HARLEY O. STAGGERS,

Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: This is in response to your letters of April 2 and 9, 1973. Over the years, as you know, the Commission has generally cooperated fully with Congress and we have managed to accommodate requests for investigative materials with our enforcement function, usually by Congress' willingness to defer access to pending investigative files until the file ceases to be active.¹ Your request, however, is extremely broad and does not indicate the specific matters as to which your Subcommittee is concerned. Instead, you indicate simply that your broad request for both pending and closed investigative files is directed solely to your Subcommittee's general oversight function. Such a blanket posture consequently has made consideration of your request more difficult. We desire, of course, to cooperate with your Subcommittee to the fullest extent possible consistent with our duties under the legislation we administer. Nevertheless, there are problems raised by the scope of your request which we believe you may wish to consider.

This Commission, unlike certain other regulatory bodies, is, to a major extent, a law enforcement agency. Its law enforcement responsibilities are broad and far ranging, not limited to any particular class of persons or industries, but extending to all types of fraudulent, deceptive or manipulative schemes involving securities. Because of the liquid nature of securities, and the large amounts of money involved, the field attracts the attention of criminals, including members of organized crime. A mere glance at the press in recent months indicates the magnitude and importance of the law enforcement cases in which the Commission becomes involved.

Like all other major law enforcement agencies, the Commission must have and give protection against premature or unwarranted public disclosure of information gathered in its investigations. This serves several essential enforcement purposes including (1) preventing the frustration of enforcement action by the destruction of evidence, the corruption or intimidation of witnesses, and the manufacture of testimony; (2) protection of the constitutional rights of prospective defendants; (3) the protection of informers and others who furnish confidential information to their Government in reliance upon the promise that their Government will respect their confidence.

These considerations, which are applicable to all law enforcement efforts, have been recognized by the courts and by the Congress as applicable to the Commission's enforcement work.

The Commission's investigations have been likened by the courts to those of a grand jury,² and just as grand jury minutes are rarely revealed, the secrecy of our investigatory files, particularly those relating to ongoing investigations, must be preserved. Thus, the Commission has rules requiring the sequestration of witnesses and their counsel³ and precluding a witness in a private investigation from

¹ This procedure, as you know, has been acceptable to this Subcommittee in the past, with your concurrence. See *Hearing Before a Subcommittee of the House of Representatives Committee on Interstate and Foreign Commerce on the Right of Access by the Special Subcommittee on Legislative Oversight to Civil Aeronautics Bound Files and Records*, 85th Cong., 1st Sess. 11 (1957).

² See, e.g., *In the Matter of Four Seasons Securities Law Litigation*, CCH Fed. Sec. L. Rep. ¶ 93,400 (W. D. Okla., 1972); *Securities and Exchange Commission v. First National Bank*, 447 F. 2d 166 (C.A. 10, 1971), *certiorari denied sub nom. Nemelka v. Securities and Exchange Commission*, 409 U.S. 1038 (1972); *Woolley v. United States*, 97 F. 2d 258, 262 (C.A. 9, 1938); *In re Securities and Exchange Commission*, 84 F. 2d 316, 318 (C.A. 2, 1936); cf. *Perkins v. Endicott-Johnson Corp.*, 128 F. 2d 208, 214 (C.A. 2, 1942), *affirmed*, 137 U.S. 501 (1943); *President v. Skeen*, 118 F. 2d 58, 59 (C.A. 5, 1941).

³ Rule 7(b) of the Securities and Exchange Commission's Rules Relating to Investigations, 17 CFR 203.7(b): "(b) Any person compelled to appear, or who appears by request or permission of the Commission, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel, as defined in Rule 2(b) of the Commission's Rules of Practice; provided, however, that all witnesses shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding."

necessarily being able to receive a copy of a transcript of his testimony, as distinguished from examining it at the Commission's office.⁴ These rules have been held valid by the courts. See *Securities and Exchange Commission v. Higashi*, 359 F. 2d 550 (C.A. 9, 1966), and *Commercial Capital Corp. v. Securities and Exchange Commission*, 360 F. 2d 856 (C.A. 7, 1966).

The need for the latter rule presumably convinced the Congress to amend earlier drafts of the bill that was to become the Administrative Procedure Act. As originally introduced, S. 7, 79th Cong., 1st Sess., January, 1945, would have provided, without exception, that "every person required to submit data or evidence shall be entitled to retain or procure a copy or transcript thereof."

The same provision was contained in a revised text—Committee Print, May 1945—upon which this Commission commented. The Commission stated:

"(b) Investigations⁵

"The requirement in the sentence of Section 6(b) that 'every person compelled to submit data or evidence shall be entitled to retain or procure a copy or transcript thereof would deprive the agency of the power in its discretion to withhold transcripts where necessary to prevent perjury or conspiracy among witnesses."

"Our objections to the requirement that transcripts of testimony be furnished does not of course apply to transcripts of testimony given in public hearings. Investigations, however, are normally private proceedings, and we believe the furnishing of transcripts of testimony taken therein is a matter which should depend upon the likelihood of the transcript being used to defeat the discovery of facts essential to administration of the Congressional policy laid down in the statutes authorizing the investigation.

"It has been our practice to be liberal in giving transcripts of testimony taken in investigations. However, we have on some occasions found it necessary to refuse requests for transcripts where there was reason to fear that the witness would make it available for the purpose of coaching other witnesses still to be examined or of revealing to a prospective defendant in a criminal proceeding just what testimony the Government has.

"It is a time-honored safeguard against perjury and conspiracy among witnesses to exclude other witnesses from a court room, or hearing room, while a particular witness is testifying, and, of course, witnesses are always examined in secret in grand jury proceedings. Where transcripts are made available to witnesses there is no way of guarding against their being made available to the persons whose activities are the principal subject of investigation.

"An example of a very difficult investigation conducted by the Commission was the investigation of the so-called political slush fund of the Union Electric Company of Missouri. While the existence of that slush fund was so notorious as to be a matter of newspaper comment at the time the investigation began, it was only after efforts of a large number of investigators over a period of many months that any reliable evidence was elicited, and when it was developed the evidence furnished the basis for perjury prosecutions of a number of the leading officials in the company, as well as convictions of violation of the statutory provision against political contributions. It would seriously have impeded, if not completely frustrated, that investigation if the Commission had been forced to make transcripts of testimony available to witnesses, and thus indirectly to those principally involved in the violations of the law.

"In cases where the investigation involves examination of employees of the suspected law violator, the employees may be under considerable pressure from the employer, who may demand that they request, ostensibly on their own account, and turn over to it transcripts of their testimony. If a witness subject to such intimidation is entitled to a transcript of his testimony as a matter of law, he may be unwilling to testify fully and truthfully.

"A large proportion of the investigatory work of this Commission is directed to uncovering fraud in connection with the interstate sale of securities, and in

⁴ Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, provides in pertinent part: "Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: provided, however, that in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony."

⁵ See pages 16-17 of Appendix to Comments of the Securities and Exchange Commission, dated July 25, 1945, on specific provisions of S. 7, revised text, Committee Print, May 1945.

this specialized field the Commission, as the courts have recognized, performs a function very similar to that of a grand jury. If the Commission could not safeguard the secrecy of its investigatory procedures, this would substantially impair the usefulness of administrative investigation in this field. It would similarly impair the legislative investigations made by the Commission in connection with rules and recommended legislation."

The Administrative Procedure Act, as adopted, provided in Section 6(b) (emphasis supplied): "Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, *except that in a non-public investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.*"

Except for editorial revisions, this provision of the Administrative Procedure Act has never been changed. See 5 U.S.C. 555. The congressional purpose in adopting the exception for testimony given in a "nonpublic investigatory proceeding" was explained by the House Committee on the Judiciary:⁶ "Nonpublic investigatory proceeding' means those of the grand jury kind in which evidence is taken behind closed doors. The limitation, for good cause, to inspection of the official transcript may be properly invoked by an agency where evidence is taken in a case in which prosecutions may be brought later and it would nullify the execution of the laws to permit copies to be circulated . . ."

In 1962 a plenary session of the Administrative Conference of the United States urged elimination of the exception which would authorize agencies to preclude a witness from obtaining a copy of his testimony.⁷ As indicated above, Congress did not amend the Administrative Procedure Act in accord with this recommendation. The Commission on April 17, 1963, determined not to implement the recommendation of the Administrative Conference in this respect, but subsequently did determine to do so, amending its rules, effective on November 27, 1970, to permit a witness in any instance to obtain a copy of the transcript of his testimony. When it became evident that this change had an adverse effect on its enforcement proceedings, the Commission amended its rules to follow the practice it had followed prior to November 27, 1970. See Securities Act Release No. 5331 (Nov. 16, 1972), a copy of which is attached for your information.

From the foregoing it is apparent that the problems of our investigative files becoming public are by no means limited to the possible prejudice of potential parties, which, you suggest in your letter of April 9, might be cured by the passage of time. We note in this connection, however, that problems of the running of the statute of limitations and of defendants' constitutional right to a prompt trial may not permit this cure. See, e.g., *United States v. Parrott*, 248 F. Supp. 196 (D. D.C., 1965). Moreover, Congressional investigations of pending enforcement matters have been held to impair "the right of private litigants to a fair trial and, equally important, . . . their right to the appearance of impartiality, which cannot be maintained unless those who exercise the judicial functions are free from powerful external influences." *Pillsbury Co. v. Federal Trade Commission*, 354 F. 2d 952, 964 (C.A. D.C., 1966).

The basic problem relates to the successful prosecution of our cases where potential defendants in a criminal proceeding can learn in advance exactly what we know of their activities and the witnesses upon whom we must rely. Members of organized crime are increasingly involved in our criminal cases; and despite all of our efforts to keep our investigations private, in more than one case potential witnesses have permanently disappeared. In many of our investigations, as a result of successful securities fraud, the subjects may have almost unlimited funds at their disposal, so that even if they would not countenance murder they would not hesitate to persuade potential witnesses that it would be worth their while for them to perjure themselves or at least to take a lengthy vacation abroad.

Apart from the harm in the particular case, the opening to the public of our investigatory files would have a devastating effect upon our future enforcement efforts. For a small agency, the Commission has, over the years, had a remarkable enforcement record. Without reference to administrative disciplinary proceedings, the Commission has, in the 10 years prior to June 30, 1972, enjoined 3,757 persons or corporations, and there have been 903 convictions in cases that

⁶ H. Rep. No. 1980, 79th Cong., 2d Sess. (1946), at p. 33. The Senate Committee on the Judiciary expressed nearly identical views. See S. Rep. 752, 79th Cong., 1st Sess. (1945), at pp. 19-20.

⁷ See Recommendation No. 24, Selected Reports of the Administrative Conference of the United States, S. Doc. No. 24, 88th Cong., 1st Sess. (1963), at page 54.

had been referred to the Justice Department. We could not have achieved these results were we unable to guarantee privacy to confidential informants; nor if our own staff members could not freely communicate with each other and with the Commission about the best ways to proceed without being concerned that any such comments might become available for anyone to second guess and quote out of context, with a resulting adverse impact upon the staff. Factors of this sort were presumably recognized by Congress in connection with the Public Information Act, passed in the 89th Congress, which contains an exemption from disclosure for "investigatory files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency."⁸ The Senate Committee on the Judiciary noted, S. Rep. 813, 89th Cong., 1st Sess. (1965), at p. 9: "These [investigatory files] are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court." The House Committee on Government Operations, H. Rept. 1497, 89th Cong., 2d Sess. (1966), at p. 11, observed that the exemption "covers investigatory files related to enforcement of all kinds of laws, . . . securities laws as well as criminal laws." As noted in *Frankel v. Securities and Exchange Commission*, 460 F. 2d 813, 817-818 (C.A. 2), *certiorari denied*, 409 U.S. 889 (1972): "If an agency's investigatory files were obtainable without limitation after the investigation was concluded, future law enforcement efforts by the agency could be seriously hindered. The agency's investigatory techniques and procedures would be revealed. The names of people who volunteered the information that had prompted the investigation initially or who contributed information during the course of the investigation would be disclosed. The possibility of such disclosure would tend severely to limit the agencies' possibilities for investigation and enforcement of the law since these agencies rely, to a large extent, on voluntary cooperation and on information from informants."

We are also concerned about the fact that our private files sometimes contain what appear to be unfounded charges against individuals who, on investigation, have not appeared to have violated the law. The mere publication of such charges and other gossip that may appear in these files could seriously defame and injure law-abiding citizens.

We have set forth at some length the reasons why the Commission cannot conscientiously permit its investigatory files to be made public so that the Subcommittee will understand why we think it necessary that we work out a manner for the Subcommittee to review the Commission's enforcement program which differs from that proposed in your April 2 letter. While we do not suggest that either of the two members of the General Accounting Office staff detailed to assist your Subcommittee staff, any member of the Subcommittee staff, any member of the Subcommittee, or any other member of Congress who would have the right to examine documents in the possession of the Subcommittee (see 2 U.S.C. 72a (d)) would make public the information contained in our investigatory files unless he should deem it necessary in the public interest, it is not clear that all such individuals would recognize all of the problems set forth above. Certainly the almost daily leaks of information from closed-door sessions of Congressional committees raise our most serious apprehensions.

The Commission will, of course, provide office space in our headquarters building for the two Government Accounting Office investigators. We suggest that they first review the enforcement matters that have been closed during the past three years. We shall give these investigators the right to examine these files, but we suggest two limitations in the interest of preserving the Commission's enforcement capability. We propose that none of the documents in our files are to be removed and no copies are to be made unless clearance is obtained from the Commission, so that it can be assured that sufficient precautions have been worked out to protect material such as documents pertaining to organized crime cases, materials identifying informants, materials identifying witnesses who may be subject to harassment or charges of malicious prosecution, and materials received in confidence from citizens or other government agencies, particularly classified materials. As to such matters, there may conceivably be situations where we may desire to consult with you before even permitting examinations by your investigators. In our view, the Government Accounting

⁸ This is now codified at 5 U.S.C. 552(b)(7). The language of the Act as passed should be compared with the language in a predecessor bill where this exemption would have been limited to "investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein." See S. Rep. No. 1219, 88th Cong., 2d Sess. (1964), at p. 3, relating to S. 1666, 88th Cong., 1st Sess.

Office investigators will be subject to the same criminal sanctions prohibiting unlawful disclosure of nonpublic information which generally apply to our own staff.

When your investigators have concluded their study of the closed files, we will both be in a better position to discuss the review of ongoing investigations, if that still appears necessary. At that point, on the basis of our experience in the investigation of the closed files, we should be more able to work out procedures that would not endanger our enforcement program but would nonetheless serve your purposes adequately.

Sincerely,

G. BRADFORD COOK, *Chairman.*

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 2, 1973.

Hon. G. BRADFORD COOK,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I have considered your letter of April 16, 1973 very carefully and am distributing copies of it to the Members of the House Committee on Interstate and Foreign Commerce.

The time has long since passed for us to permit you to stall and obstruct the Subcommittee's legislative oversight review. It is not a matter whether or not the Commission will permit the Congress to look at materials. Any constraints upon the Subcommittee's examination of any matter in the Commission is wholly voluntary upon our part. It is not a matter in which the Commission has any power or color of legal right to impose conditions.

We have a duty under the law to: "review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of [the Interstate and Foreign Commerce] committee." [2 USC 190d]

It is my firm belief that any deliberate interference with our performing this review, whether by withholding files or otherwise, is a contempt of Congress and I shall treat it as such.

Your references to confidential sources have a hollow ring. Your predecessor told me the same thing and it turned out the confidential sources were men such as John Mitchell and Maurice Stans. The eagerness with which Chairman Casey sought out the counsel of John Dean, at the same time he was "ducking" the Subcommittee and the subsequent turn of events, rebut any argument of the Commission's good faith in transferring the files.

It is precisely because of your resistance that we must see the open files. Now that I have considered the internal memoranda in the ITT case, there is little doubt in my mind that the internal processes of the Commission are seriously in need of Congressional review. I am encouraged that as General Counsel you supported the strong enforcement recommendations of the staff which were ultimately ignored. The clear implication exists, however, that the same "inexorable pressure" which was brought to bear upon the Justice Department was also brought upon the SEC. This is most regrettable. Until recently, the Commission had enjoyed an outstanding reputation for integrity and independence. Now, in addition to the ITT case, we find ourselves forced to look at a number of other cases in which we have a concern that similar interference may have occurred.

It might be appropriate to point out that your reference to the past willingness of the Subcommittee to wait until a file ceases to be active is incomplete. The study of the Civil Aeronautics Board to which you refer was part of a major legislative oversight investigation. In that instance, the Subcommittee temporarily deferred the exercise of its right to look at cases involving only decisional matters then pending before the Civil Aeronautics Board. Under the particular circumstances then existing, the Subcommittee willingly deferred consideration of a very select number of matters to avoid even the appearance of influencing Board decisions. Ultimately, the Subcommittee did examine open matters pending before the Board. Furthermore, in this same legislative oversight inquiry, the Subcommittee had access to open files of the Federal Communications Commission in such matters as the Miami Channel 10 case and of the SEC in the Bernard Goldfine-Sherman Adams controversy. Your position on open files would prevent legitimate oversight in future cases of the same kind.

To preserve the integrity of the Commission's files, I have instructed that

those persons working on this project not remove material from them. You will be advised of our needs for copying any material considered necessary at the appropriate time. Beyond this, I will consider on an ad hoc basis requests for withholding information on the subject of confidential informants and the like. Such exceptions will not be granted as a matter of routine, but only upon a showing of exceptional circumstances.

As I view this issue now dividing us, it is nothing less than the accountability of everyone in government to the American people, yourself as much as any elected official. We must insist upon fulfilling our responsibilities to the people and upon your fulfilling those responsibilities as well. I know I do not have to remind you that the philosophy underlying the Securities Acts is echoed in the statement of Justice Brandeis, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." I am sure you would wish to advocate neither secrecy nor unaccountability of the Commission to the elected representatives of the people.

On the basis of the above considerations, it is my sincere hope that you and your colleagues will reconsider the position you have taken on this matter. In any case, my own course is clear: we will meet our responsibilities to the American people. Those who conduct the public business—not only the SEC but all agencies of government—must remain accountable to the people and to their collective representatives—the Congress of the United States.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., May 7, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: I am responding to your letter of May 2, 1973. The Commission greatly regrets that you view my letter of April 16 as evasive or obstructive. We have always tried to be responsive to your letters, and we felt compelled to suggest ways in which we felt the oversight responsibilities of the Subcommittee could be exercised without the risk of endangering the Commission's enforcement program and the rights of innocent persons. We did not attempt in our letter to "impose" conditions upon access to our files. We simply suggested that it might be better for the Subcommittee to refrain from reviewing our open investigatory files until your examination of closed files had been completed.

Since the Subcommittee has nonetheless decided that access at the present time to all our enforcement files is necessary, as strongly indicated in your letter, the Commission will accordingly comply with your request. We have been concerned, as you know, with the impact upon our responsibilities of any use of these files for other than enforcement purposes. Your letter makes it clear, however, that the Subcommittee itself has assumed full responsibility for our enforcement cases and for the prejudice that may arise with respect to them.

The Commission has been most distressed that the question of treatment of our open enforcement files has appeared to drive a wedge between your Subcommittee and the Commission in recent months; we hope that this resolution of the issue will remove any animosity.

For the Commission,
Very truly yours,

G. BRADFORD COOK, *Chairman.*

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, May 9, 1973.

HON. G. BRADFORD COOK,
*Chairman, Securities and Exchange Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 7, 1973 concerning the Subcommittee's legislative oversight review. I am pleased that we have been able to resolve this issue without undertaking any measures which might prejudice what had been our good relations in the past.

As I told you in my office, we do not want to persecute or prosecute anyone and we do not want to interfere in any way with the efficient operations of the Commission. Our review is intended to determine the adequacy of existing law and, if appropriate, to open up new avenues for improving the implementation of the law. I feel confident that the Subcommittee will benefit from a better understanding of the Commission's processes and I hope that we will ultimately be able to show you definite benefits for the Commission as well.

This legislative oversight review of the SEC is intended to be extended to the other regulatory and administrative agencies within the jurisdiction of the House Committee on Interstate and Foreign Commerce. What is learned from our SEC experiences will undoubtedly prove useful with respect to evaluating those agencies in their turn.

We do intend to protect the rights of innocent parties and to preserve the integrity of the Commission's enforcement programs. Our concern with the Commission's files must be in the role they play in chronicling its enforcement record and it is to this end that I have insisted upon the availability of open as well as closed cases. We will, of course, begin with the closed cases first to minimize any possible interference and to provide more complete data.

Judging from your letter, I look forward to our working together harmoniously on this project and other matters of mutual interest.

Sincerely,

HARLEY O. STAGGERS, *Chairman.*

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