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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN,

Plaintiff,

vs.

JOHN McCONE; RICHARD HELMS; JAMES SCHLESINGER; J. EDWARD DAY; WILLIAM COTTER; THOMAS KARAMESSINES; GEORGE BUSH, DIRECTOR OF CENTRAL INTELLIGENCE AGENCY; JOHN MITCHELL; UNITED STATES OF AMERICA; and an unknown number of unnamed present and former employees of the United States,

Defendants.

NO. C-75-1211 CBR

PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANTS' MOTIONS FOR DISMISSAL OR FOR SUMMARY JUDGMENT (WITH SUPPORTING AFFIDAVITS)

OGC Has Reviewed

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STEPHANIE KIPPERMAN, Plaintiff, vs. JOHN McCONE; RICHARD HELMS; JAMES SCHLESINGER; J. EDWARD DAY; WILLIAM COTTER; THOMAS KARAMESSINES; GEORGE BUSH, DIRECTOR OF CENTRAL INTELLIGENCE AGENCY; JOHN MITCHELL; UNITED STATES OF AMERICA; and an unknown number of unnamed present and former employees of the United States, Defendants.	NO. C-75-1211-CBR PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANTS' MOTIONS FOR DISMISSAL OR FOR SUMMARY JUDGMENT

INTRODUCTION

Defendants' most recent motions for dismissal or summary judgment rest in part upon the claim that Plaintiff's complaint is a "sham", and partly upon the claim that, even if a cause of action is made out, jurisdiction and venue do not exist in this District.

Raw data, supplied by Defendants themselves and contained

in the "Report to the President by the Commission on CIA activities within the United States" ("Rockefeller Report"), demonstrates the good faith nature of each of the three counts in the Third Amended Complaint, and raise grave questions about whether or not the Central Intelligence Agency has validly declared with confidence that Stephanie Kipperman's mail was not opened or photographed.

The arguments about venue and jurisdiction made by Defendants seem to track those previously made, with the addition of assertions about the validity of COUNT THREE, insofar as it relies upon 28 U.S.C. § 1339 (postal matters) and § 1346 (the Tucker Act).

The first portion of this Memorandum will set forth the statistical reasons why Plaintiff's claim is made with sufficient basis for belief that she has been wronged; the second portion will deal with jurisdiction and venue.

It is noted that only Defendant UNITED STATES has commented (briefly) upon Plaintiff's proposed discovery. If this discovery plan in any way could be viewed as placing an unreasonable burden upon the Government, or jeopardizing official secrets, it is suggested that this should be brought to the attention of the Court at the hearing on these motions.

I

DATA AVAILABLE TO PLAINTIFF PROVIDES A SUBSTANTIAL BASIS FOR HER BELIEF THAT HER MAIL HAS BEEN OPENED, PHOTOGRAPHED AND DELAYED.

A. <u>As A Repeat Correspondent, Plaintiff Has Cause To Believe That Her Mail Was Tampered With</u>.

Plaintiff's Third Amended Complaint has been characterized variously by Defendants as a "sham", an act of "desperation",

and a "last effort in her crusade". Much is made of the inability of counsel for Plaintiff to directly contravene affidavits filed by CIA employees.

Plaintiff admittedly remains unable to directly contravene affidavits filed by any CIA employee or operative which rely upon CIA files for their content. Until discovery of those files is permitted to Plaintiff -- and such discovery has been stoutly resisted throughout this proceeding -- Plaintiff cannot directly affirm or deny the contents of those unseen files.

Plaintiff has been able to rely upon the Rockefeller Report and news stories which quote knowledgable officials. See Affidavit of Counsel, accompanying this response.

Hampered by the reluctance of Defendants to provide any detailed information, Plaintiff nonetheless believes that there is a substantial possibility that she has been aggrieved in three separate ways: Opening and photographing of her mail; photographing the exterior of her envelopes; and examination of her mail by unauthorized persons, with concomitant delay.

A plaintiff need not be certain a fact is true before alleging it in a complaint. The provision of F.R.C.P., Rule 8(e)(2), allowing pleading in the alternative, or hypothetically, demonstrates that some degree of certainty below 50% is acceptable. There are no hard and fast rules setting forth a "threshhold confidence level", but the standards for awarding summary judgment provide guidance. See, Dawn v. Sterling Drugs, Inc., 319 F. Supp. 358 (C.D. Cal. 1970)(no summary judgment if a scintilla of evidence supports the theory of the non-moving party); Clausen & Sons, Inc. v. Theo. Hamm Brewing Co., 395 F. 2d 388 (8th Cir. 1968)(no summary judgment if there is the slightest doubt as to a factual dispute or genuine issue of fact.)

Plaintiff's logical inferences from the data available to her provide far more than a scintilla of evidence. Raw data indicates that:

1. The chance that her mail was opened at some time during her years of correspondence is at least one in six and may be more likely than not.

2. It is extremely likely (over 90% probability) that her mail was photographed at some time during her years of correspondence.

3. It is virtually certain that her mail was delayed and examined in an unauthorized fashion.

The self-serving declarations of the CIA and its employees do not undercut this position, at least as long as all Defendants remain crouched behind the stone wall of non-disclosure. As discussed below, the Freedom of Information Act data provided by the Affidavit of Ethel Mendoza raises grave doubts about whether the CIA's record keeping has been as complete as heretofore claimed (or in the alternative whether Plaintiff has been apprised of the true facts).

Plaintiff has framed her latest pleading in three counts, because the wrongs she alleges are discrete, and can be assigned a different degree of probability. Additionally, Plaintiff cannot allege in good faith that she suffered substantial damages with regard to the delay in examination of her mail. Therefore, she has claimed only nominal damages for such delay ($5.00 for each instance), and COUNT THREE relies upon different jurisdictional statutes.

Taking the counts in reverse order, COUNT THREE of the Third Amended Complaint (hereinafter "TAC"), the Affidavit of Sydney Stembridge, and the Rockefeller Report, demonstrate the

virtual certainty that Stephanie Kipperman's mail was channelled through the CIA's intercept section, and examined. We are not told in the Stembridge Affidavit what proportion of mail to the Soviet Union passed through New York postal facilities during weekends, after normal business hours, and on holidays. It is a fair assumption that the bulk of the Soviet-bound mail travelled through those facilities during regular business hours. As stated in the NOTICE OF IDENTITY OF PLAINTIFF, dated December 19, 1975, Stephanie Kipperman wrote on an average two to four letters a year to the U.S.S.R., and received a like number from the U.S.S.R. Being most generous to the Defendants in our assumptions -- as will be the case throughout the statistical analysis -- the lower figure, two letters a year, is assumed. Plaintiff, therefore, has sent at least twenty-four letters and received at least twenty-four letters, during the overlap period of her correspondence with the intercept program, 1960-1973. The accompanying Affidavit of Plaintiff demonstrates that all, or nearly all, of the letters she sent to the U.S.S.R. were airmail. Furthermore, virtually all of the letters sent to her were also airmail.

Since Defendants had to make some kind of physical examination of the letters passing through their hands before determining which letters to photograph or open, Plaintiff submits that it is certain that some (and probably most) of the letters to and from her were delayed and handled in unauthorized fashion.

Next, we turn to COUNT TWO, the photographing of the exteriors of envelopes. Defendants state that the HTLINGUAL program photographed 9.55% of the envelopes passing through the intercept stations. It will not unduly distort the following

statistical analysis to round this estimate off to 10%, for ease of computation. It is assumed that the photography of "covers" was largely random.[1]

Each time Plaintiff sent mail to or received mail from, the Soviet Union, she properly assumes that there was a 1/10 chance that such mail would be photographed. For purposes of this lawsuit and her good faith claim, the important question is: What are the probabilities that at least one of the letters that she sent or received from the Soviet Union, had its envelope photographed? The calculation is a simple one, and one which the Court can take judicial notice of.

Working on the premises that Stephanie Kipperman sent and received 48 letters (the lowest estimate) and that there was a 1/10 chance of illegal photography with each sending, one can determine the probability of interception at least once by application of the "Multiplication Law". One takes the probability, on each sending, that Plaintff's mail was not photographed, and multiplies that fraction times itself for the number of occurrences in question. The resulting fraction is then subtracted from 1 and converted to a percentage value. In this case, there was a 9/10 probability that any individual letter was not photographed; the simple formula would be $(.9)^n$ where "n" equals the number of occurrences.[2] For 48 letters, the

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1. This assumption is a reasonable one, at least until Defendants suggest some other procedure. The mail "watchlist", on an average, contained approximately 300 names (Rockefeller Report, p. 107). Making a generous estimate that each of these names on the watchlist sent and received 52 letters each year, and that all of these letters were photographed, at least on the exterior, the total number of such photographs during 20 years would be 312,000, only a small share of the 2,705,726 total exteriors photographed.

2. To find the probability of an event happening at least once (continued on next page)

calculation (simple to make on a hand-held calculator) yields the information that Plaintiff can reasonably believe that it is 99.36% certain that at least one of her letters had its exterior photographed.

By a similar calculation -- and this bears upon the CIA "disclosure" in response to Freedom of Information Act inquiries -- after only seven letters are sent by an individual, it is more likely than not that at least one of the individual's letters was photographed. 3/

Defendants may protest that the CIA used some special factors, other than the watchlist, which would have excluded random photography of mail passing through their operation. If this is so, it is properly the subject of the full discovery which Plaintiff has been urging throughout this proceeding. Plaintiff notes that the Rockefeller Report, p. 112, states that the mail project generated a computerized record system containing 2,000,000 entries. If all, or the bulk of those entries, are names, the random quality of information collected is manifest. 4/

It will thus be seen that the "bald-headed man" hypothesis

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over a sequence of independent periods, one takes "certainty" as = 1. Then the chances of the event not happening equal 1 - x, where x = the probability of the event occurring. These probabilities of non-occurrence are multiplied together as many times as there are independent events. The result is the likelihood of the event not happening at all over "n" events. This result is subtracted from one, to yield the probability of the event happening one (or more) times.

3. And according to earlier COLBY/MENDOZA affidavits, the names on photographed envelopes become part of the CIA files.

4. The reference in the Rockefeller Report to a computerized record system is at odds with statements made by counsel for Defendants in court, and by the Affidavit of WILLIAM COLBY, filed in this action, dated January 12, 1976, which state that the comprehensive record of the mail project is contained in a microfilm program. This disparity should be resolved by the Court.

rests on strong statistical ground in this action.

Finally, COUNT ONE, the "ivory snow" count, loses much of its defense-claimed purity when subjected to a similar statistical analysis. To determine the probability that at least one of Plaintiff's letters were opened, if the possibility of any individual letter being opened was .76%, the forumula $(.9924)^n$ is used. For the low estimate of 48 letters, there is a 30.7% chance that at least one of Plaintiff's letters was opened. For the maximum estimate of letters sent, 96, there is a 52% probability that Plaintiff's mail was opened -- more likely than not! 5/

Doubtless non-random facts, such as the use of a "watchlist" and other unvoiced criteria, would skew this last analysis in favor of Defendants. Nonetheless, the point remains that in the face of the complete reluctance of Defendants to afford Plaintiff discovery, she can only rely upon the Rockefeller Report and news reports. These sources provide her good faith belief that there is a significant chance that her mail has been opened.

Attached to this Memorandum is an extract from "Use and Abuse of Statistics", by W. J. Reichmann, Pelican Books, 1973, pp. 204-205, discussing the Multiplication Law. As will be seen, the results, as here, are often non-intuitive. For instance, if 30 of the lawyers in this action compared birthdates, it is probable that we would find two of us with the same birthdate.

B. Statistics And Facts Provided By CIA Employees Are Internally Inconsistent.

In the most recent Affidavit of Ethel Mendoza, dated February 25, 1976, Defendant UNITED STATES provides for the

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5. The adding machine tape containing the calculations described is duplicated and attached as Appendix "B", with an explanation of the computation next to the tape.

first time information not already on public record. If this thread of information is grabbed and firmly pulled, one may discern the tightly woven fabric of Defendants' claims beginning to come unraveled. Plaintiff suggests that further discovery will reveal that their confident claims are threadbare.

According to the Affidavit of Ethel Mendoza, the ratio of the number of letters (presumably documents contained in the interior of an envelope) and the number of mail covers (presumably photographed envelopes) are exactly the opposite of the ratio one is led to expect from the Affidavit of Sydney Stembridge and the Rockefeller Report. According to those latter documents, over ten times as many exteriors were photographed as interiors were examined and photographed. Yet, Ethel Mendoza tells us that, in response to requests from interested individuals, records turned up 566 letters and 22 mail covers. Plaintiff can only hypothesize that this is a carelessly drawn affidavit, and should read 566 mail covers, 22 letters; if not, the discrepancy is possible to explain only by drawing the conclusion that, contrary to prior statements under oath by Defendants, all names extracted by mail "cover" were not collected in a central, "comprehensive" file.

Furthermore, statistical sampling techniques, which should be extremely accurate in this matter, since they cannot be rendered invalid by changes in public opinion (as in presidental polls), leave unexplained the extremely low number of affirmative responses to the approximately 6,000 requests for information directed to the CIA.

Certain assumptions must be made in order to test the figures provided by Ethel Mendoza. Some of these assumptions are gross (in a statistical, not descriptive, sense) only because

Defendants continue to refuse to be forthcoming with details. To enable Plaintiff to attempt an evaluation of the Mendoza figures, the following assumptions were made:

1. It is assumed that the 6,000 persons making requests of the CIA represent a normal cross-section of correspondents with the Soviet Union.

2. It is assumed that the CIA intercept program photographed envelopes of approximately 10% of the correspondents with the Soviet Union. 6/

3. It is assumed that the CIA conducted a thorough records check of all HTLINGUAL records of requesting individuals.

If, in a large total population, 10% of the persons contained therein share a common trait (in this case, illegal photography of their correspondence) in a large sample of 6,000 people selected from that general population, it is statistically unthinkable that only 2% of the sample should have the trait described. Yet according to Defendants, this is the case here.

In the face of admissions that 10% of all envelopes passing through CIA intercept points were photographed, and in the face of the Rockefeller Report statement that over 2,000,000 items were collected in the HTLINGUAL computer program, the Government states, with some pride apparently, that the "vast majority" of

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6. This assumption is not undercut by the fact that many of the names photographed would be duplicates. It is to be recalled that the 27,000,000 letters passed through the CIA's hands cannot be taken to represent 27,000,000 correspondents. Rather, because of persons like Stephanie Kipperman, who regularly wrote to and received mail from the Soviet Union, it is more probable that the total number of correspondents would be a fraction of that (perhaps 4 or 5,000,000 following the four-letters-per-person ratio revealed in the Freedom of Information Act disclosure). Furthermore, each time an envelope exterior is photographed, in the normal course of events, at least two names would be collected for inclusion in the CIA data bank: Addressee and Addressor (and in some cases, i.e., husband and wife, more than two names)

the searches of the HTLINGUAL program (in response to FOIA or Privacy Act inquiries) revealed no records or entries.

"Use and Abuse of Statistics", supra, pp. 234-235, attached hereto as Appendix "C", discusses sampling and degree of certainty. Using the formula at page 234, in substituting the values of p = 10%, q = 90%, and n = 6,000, we discover that the square root of $\frac{900}{6000}$ is approximately 3/8th, and that we can, therefore, expect that a sample of 6,000 is going to produce a sub-group of 10%, plus or minus 1% with a confidence factor of 95%. 7/ Put into simpler language, it would be extremely rare for a large sample, such as that created by the Freedom of Information Act requests, to vary sharply from the 10% figure of persons in the general population whose mail is photographed. A variance of 8% as here, can virtually be ruled out as a mathematical possibility.

Plaintiff can conceive of various explanations which might explain this disparity in percentages. Perhaps a large portion of the Soviet-bound mail passed through New York on Sundays, holidays or after working hours. Perhaps a great proportion of the photography was directed to names on the watchlist (small in number though this list was). Perhaps the 6,000 people who wrote to the CIA were largely crackpots and cranks who had never written the Soviet Union (although given the sophistication of persons likely to respond to Freedom of Information Act legislation, it would be more plausible to suppose the inquiries were made by intelligent, regular correspondents with the Soviet Union.).

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7. The statistical sampling computations are not as simple and self-evident as the application of the Multiplication Law. The Court is not asked to take judicial notice of the sampling mathematics. Judicial notice should be taken of the normal validity of sampling techniques and the unexplained wide variation between expected result (10%) and actual result (2%).

Barring those kinds of explanations -- which should be the subject of the discovery Plaintiff has steadfastly insisted upon -- Defendants have some explaining to do. Either large numbers of persons whose envelopes were photographed have slipped through the cracks, or the CIA's so-called "comprehensive record check", is substandard, or the Court has been misled.

In light of the statistical anomolies, it would be premature to dispose of this case by dismissal or summary judgment. The glib assurances of Defendants and Defendants' employees must be subject to the searching impartial scrutiny of normal civil discovery procedures.

II

JURISDICTION AND VENUE

A. Defendants' Mail Intercept Program Wronged Plaintiff In A Manner Creating A Legally Cognizable Right, And Such Rights Are Properly Vindicated In The Federal Courts.

1. Plaintiffs mail was tampered with.

This subject is touched upon again, because the majority of Defendants continue to hammer home their point, in the arguments upon jurisdiction, that there can be no jurisdiction where Defendants' actions in no way affected Plaintiff. The statistical analysis above demonstrates that Plaintiff has a good faith reasonably-held belief that her mail was delayed, photographed and opened. The affidavits filed on behalf of Defendants raise other interesting questions, including:

a. Is the "comprehensive" CIA file on the mail intercept program contained on microfilm, or on a computer?

b. Why were such a small number of persons making inquiry under the Freedom of Information Act given affirmative

responses about CIA tampering with their mail?

c. Why, in the Freedom of Information Act responses were the ratios of mail covered to mail openings the reverse of the ratios for the entire population of letters received?

d. Are the more than two million "items" in the HTLINGUAL program names, or names plus other information?

2. The opening, photographing, or delay of Plaintiff's mail gives rise to a cause of action.

The events complained of by Plaintiff create a cause of action against the United States, and individual Defendants.

a. Individual Defendants.

Defendants individually named herein are properly before this Court, regardless of the amount in dispute, under the provisions of 28 U.S.C. § 1339. That section, which has no requirement as to amount in controversy, states in its entirety

> "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service."

Plaintiff explicitly relies upon § 1339 in COUNT THREE of her Complaint. This is not an impermissible splitting of her cause of action, since, as the numerous papers filed by Defendants make clear, the delay of Plaintiff's mail and the photographing or opening of that mail, are events which are not inescabably linked. Rather, they are separate wrongs relying upon differing statutes or constitutional provisions for their legal existence and giving rise to a differing degree of damages. 18 U.S.C. §1701-1703, 39 C.F.R. § 233.2, and its predecessors, and 39 U.S.C. § 4057 [8/] (repealed, as one of the Defendants point out, in 1970,

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8. Essential provisions of this Section are now contained in 39 U.S.C. § 3623.

but applicable to the mail intercept prior to that date) are some of the Acts of Congress under which this action arises.

Regulations issued by the postal service have the force and effect of law. Rodway v. U.S. Dept. of Agriculture, 514 F. 2d 809 (D.C. Cir. 1975); United States v. Short, 240 F. 2d 292 (9th Cir. 1957). As discussed below, it is proper to infer a civil cause of action from these statutes and regulations.

COUNTS ONE and TWO of the Third Amended Complaint rely upon 28 U.S.C. § 1331 for finding Federal subject matter jurisdiction against the individual Defendants. The violations alleged here, opening of mail and photographing of envelope exteriors (with the accompanying creation of a CIA file), are significant, deliberate violations of the Bill of Rights, and must, when punitive damages are taken into account, be valued at more than $10,000. Paton v. LaPrade, 524 F.2d 862,872 (3d. Cir. 1975) (punitive damages may be awarded for malicious disregard of plaintiff's constitutional rights even in the absence of actual damages).

Defendant MITCHELL scoffs at the notion that Plaintiff should be entitled to anything but nominal damages for unauthorized mail openings (MITCHELL, p. 4).[9/] MITCHELL then goes on where other Defendants fear to tread (p. 13), and boldly asserts that all of his actions were properly in discharge of his official duties and suggests that "responsible Government officers" must be protected from the harrassment and inevitable hazards of vindictive or ill-founded damage suits." Plaintiff asks the Court to read again Chapter 9 of the Rockefeller Report which she believes refutes the remarkable contention by MITCHELL that the mail intercept program was "business as usual".

Insofar as any mail openings occurred, Plaintiff's Fourth Amendment rights have been violated. See United States v. Van Leeuwen, 397 U.S. 249 (1970). It is the

9. Hereinafter, Defendants' Motions To Dismiss The Third Amended Complaint will be cited by Defendant's name only.

modern trend of enlightened courts to view civil rights as inherently worth more than the jurisdictional amount of § 1331. Halderman v. Pittenger, 391 F. Supp. 872 (D.C. Penn. 1975). See also, Committee for G.I. Rights v. Callaway, 518 F. 2d 466 (D.C. Cir. 1975)(where substantial rights are at stake, certainty as to the amount of controversy is not necessary).

Here, the jurisdictional amount claimed contemplates punitive damages as well as damages awarded for the violation of a constitutional right and mental distress. The reference of one of the Defendants to the impropriety of Plaintiff claiming emotional distress without alleging extreme and outrageous conduct, etc. (HELMS, p. 4-5) is based upon a misreading of the pleadings, and a mistaken understanding of the law in California. Plaintiff is not claiming a tort where the only damage is emotional distress. Rather, she has pleaded an intentional violation of her constitutional rights. In that instance, exemplary damages are appropriate. Silberg v. California Life Ins. Co., 11 Cal. 3d 452, 462 (1974) (exemplary damage where defendant acted with a "conscious disregard of the plaintiff's rights"); Paton v. LaPrade, supra.

Plaintiff asks the Court to keep in mind that Defendants are alleged to have opened and photographed her mail, and to have extracted her name to add it to CIA data banks. The information contained in the Rockefeller Report, as well as in news articles (see Affidavit of Counsel and Exhibits) shows the unquestioned illegality of the intercept, and the complicity of each Defendant.

If such mail intercept programs are a wrong without a remedy -- as Defendants assert -- the foundations of the Republic will not crumble. However, a small crack will be driven into those foundations; a collection of such cracks may be enough to profoundly change the nature of our society.

Several Defendants contend that neither postal statutes and regulations, or appropriate criminal statutes create a civil cause of action in this case. The problem is an interesting one and must be considered in the light of the recent Supreme Court case of Cort v. Ash, ___ U.S. ___, 95 S. Ct. 2080 (1975), which deals directly with the issue, providing guidelines for future determinations. Since each of the separate counts of the Third Amended Complaint rests on different grounds, the implied right of action question is discussed separately for the three counts.

COUNT ONE, alleging the opening of Plaintiff's mail, does not need to look to any statute or regulation for an implied right of action. The opening of mail is proscribed by both the First Amendment, Paton v. LaPrade, supra, and the Fourth Amendment, Van Leeuwen, supra. Both Paton and Bivens[9a/], supra, hold that persons whose First and Fourth Amendment rights have been violated may seek civil relief from those who have caused the violations.

COUNT TWO, the "mail cover" count, described conduct which is proscribed by 39 C.F.R. 233.2, and its predecessor regulations. A copy of this mail cover regulation is attached hereto as Appendix D along with part of 49 F.R., p. 11579, stating that § 233.2 (a 1975 regulation) substantially republishes procedures and safeguards already in effect in prior Postal Service regulations.

These regulations have the force of law, Rodway, supra, and were grossly violated by the mail intercept program. See Rockefeller Report, Chapter 9. Whether or not mail covers intrude upon the Fourth Amendment rights of the sender and the recipient, the First Amendment rights of Plaintiff have been violated by the alleged program. The cases cited (HELM, p. 4), condoning

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9a. Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

mail covers in criminal cases, provide small comfort for Defendants, since they involve legitimate mail covers carried out according to Postal Service regulations, against known or suspected criminals.

COUNT THREE charges delay of Plaintiff's mail. The Supreme Court in Van Leeuwan has held that "in theory"

> " . . . detention of mail could at some point become an unreasonable seizure of 'papers' or 'effects' within the meaning of the Fourth Amendment." 397 U.S. at 252

In Van Leeuwan, detention for one and one-half hours was ruled not to be excessive. We do not know from the facts provided by Defendants what the magnitude of delay was. If the detention was prolonged enough to warrant the label of a "seizure", the Fourth Amendment would allow a civil cause of action under Bivens. If not, 18 U.S.C. § 1701 and 1703 creates a civil cause of action. The Defendants rely upon two cases to support a contrary position. One of them is Paton v. LaPrade, 382 F. Supp. 1118 (D. N.J. 1974). However, on appeal in that case, the Third Circuit, reversing this decision, specifically held open the question of whether or not defendant had an implied right of action under 18 U.S.C. 1702. Paton, supra, 524 F. 2d at 870, n. 10.

The other case cited by Defendants, United States ex rel. Pope v. Hendricks, 326 F. Supp. 699 (E.D. Penn. 1971) does hold that there is no implied cause of action for a violation of § 1702. The holding of this District Court in Pennsylvania is not binding upon this Court and the opinion should be read in its entirety: that Court also held that a Plaintiff who is placed in solitary confinement with a bright lightbulb burning 24 hours a day without adequate food or heat was not the recipient of cruel or unusual punishment, and furthermore that his jailers had the right to

withhold legal mail for him for six months. The entire opinion is discredited by such findings.

The Supreme Court in the past has not hesitated to find a civil cause of action created by implication by a criminal statute. Wyandotte Transp. Co. v. United States, 389 U.S. 191 (1967). See also, J. I. Case v. Borak, 377 U.S. 426 (1964). Space precludes a detailed application of Cort, supra, to the facts at bar. It is suggested that if the Court takes the four factors set forth in Cort and applies them to the facts here, it will readily be seen that 18 U.S.C. § 1701 and 1703 do imply a civil remedy for delay of the mail.

The general principle set forth in Bivens, supra, by the United States Supreme Court, should be honored:

> "And 'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief'". 403 U.S. at 392.

The congressional intent in enacting Section 1701-1703 has been described by the Ninth Circuit (discussing Section 1702) in McCowen v. United States, 376 F. 2d 122 (9th Cir. 1967), saying that it was the

> "Congressional intent to extend federal protection over mail matter from the time it enters the mails until it reaches the addressee or his authorized agent."

b. Defendant UNITED STATES.

Plaintiff is entitled to injunctive relief against the United States and agents of the United States, insofar as Plaintiff has a legitimate ground for believing that mail cover operations may commence again. The allegations of the "chilling effect" of the mail cover program were included in the Third Amended Complaint

not, as some Defendants apparently believe, in order to create a cuase of action for damages, but rather as a predicate for injunctive relief.

The United States is also a proper party to this law suit, insofar as Defendants may have been acting within their "official capacity" while acting beyond their actual authority. See Hatcheley v. United States, 351 U.S. 173, 181 (1956). The possibility that the actions of Defendants could fall into this grey zone is increased by the apparent belief of the individual Defendants that their actions, illegal or not, were done in "the best interests" of the country. Defendant MITCHELL, for one, continues to insist in his Motion To Dismiss The Third Amended Complaint that everything he did in connection with the mail intercept program was within the scope of his authority or in the discharge of his official duty (Mitchell, p. 12-13).

Additionally, the UNITED STATES is an appropriate defendant here because Presidental ratification and approval can be inferred for the mail intercept. See Exhibits accompanying Affidavit of Counsel, attached hereto.

The involvement of high-level Government officials, up to and including the President, also raises questions about the propriety of interposing sovereign immunity as a bar to Plaintiff's action. Scholars apparently agree that the notion that "the King can do no wrong"

> " . . . meant that the King must not, was not allowed, not entitled to do wrong . . ." Erlich, No. XII: Proceedings Against The Crown (1216-1377) at 74, in 6 OXFORD STUDIES IN SOCIAL AND LEGAL HISTORY (Vinogradoff ed. 1921).

If we are to have a nation under law, remedies must be fashioned by the courts to insure that the Government, as well as the governed, is subject to those laws.

A cause of action against the United States is also appropriate under the Administrate Procedure Act. Arizona State Department of Pub. Welfare, the Department of H.E.W., 449 F. 2d 456, 464 (9th Cir. 1971) has been cited by MITCHELL, p. 3, as standing for the proposition that the APA does not confer independent jurisdiction on the Federal courts. A reading of the case reveals that it actually holds that 5 U.S.C. § 703 does not confer upon the Court of Appeals any additional jurisdiction not expressly authorized by a separate statutory grant of power. The Ninth Circuit states in Rothman v. Hospital Service of Southern California, 510 F. 2d 956 (9th Cir. 1975), that

> "We have held that the A.P.A. provides jurisdiction for review of agency action in District Court unless such jurisdiction is otherwise barred." (Emphasis supplied). 510 F.2d at 958.

Where the head of an agency directs that his agency carry out actions which aggrieve a citizen, that citizen can rely upon the APA as creating jurisdiction for injunctive relief against the United States and offending agencies.

Finally, the United States is a proper defendant in this case under 28 U.S.C. § 1346(a)(2).[10/] The Tucker Act "bites" for delay of the mail; if it is determined that COUNTS ONE and TWO of the Third Amended Complaint state a cause of action whose value is less than $10,000, 28 U.S.C. § 1346(a)(2) would also take hold there. State of Washington v. Udall, 417 F. 2d 1310, 1321 (9th Cir. 1969).

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10. The question of whether or not any cause of action exists, and whether, if it does, the Federal courts have subject matter jurisdiction over it, are intertwined closely and are being treated together in this Memorandum.

The mail intercept program was a violation of constitutional and statutorily protected rights, and Defendants' efforts to characterize it as "sounding in tort", ignore the facts. Section 1346(a)(2) creates jurisdiction in the District Courts of "Any other civil action or claim against the United States, not exceeding $10,000.00 in amount, founded either upon the Constitution or any Act of Congress, or any regulation of an executive department, . . . " (emphasis supplied).

Plaintiff seeks damages for the violation of constitutional and statutory rights, as well as punitive damages for the intentional nature of such violations. She has nver claimed tort damages. As discussed in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 392-93, violations of constitutional rights are often the result of conduct which would not, if engaged in by private persons, be condemned by state court (i.e., a tort).

The mail intercept program was a violation of the First Amendment rights of Plaintiff, Paton v. LaPrade, 524 F. 2d 862 (3d Cir. 1975), and Fourth Amendment rights, United States v. Van Leeuwen, 397 U.S. 249 (1970). The statutes and regulations violated by Defendants' tampering with Plaintiff's mail are set forth and discussed in greater detail above.

B. Defendants' Joint Venture Carried Out Acts In California, And Availed Itself Of The Benefits of California Services and Laws; Venue Is Properly Laid In The Northern District of California.

The following discussion will address itself primarily to venue questions. The same considerations which argue for local venue also provide grounds for finding personal jurisdiction

over each individual Defendant.

1. Defendants' joint venture was doing business in the Northern District of California.

Defendants' responses evince some outrage about Plaintiff's inclusion of the Far East mail intercept program in her description of Defendants' conspiracy. Plaintiff is not shifting the emphasis of her original conspiracy allegations nor is this a last-ditch effort to create venue where none existed before.

Plaintiff continues to believe that the actions of Defendants in carrying out the Soviet mail cover program warrant finding local venue. However, as a reading of the Rockefeller Report, Chapter 9 will show, the Far East intercept program was part and parcel of a general effort to fight the Communist monolith. The Court could well determine that the two intercepts were closely related, were covered by the same umbrella, furthered the same objectives, and therefore agents of the Defendants were directly present in San Francisco carrying out the conspiracy alleged in the Third Amended Complaint.

Whatever the determination on this point, Plaintiff continues to place her primary stress on the fact that, with regard to Soviet mail only, Defendants were involved in a joint venture which did business in California. This business had relation to their scheme to violate the Plaintiff's rights and provides cause for holding Defendants locally to answer for their actions.

Some of the Defendants have elsewhere characterized themselves as being no different than mail carriers, mere low-level employees of the Government. Plaintiff believes that this is a wishful characterization. A reading of the Rockefeller Report shows that, on the contrary, a group of officials at the highest levels of Government conspired together, set up, and operated over

a space of twenty years, a comprehensive mail-intercept program of vast scope. The schemers behind the program were part of a joint venture, and venue determinations should be made as they would be for any joint venture whose operations reach into this forum.

The Defendants in this action, concerting together, were present in the jurisdiction, availed themselves of the benefits of the forum, and injured Plaintiff locally through their actions. For venue purposes, a co-conspiracy is certainly an unincorporated association of individuals sharing a common objective. As such, they should be held to the venue provisions of 28 U.S.C. § 1391(c), permitting the suit of any corporation in any judicial district in which the corporation was doing business at the time the cause of action arose. Denver, Rio Grande & Western R. Co. v. Bthd. of Railroad Trainmen, 387 U.S. 556 (1967)(unincorporated association sued as an entity will be treated like a corporation for venue, and may be sued wherever doing business); Penrod Driving Co. v. Johnson, 414 F. 2d 1217 (5th Cir. 1969)(partnership like a corporation for venue); Farmers Elevator Mut. Ins. Co. v. Carl J. Austad & Sons, Inc., 343 F. 2d 7 (4th Cir. 1965)("doing business" at the time the cause of action arose).

One Defendant has cited Sheard v. Superior Court, 40 Cal. App. 3d 207 (1974) as holding that an individual cannot be personally held to an answer in a jurisdiction where his corporation is doing business. When read completely, Sheard establishes that, where a corporation is the alter ego of individual defendants, those defendants can be subject to the jurisdiction of a forum wherein the corporation acted for the individuals.

The individual Defendants in this action were, through their

joint venture, "doing business" in the State of California irrespective of the Far East mail intercept. One named, and one or more unnamed Postmasters General were parties to the overall conspiracy. All of the directing members of the conspiracy understood that they would be able to act through mail carriers and take advatage of those mail carriers in the State of Califorinia. Importantly, the ways in which Defendants were "doing business" in the forum directly contributed to the success of the objectives of their conspiracy.

Putting aside the question of the conspiracy "doing business" in the State of California, we turn to an analysis of modern views of the law of venue. A prime concern of the court in determining whether or not venue lies locally is the interest of the forum in protecting the rights of its residents. The recent California Supreme Court case of Cornelison v. Chaney, 16 Cal. 3d 143 (1976) elucidates the current perimeters of that doctrine. In Cornelison (extract attached hereto as Appendix E) the California Supreme Court found jurisdiction (and venue, under the rubic "convenience of the parties") over a defendant trucker, for an accident occurring on the highways outside California. Because defendant was involved in a multi-state trucking business, because a risk of defendant's business was causing injury to persons in distant forums, and because he had been coming into the State of California for many years as a trucker, California found that it had a sufficient interest in providing a forum for its residents to justify subjecting defendant to the jurisdiction of the California courts.

This Court has a legitimate interest in protecting forum residents from the acts of distant Government officials,

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deliberately opening, photographing or tampering with their mail. The multi-state nature of the conspiracy alleged by Plaintiff contemplated injury to defendants in distant forums.

Likewise, Defendants availed themselves of the benefits of California laws and roads, providing the necessary contacts for allowing the forum resident to vindicate his interests locally. Professor Moore has made a persuasive case for applying a "minimum contact" approach to § 1391 venue questions, rather than the "most significant contacts" approach urged by Defendants and applied by some district courts in contract cases. 1 MOORE'S FEDERAL PRACTICE ¶ 0.142 [5.-2].

Plaintiff, in her previous Memorandum, has pointed out that her action is transitory in nature. The damage done to her has both violated her personal "penumbra" of privacy, and through an intentional violation of her civil rights, created emotional distress. 11/ Both of these violations "arise" in the Northern District of California. Cf., Katz v. United States, 389 U.S. 347 (1967). Her cause of action is not unlike a products liability case, in which negligent manufacture in forum A causes eventual injury to a person in forum B. Under the law of the Ninth Circuit, the action may then properly be brought in forum B. Duple Motor Bodies, Ltd. v. Hollingworth, 417 F. 2d 231 (9th Cir. 1969).

Plaintiff previously put forward the suggestion that private mail was a "conduit" which began at the place where the sender puts the letter into the mail and which does not end until the letter is finally received by the addressee. This interpre-

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11. Plaintiff does not claim that the emotional distress pleaded in her Third Amended Complaint is disabling, or of major proportion.

tation is supported by the Ninth Circuit in McCowen, supra. However, the "conduit" claim, with its accompanying venue theory, (that if the stream is broken in another state a plaintiff is harmed at the commencement of the conduit) was the subject of a forceful, confident assault by one of defense counsel at the last court hearing. Statements were made at that time that the condui model was faulty, because it is established in wire-tap cases, under 18 U.S.C. § 2511 (forbidding unauthorized wiretaps) and under obstruction of the mail cases, that venue could only be lai in the jurisdiction where the tap was applied to the phone line o where a letter was taken out of the flow of mail. Plaintiff has been able to discover no cases on point. Nor have any cases been cited by Defendants, either before the assertions during oral argument or since. Such cases should be brought to the attention of the Court.

Although not giving primary reliance to the conduit theory, Plaintiff continues to suggest to the Court that it provides a useful conceptual construct in determining the fairness of hearing Plaintiff's action locally.

In criminal cases, the Ninth Circuit has gone so far as to hold that venue in a conspiracy case is proper in districts which conspirators have overflown in order to obtain contraband. United States v. Williams, ___ F. 2d ___ (9th Cir. Jan. 26, 1976) No such generous application of the venue laws to this civil conspiracy are necessary to find local venue (and jurisdiction) for all defendants. Where the civil rights sought to be protected are of a substantial nature, where Plaintiff is a resident of the forum, where Defendants, conspiring together, have acted in this forum to set in train the events which injured Plaintiff, and where constitutional rights attaching locally have been violated,

this Court should not interpret jurisdiction and venue provisions in an illiberal spirit.

III

MISCELLANEOUS QUESTIONS

Plaintiff does not and has never relied upon the "Freedom of Information Act" as a basis for her cause of action. Defendant DAY's erroneous assumption that she has done so (DAY, p.7) is understandable, since 5 U.S.C. § 552 is the Freedom of Information Act. Plaintiff has cited 5 U.S.C. § 551, et seq., which is known as the Administrative Procedure Act (see popular name table, U.S.C.A.) as providing jurisdiction against the UNITED STATES and Defendant BUSH.

Defendant MITCHELL continues to flail the dead horse of the Federal Tort Claims Act (MITCHELL, p. 6-7). Plaintiff has never relied upon the Federal Tort Claims Act, and has specifically disavowed any such reliance upon FTCA at the last hearing in this matter. She again disclaims any efforts to establish a cause of action under the Federal Tort Claims Act.

The Court, during the last hearing on this matter, raised the question of whether or not 28 U.S.C. § 1391(e) required all Defendants to be officers or employees of the United States before Section 1391(e) venue provisions could be applied to any United States employees. The weight of authority holds that Section 1391(e) venue provisions can apply to Government Defendants without the preclusion of joining other defendants who are otherwise subject to process. Kletschkav. Driver, 411 F. 2d 436 (2d Cir. 1969); 1 MOORE'S FEDERAL PRACTICE, ¶ 0.142 [7], and cases cited therein.

CONCLUSION

The Defendants in this case have told the Court that;

(1) We never did anything;

(2) If we did anything, so what?

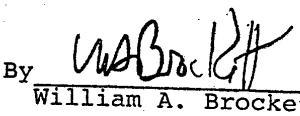
(3) If we did anything and it matters, we were never here in California.

Plaintiff asks the Court to reject this line of reasoning on the basis of the above analysis and Plaintiff's previous Response to Motions to Dismiss the Second Amended Complaint. The motions to dismiss or for summary judgment should be denied, and Plaintiff should be allowed to commence discovery in this action.

Dated: March 9, 1976

KIPPERMAN, SHAWN & KEKER

WILLIAM A. BROCKETT

By 
William A. Brockett

in two? Probability theory is concerned with chance or with the unknown factors which produce the results. Once events have taken place and the outcomes are known, the mathematical probability in each case is 1. The probabilities are therefore:

Head on first throw $p = 1$
" " second " $p = 1$
" " third " $p = \frac{1}{2}$

and the probability of completing a run of three consecutive heads is therefore equal to $1 \times 1 \times \frac{1}{2} = \frac{1}{2}$.

Having actually thrown the first two heads, we have eliminated the adverse chance factors in those two throws. The probability of complete success improves with each successful stage completed just as a tennis player's chances of winning a tournament improve with each match won, assuming unkindly that players are so well matched that the results depend upon chance.

The multiplication law can give rise to results which at first sight are almost unbelievable. Suppose that there are thirty people at a meeting. What is the probability that two of these will have the same birthday (that is, date of day and month but not necessarily of year)? There are 365 days in an ordinary year and there are therefore 365 different possible birth-dates. What would you expect the chances of a duplication to be? One in twelve perhaps or, say, one in ten?

The easiest way to calculate this ratio is by first calculating the probability of total failure; that is, the probability that there is not a duplication of birth-rates. The first man has 365 'possible' dates. The second man therefore has 364 chances out of 365 of not duplicating the first man's date. Similarly, the third man has 363 chances of not duplicating either of the dates of the first two men. The chances of failure on the part of the remaining twenty-seven men reduce by 1 in 365 at each remove so that the thirtieth man has 336 chances in 365 of not duplicating any of the dates of the preceding twenty-nine men. The total probability of failure therefore is the product of the twenty-nine terms:

$$\frac{364}{365} \times \frac{363}{365} \times \frac{362}{365} \times \ldots \times \frac{336}{365}$$

and this is approximately equivalent to 0·3. This, however, is the probability of failure. The probability of success or failure is 1, since one of the results must be achieved, and the probability of success is therefore

$$1 - 0{\cdot}3 = 0{\cdot}7$$

There are therefore approximately seven chances out of ten that there will be a birth-date duplication. This is quite out of character with what might have been considered probable without the assistance of mathematics and it serves to demonstrate that probabilities should never be assessed intuitively unless the intuition is really a manifestation of experience.

In all the foregoing problems we have assigned finite limits to the calculations by stating the number of events to be considered. That is, what results may be obtained in three tosses of a coin or in two selections of coloured balls or amongst thirty people. All these are finite classes. A famous problem – the St Petersburg Paradox – will illustrate the kind of difficulty which may be encountered where there are no finite limits. We return to our coin-tossing with the assistance of Mr A and a Banker. Mr A tosses a coin and, if a head appears, the Banker pays him £1 and the experiment is over. If, however, Mr A does not get a head on the first throw he continues to throw until he does. With every throw his possible prize is doubled. Thus if he tosses a head on the second throw, he will win £2; on the third throw he will win £4 and so on. The problem is to assess what amount Mr A should pay the Banker for the privilege of playing, so that the game shall be a fair one, neither Mr A nor the Banker having an unfair advantage no matter how long the game continues.

The probability of a head on the first toss is $\frac{1}{2}$. The prize at this level is £1 and the value of Mr A's expectation is therefore 10 shillings. Mr A will win on the second toss only if his first throw was a tail and his second throw was a head, and the probability of this combination of results is $\frac{1}{2} \times \frac{1}{2}$. The prize at this level is £2 and the value of Mr A's expectation is therefore £2 $\times \frac{1}{4}$ which is again equal to 10 shillings. Similarly the value of his expectation is 10 shillings at every toss and he must therefore

APPENDIX "A"

COMPUTATION OF MAIL OPENING PROBABILITY:

.76% = .0076 (chance of any one letter being opened).

1 − .0076 = .9924 (chance any one letter will not be opened)

CHANCE AT LEAST ONE LETTER WAS OPEN

48 LETTERS = 1 − .6934 = .3066 = 30.7%

96 LETTERS = 1 − .4807 = .5193 = 51.9%

(.9924)^	number of letters ("n")
0•9924 × 0•9924 = 0•98485776	2
0•98485776 = 0•977372841	3
0•977372841 = 0•969944807	4
0•969944807 = 0•962573226	5
0•962573226 = 0•955257669	6
0•955257669 = 0•94799771	7
0•94799771 = 0•940792927	8
0•940792927 = 0•9336429	9
0•9336429 = 0•926547213	10
0•926547213 = 0•919505454	11
0•919505454 = 0•912517212	12
0•912517212 = 0•905582081	13
0•905582081 = 0•898699657	14
0•898699657 = 0•891869539	15
0•891869539 = 0•88509133	16
0•88509133 = 0•878364635	17
0•878364635 = 0•871689063	18
0•871689063 = 0•865064226	19
0•865064226 = 0•858489737	20
0•858489737 = 0•851965214	21
0•851965214 = 0•845490278	22
0•845490278 = 0•839064551	23
0•839064551 = 0•83268766	24
0• *	$n^{24} \times n^{24} = n$

0•83268766 ×	24
0•83268766 =	24
0•693368739	48

48 LETTERS – CHANCE NO ONE WILL BE OPENED →

0• *	$n^{48} \times n^{48} = n^{9}$
0•693368739 ×	48
0•693368739 =	48
0•480760208	96

96 LETTERS – CHANCE NO ONE WILL BE OPENED →

APPENDIX "B"

or once in four hundred times. One single sample may not therefore tell us very much, unless it is sufficiently large, but as statistical surveys become more frequent and as more knowledge is gained from more and more samples of the same population, so the better able are we to apply the fruits of experience to the assessment of the variables involved.

The probabilities so far discussed have been in connexion with sample means. Sampling, however, is very often carried out to ascertain what proportion of a population possesses specified characteristics. For each characteristic, each member of the population must either possess it or not, provided it is a clear-cut concept so that there is no confusion caused by marginal differences. Individuals may then be categorized in definite classifications of the 'haves' and 'have-nots', and calculations may be made to assess the probability that an individual possesses the characteristic. The standard error for a proportion becomes

$$\text{s.e.} = \sqrt{\frac{pq}{n}}$$

where p represents the probability that an individual possesses the characteristic and q represents the probability that he does not. This is another way of saying that p represents the estimated proportion of individuals who possess the characteristic, and q represents the proportion of individuals who do not. Thus if the estimated proportion of individuals possessing the characteristic is 25%, then the standard error (expressed as a percentage) is

$$\sqrt{\frac{25 \times 75}{n}}$$

If the standard error is 2% then

$$2 = \sqrt{\frac{25 \times 75}{n}}$$

whence n is approximately equivalent to 469. A sample size of 469 would therefore be necessary in order that the desired standard error of 2% might be derived from the sample, and we could then be 95% confident that the parametric proportion would lie

within the limits of (25 ± 4)%, or between 21 and 29%. Similarly, n gives the sample size which, for any estimated population proportion, will give the desired degree of accuracy as measured by the size of the standard error.

Here again it is mainly the desired degree of accuracy required rather than the size of the population which decides the sample size. Nevertheless the relationship between sample size and population size does have some effect, but this is negligible unless the sample represents a large proportion of the population. It is in fact generally ignored in practice unless the sample size represents at least one-tenth of the total population, and is also often ignored unless it represents one-fifth of the population. At this latter level the standard error, unless adjusted, would be overstated by about 11%.[1] A sample size of 1,000, however, will give a standard error value of sufficient accuracy with regard to a population of 50,000, and a similarly sized sample would give an equally accurate result for a population of 100,000.

Subject to due consideration being given to the formula for the generation of optimum sample sizes, the actual size of a sample will very often depend upon the further consideration of hard cash. Surveys are expensive exercises and it is necessary to balance the estimated value of the results desired against the estimated cost of obtaining those results. If only a limited sampling survey is possible within a limited cash structure and this will not give sufficiently accurate results, then either the amount of cash to be made available for the project must be increased or otherwise the project should be abandoned. To conduct a survey which is known from the start to be incapable of giving a desired accuracy merely wastes time and labour which might have been more profitably employed.

The expense of surveys makes it desirable to use the same sample for a number of different though possibly related characteristics. Odhams Press, for instance, carry out a survey of the market for domestic appliances and furniture. They ask each respondent not only whether she has a gas cooker but also whether she has an electric kettle; these are related yet quite

1. See Wallis and Roberts, *Statistics – A New Approach*, Methuen, p. 369.

Appendix "C"

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: February 28, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-6253 Filed 3-11-75;8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 233—INSPECTION SERVICE AUTHORITY

Mail Covers

The Postal Service has decided to republish the regulations governing the use of the mail cover as an investigative technique to make these regulations more accessible to the public, and to discourage confusion concerning the nature and uses of this important law enforcement tool. In this republication the Postal Service has updated the provisions dealing with the delegation of mail cover authority to reflect the present organizational structure of the Postal Inspection Service. However, no substantive changes have been made in mail cover procedures or safeguards.

The use of mail covers has been governed by regulations contained in § 233.2 of the *Postal Service Manual*, supplemented by provisions formerly contained in Part 861 of the *Postal Manual* of the old Post Office Department which have been retained as operating instructions by the Postal Inspection Service. The combination of these provisions under one heading in the Code of Federal Regulations will improve their accessibility and facilitate their interpretation.

A mail cover is a relatively simple investigative or law enforcement technique. It involves recording the name and address of the sender, the place and date of postmarking, the class of mail, and any other data appearing on the outside cover of a piece of mail. Mail is not delayed in connection with a mail cover, and the contents of first-class mail are not examined. As sanctioned by law, the contents of second-, third-, and fourth-class mail matter may be examined in connection with a mail cover.

In their new format, the mail cover regulations of the Postal Service continue existing procedural and substantive safeguards designed to assure the confidentiality of the mail cover process and prevent the unjustified use of mail covers. Mail covers are available to law enforcement agencies only in order to obtain information in the interest of (1) protecting the national security, (2) locating a fugitive, or (3) obtaining evidence of commission or attempted commission of a crime.

Accordingly, the Postal Service adopts the following amendments to the provisions concerning Postal Service management organization, procedure, and practice with regard to mail covers, effective March 14, 1975:

§ 233.2 [Redesignated]

1. In 39 CFR Part 233, § 233.2 *Withdrawal of mail privileges* is renumbered as § 233.3, and a new § 233.2 is added to read as follows:

§ 233.2 Mail covers.

(a) *Policy.* The U.S. Postal Service maintains rigid controls and supervision with respect to the use of mail covers as investigative or law enforcement techniques.

(b) *Scope.* These regulations constitute the sole authority and procedure for initiating, processing, placing and using mail covers.

(c) *Definitions.* For purposes of these regulations, the following terms are hereby defined:

(1) "Mail cover" is the process by which a record is made of any data appearing on the outside cover of any class of mail matter, including checking the contents of any second-, third-, or fourth-class mail matter as now sanctioned by law, in order to obtain information in the interest of (i) protecting the national security, (ii) locating a fugitive, or (iii) obtaining evidence of commission or attempted commission of a crime.

(2) "Fugitive" is any person who has fled from the United States or any State, a Postal Inspector in Charge, and a limited number of their designees, are authorized to order mail covers. Only the Chief Postal Inspector, or his designees at Inspection Service Headquarters, may order a national security mail cover. Mail covers do not include matter mailed between the mail cover subject and his known attorney-at-law; and except in fugitive cases, no mail cover remains in force when the subject has been indicted for any cause. Any data concerning mail covers is made available to any mail cover subject in any legal proceeding through appropriate discovery procedures. These administrative safeguards afford significant protection to the privacy of the users of the mail, without compromising the effectiveness of the mail cover.

(4) "Law enforcement agency" is any authority of the Federal Government or any authority of a State or local government one of whose functions is to investigate the commission or attempted commission of acts constituting a crime.

(d) *Authorizations—Chief Postal Inspector.* (1) The Chief Postal Inspector is the principal officer of the Postal Service in the administration of all matters governing mail covers. He may delegate any or all authority in this regard to not more than two designees at Inspection Service Headquarters. Except for national security mail covers, he may also delegate any or all authority to the Regional Chief Postal Inspectors. All such delegations of authority shall be issued through official directives.

(2) The Chief Postal Inspector, or his designee, may order mail covers under the following circumstances:

(i) When he has reason to believe the subject or subjects of the mail cover are engaged in any activity violative of any postal statute.

(ii) When written request is received from any law enforcement agency wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover is necessary to (A) protect the national security, (B) locate a fugitive, or (C) obtain information regarding the commission or attempted commission of a crime.

(iii) Where time is of the essence, the Chief Postal Inspector, or his designee, may act upon an oral request to be confirmed by the requesting authority in writing within 2 business days. However, no information shall be released until an appropriate written request is received.

(e) *Postal Inspectors in Charge.* (1) All Postal Inspectors in Charge, and not more than three designees pursuant to delegations in writing, may order mail covers within their districts under the following circumstances:

(i) Where he has reason to believe the subject or subjects are engaged in an activity violative of any postal statute.

(ii) Where written request is received from any law enforcement agency of the Federal, State, or local governments, wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover would aid in the location of a fugi-

the possible location of the person wanted must be telephoned or telegraphed immediately to the postal inspector in charge. Remove circulars immediately when notified.

(b) *Rewards.* (1) Rewards will be paid in the amounts and under the conditions stated in Sign 32, Notice of Reward, for the arrest and conviction of persons accused of the following postal offenses:

(i) Robbery or attempted robbery.

(ii) Mailing bombs or poison.

(iii) Post office burglary.

(iv) Stealing or unlawful possession of mail or money or other property of the United States.

(2) The postmaster or a designated employee should personally present reward signs to station agents, railroad detectives, police officers, sheriffs and their deputies, if practicable, and encourage their cooperation in protecting mail and Government property.

[illegible]: The text of Sign 32, referred to in paragraph (b)(1) of this section, reads as follows:

The United States Postal Service will pay a reward for information and services leading to the arrest and conviction of any person for the following offenses:

ROBBERY

1. Not to exceed $3,000 for robbery or attempted robbery of any custodian of any mail, or money or other property of the United States under the control and jurisdiction of the U.S. Postal Service, if such custodian is wounded, or his life jeopardized with a dangerous weapon; but not to exceed $1,500 if the custodian is not wounded, or his life not jeopardized with a dangerous weapon.

MAILING OF BOMBS OR POISON

2. Not to exceed $3,000 for mailing or causing to be mailed any poison, bomb, device, or composition, with the intent to kill or harm another, or injure the mails or other property.

[illegible]. Not to exceed $300 for mailing or causing to be mailed any poison, bomb, device, or composition which may kill or harm another, or injure the mails or other property.

BURGLARY OF POST OFFICE

4. Not to exceed $300 for breaking into or attempting to break into a post office, station, branch, or building used wholly or partially as a post office with intent to commit a larceny or other depredation in that part used as a post office.

THEFT OF MAIL

5. Not to exceed $300 for the theft or attempted theft of any mail, or the contents thereof, or the theft of money or any other property of the United States while in the custody and control of the U.S. Postal Service, from any custodian, postal vehicle, railroad depot, airport, or other transfer point, post office or station or receptacle or depository established, approved, or designated by the Postmaster General for the receipt of mail.

EMBEZZLEMENT OF MAIL

6. Not to exceed $300 for embezzlement of mail or the contents thereof by a mail carrier on a mail messenger or star route.

OFFENSES INVOLVING MONEY ORDERS

7. Not to exceed $300 for the altering, forging, uttering, or passing of postal money orders stolen from a post office, station, branch, or postal custody.

GENERAL PROVISIONS

8. The U.S. Postal Service will also pay rewards as stated above for information and services leading to the arrest and conviction of any person:

(a) as an accessory to any of the above crimes;

(b) for receiving or having unlawful possession of any mail, money, or property secured through the above crimes;

(c) for conspiracy to commit any of the above crimes.

9. When a person has been adjudged a juvenile delinquent for having committed any of the above crimes, the same reward may be paid as though such person had been convicted of such crime.

10. The term "custodian" as used herein includes any person having lawful charge, control, or custody of any mail matter, or any money or other property of the United States under the control and jurisdiction of the U.S. Postal Service.

11. A reward may be paid for the conviction of a person for an offense listed above, even though arrested for committing another offense.

12. When an offender is killed while committing a crime listed above or in resisting lawful arrest, the same reward may be paid to a person rendering information and services as though the offender had been arrested and brought to conviction.

13. The amount of the reward to be paid will be based on the importance of services rendered, character of the offender, risks and hazards involved, time spent, and expenses incurred. Maximum rewards will be paid only when services were of the maximum value.

14. The Postal Service will reject a claim where there has been collusion, or improper methods have been used to effect an arrest or to secure a conviction. It has the right to allow only one reward where several persons were convicted of the same offense, or one person was convicted of several offenses.

15. A written claim must be submitted to the Postal Inspector in Charge of the Division in which the crime was committed within 6 months from the date of conviction of an offender or the date of his death, arrest. Applications for the filing of claims may be obtained from the Inspector in charge.

[39 U.S.C. 401, 404(8)] [36 FR 4673, Mar. 12, 1971, as amended at 37 FR 15305, July 29, 1972] Authority - 39 USC 401, 404(8)

§ 233.2 Mail covers.

(a) *Policy.* The U.S. Postal Service maintains rigid controls and supervision with respect to the use of mail covers as investigative or law enforcement techniques.

(b) *Scope.* These regulations constitute the sole authority and procedure for initiating, processing, placing and using mail covers.

(c) *Definitions.* For purposes of these regulations, the following terms are hereby defined:

(1) "Mail cover" is the process by which a record is made of any data appearing on the outside cover of any class of mail matter, including checking the contents of any second-, third-, or fourth-class mail matter as now sanctioned by law, in order to obtain information in the interest of (i) protecting the national security, (ii) locating a fugitive, or (iii) obtaining evidence of commission or attempted commission of a crime.

(2) "Fugitive" is any person who has fled from the United States or any State, territory, the District of Columbia, or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime or to avoid giving testimony in a criminal proceeding.

(3) "Crime", for purposes of these regulations, is any commission of an act or the attempted commission of an act that is punishable by law by imprisonment for a term exceeding 1 year.

(4) "Law enforcement agency" is any authority of the Federal Government or any authority of a State or local government one of whose functions is to investigate the commission or attempted commission of acts constituting a crime.

(d) *Authorizations—Chief Postal Inspector.* (1) The Chief Postal Inspector is the principal officer of the Postal Service in the administration of all matters governing mail covers. He may delegate any or all authority in this regard to not more than two designees at Inspection Service Headquarters. Except for national security mail covers, he may also delegate any or all authority to the Regional Chief Postal Inspectors. All such delegations of authority shall be issued in writing and shall direct [illegible]

(2) The Chief Postal Inspector, or his designee, may order mail covers under the following circumstances:

(i) When he has reason to believe the subject or subjects of the mail cover are engaged in any activity violative of any postal statute.

(ii) When written request is received from any law enforcement agency wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover is necessary to (A) protect the national security, (B) locate a fugitive, or (C) obtain information regarding the commission or attempted commission of a crime.

(iii) Where time is of the essence, the Chief Postal Inspector, or his designee, may act upon an oral request to be confirmed by the requesting authority in writing within 2 business days. However, no information shall be released until an appropriate written request is received.

(e) *Postal Inspectors in Charge.* (1) All Postal Inspectors in Charge, and not more than three designees pursuant to delegations in writing, may order mail covers within their districts under the following circumstances:

(i) Where he has reason to believe the subject or subjects are engaged in an activity violative of any postal statute.

(ii) Where written request is received from any law enforcement agency of the Federal, State, or local governments, wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover would aid in the location of a fugitive, or that it would assist in obtaining information concerning the commission or attempted commission of a crime.

(2) Except where mail covers are ordered by the Chief Postal Inspector, or his designee, requests for mail covers must be approved by the Postal Inspector in Charge, or his designee, in each district in which the mail cover is to operate.

(3) Where time is of the essence, the Postal Inspector in Charge, or his designee, may act upon an oral request to be confirmed by the requesting authority in writing within 2 business days. However, no information shall be released until an appropriate written order is received.

(f) *Limitations.* (1) No person in the Postal Service, except those employed for that purpose in dead-mail offices, may break or permit breaking of the seal of any matter mailed as first-class mail without a search warrant, even though it

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nay contain criminal or otherwise unmailable matter, or furnish evidence of the commission of a crime.

(2) No mail covers shall include matter mailed between the mail cover subject and his known attorney-at-law.

(3) No officer or employee of the Postal Service other than the Chief Postal Inspector, or Postal Inspectors in Charge, and their designees, are authorized to order mail covers. Under no circumstances shall a postmaster or postal employee furnish information as defined in § 233.2(c) to any person except as authorized by the Chief Postal Inspector, a Postal Inspector in Charge, or their designees.

(4) Excepting mail covers ordered upon subjects engaged, or suspected to be engaged, in any activity against the national security, or activity violative of any postal law, no mail cover order shall remain in force and effect for more than 30 days. At the expiration of such period, or prior thereto, the requesting authority may be granted additional 30-day periods under the same conditions and procedures applicable to the original request.

(5) No mail cover shall remain in force longer than 120 days unless personally approved for further extension by the Chief Postal Inspector.

(6) Excepting fugitive cases, no mail cover shall remain in force when the subject has been indicted for any cause. If the subject is under investigation for further criminal violations, a new mail cover order must be requested consistent with these regulations.

(g) *Records.* (1) All requests for mail covers, with records of action ordered thereon, and all reports issued pursuant thereto, shall be deemed within the custody of the Chief Postal Inspector. However, the physical housing of this data shall be at the discretion of the Chief Postal Inspector.

(2) The Postal Inspectors in Charge shall promptly submit copies of all requests for mail covers and the determination made thereon to the Chief Postal Inspector, or to his designee for review.

(3) If the Chief Postal Inspector, or his designee, determines a mail cover was improperly ordered by a Postal Inspector in Charge or his designee all data acquired while the cover was in force shall be destroyed, and the requesting authority notified of the discontinuance of the mail cover and the reasons therefor.

(4) Any data concerning mail covers shall be made available to any mail cover subject in any legal proceeding through appropriate discovery procedures.

(5) The retention period for files and records pertaining to mail covers shall be 8 years.

(h) *Reporting to Requesting Authority.* Once a mail cover has been duly ordered, authorization may be delegated to any officer in the Postal Service to transmit mail cover reports directly to the requesting authority. Where at all possible, the transmitting officer should be a Postal Inspector.

(i) *Review.* (1) The Chief Postal Inspector, or his designee, shall review all actions taken by Postal Inspectors in Charge or their designees upon initial submission of a report on a request for mail cover.

(2) The Chief Postal Inspector's determination in all matters concerning mail covers shall be final and conclusive and not subject to further administrative review.

[40 FR 11579, Mar. 12, 1975]

§ 233.3 [Reserved] Withdrawal of mail privileges.

(a) *False representation and lottery mail orders.* (1) When a person or concern is using the mails to conduct a lottery or scheme seeking remittances in the mail based on false representations, the Postal Service, upon satisfactory evidence received by it, may order such mail returned to senders marked as the case may be, "Lottery Mail" or "Return to Sender: Order Issued Against Addressee for Violation of False Representation Law." The judicial officer acts on behalf of the Postal Service in these matters.

(2) Notice of these orders is published in the Postal Bulletin.

(3) Notices of orders against foreign enterprises are cumulated in Publication 43 (distributed to exchange offices).

(4) Each order against a domestic enterprise is enforced only by the post office designated in the order. Each order against a foreign enterprise is enforced by all exchange offices.

(b) *Fictitious name or address orders.* When a person or concern uses a fictitious, false, or assumed name, title, or address to conduct an unlawful business through the mail, the Postmaster General may, upon evidence satisfactory to him, order such mail returned to the sender marked "Fictitious." Fictitious name or address orders appear in the Postal Bulletin and must be strictly observed. See § 123.4(d) of this chapter.

[36 FR 20872, Oct. 6, 1971. Redesignated at 40 FR 11579, Mar. 12, 1975]

PART 235—DEFENSE DEPARTMENT LIAISON

Sec.
235.1 Postal Service to the Armed Forces.
235.2 Civil preparedness.

AUTHORITY.—39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91-375, 84 Stat. 719.

§ 235.1 Postal Service to the Armed Forces.

(a) Publication 38, Postal Agreement with the Department of Defense, defines the Postal Service's responsibilities for providing postal service to the Armed Forces.

(b) The Chief Inspector is responsible for military liaison.

(c) Postal inspectors provide liaison between postmasters and military commanders, visit military installations as required, and make any necessary recommendations.

[38 FR 26193, Sept. 9, 1973]

§ 235.2 Civil preparedness.

(a) *Mission.* The prime objective of postal emergency preparedness planning is to maintain or restore essential postal service in a national emergency, natural disaster, or disruptive domestic crisis.

(b) *Emergency Coordinator.* The Chief Inspector is designated Emergency Coordinator for the Postal Service. As Emergency Coordinator, he provides general direction and coordination of the following programs:

(1) National Civil Preparedness and Defense Mobilization;

(2) Natural Disaster Preparedness;

(3) Emergency Response to Disruptive Domestic Crisis.

(c) *Regional Emergency Coordinator.* The Chief Inspector may delegate authority to Regional Chief Postal Inspectors, or others, for the function of Regional Emergency Coordinator and the general direction and coordination of all such programs within the Postal Regions, as are conducted by him at the National level.

(d) *Postmaster General emergency line of succession.* (1) Deputy Postmaster General; (2) Senior Assistant Postmaster General, Administration; (3) Senior Assistant Postmaster General, Operations; (4) Senior Assistant Postmaster General, Finance; (5) Chief Inspector.

(e) *Headquarters and field lines of succession.* Each Headquarters organizational unit shall establish its own internal line of succession to provide for continuity under emergency conditions. Each Regional Postmaster General, Regional Chief Inspector, Postal Data Center Director, Inspector in Charge, and postmaster at first-class post offices shall prepare a succession list of officials who will act in his stead in the event he is incapacitated or absent in an emergency. Orders of succession shall be shown by position titles, except those of the Inspection Service may be shown by names.

(f) *Field responsibilities.* Postmasters and heads of other installations shall:

(1) Carry out civil preparedness assignments, programs, etc., as directed by regional officials.

(2) Comply with, and cooperate in community civil preparedness plans (including exercise) for evacuation, take cover and other survival measures prescribed for local populations.

(3) Designate representatives for continuing liaison with local civil preparedness organizations where such activity will not interfere with normal duties.

(4) Endeavor to serve (at their own option) as members on the staff of the local civil preparedness director, provided such service will not interfere with their primary postal responsibility in an emergency.

(5) Authorize and encourage their employees to participate voluntarily in non-postal pre-emergency training programs and exercises in cooperation with States and localities.

[38 FR 26193, Sept. 9, 1973]

Post Office Organization and Administration

PART 241—ESTABLISHMENT AND DISCONTINUANCE

Sec.
241.1 Post offices.
241.2 Stations and branches.

AUTHORITY: The provisions of this Part 241 issued under 39 U.S.C. 401.

§ 241.1 Post offices.

(a) *Establishment.* See § 113.1 of this chapter.

(b) *Classification.* As of July 1 each year, post offices are classified by the Postmaster General based on the allow-

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in addition, the interest of his minor child, or children, and other individuals related to the employee by blood who are residents of the employee's household.

(h) *Nominal Value.* In respect to food and refreshment, "nominal value" means not in excess of what an employee would ordinarily and generally spend for food and refreshment if he were paying his own bill. In respect to gifts, nominal value means an item having a retail value of not more than $2.00.

(i) *Business Dealings with the Postal Service.* Any contract, work, or business, or the performance thereof, or any litigation arising out of or involving any contract, work, or business, or the sale or acquisition of any property, real or personal, or any interest in property, whose expense, price, or consideration is payable by or to the Postal Service.

(j) *This Code.* The Code of Ethical Conduct for Postal Employees which consists of the regulations of the Postal Service which are published in 39 CFR 447.11 through 447.91 inclusive.

[39 FR 1890, Jan. 16, 1974; 39 FR 4081, Feb. 1, 1974]

Subpart I—Statutory Provisions

The laws mentioned in this Code are listed for information only. Nothing in this Code constitutes an interpretation or construction of these laws which would bind the United States Postal Service or the United States. Failure to mention a statute does not excuse any person from complying with it.

§ 447.91 Statutes and regulations applicable to postal employees.

The following statutes are applicable to all employees in the Postal Service:

(a) House Concurrent Resolution 175, 85th Congress, 2nd Session, 72 Stat. B12, the "Code of Ethics for Government Service." (Quoted above at § 447.12)

(b) Prohibition against proscribed political activities (5 U.S.C. subchapter III of chapter 73 and 18 U.S.C. 602, 603, 607, and 609).

(c) Prohibition against appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(d) Prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(e) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(f) Prohibition against acting as the agent for a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(g) Prohibition against unauthorized taking or use of documents relating to claims against or by the Government (18 U.S.C. 285).

(h) Prohibition against postal employees becoming interested in any contract for carrying the mail (18 U.S.C. 440).

(i) Prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(j) Prohibition against

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(k) Prohibitions against

(1) Disclosure of classified information (18 U.S.C. 798), and

(2) Disclosure of confidential information (18 U.S.C. 1905).

(l) Prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(m) Prohibition against participation in lottery enterprises (18 U.S.C. 1303).

(n) Prohibition against Carriage of Mail contrary to law (18 U.S.C. 1693).

(o) Prohibition against Desertion of Mail (18 U.S.C. 1709).

(p) Prohibition against Obstruction of Correspondence (18 U.S.C. 1702).

(q) Prohibition against Delay or Destruction of Mail or newspapers (18 U.S.C. 1703).

(r) Prohibition against theft of mail (18 U.S.C. 1709).

(s) Prohibition against theft of newspapers (18 U.S.C. 1710).

(t) Prohibition against Misappropriation of Postal Service funds (18 U.S.C. 1711).

(u) Prohibition against falsification of postal returns (18 U.S.C. 1712).

(v) Prohibition against improper issuance of money orders (18 U.S.C. 1713).

(w) Prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(x) Prohibition against sale or pledge of stamps (18 U.S.C. 1721).

(y) Prohibition against unlawful collection of postage (18 U.S.C. 1726).

(z) Prohibition against failure to account for postage (18 U.S.C. 1727).

(aa) Prohibition against improper approval of bond or sureties (18 U.S.C. 1732).

(bb) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(cc) Prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(dd) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(ee) Prohibition against disclosure of lists of names and addresses (39 U.S.C. 412).

(ff) Prohibition against making or receiving political recommendation for appointment or promotion (39 U.S.C. 1002).

(gg) Prohibition against receipt of unauthorized fees (39 U.S.C. 1009).

(hh) Oath of office required for all postal employees (39 U.S.C. 1011).

(ii) Prohibition against opening first-class mail (39 U.S.C. 3623).

NOTE: In addition to these statutes, Executive Order No. 11222 of May 8, 1965, as made applicable to the Postal Service by Executive Order No. 11590 of April 23, 1971, prescribes standards of ethical conduct for officers and employees of the Government.

SUBCHAPTER G [RESERVED]

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE

PART 601—PROCUREMENT OF PROPERTY AND SERVICES [1]

Sec.

AUTHORITY: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605. [1]

SOURCE: The provisions of this Part 601 appear at 36 FR. 23217, Dec. 7, 1971, unless otherwise noted.

§ 601.100 Postal Contracting Manual; incorporation by reference.

Section 552(a) of title 5, United States Code, relating to public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its Postal Contracting Manual (PCM), Publication 41, a loose-leaf publication.

§ 601.101 Effective date.

The provisions of the Postal Contracting Manual are applicable, effective January 1, 1972, with respect to all covered procurement activities of the Postal Service. However, the Manual or portions thereof may be placed into effect at an earlier time by individual procurement officers of the Postal Service for procurement activities under their jurisdiction after December 7, 1971.

§ 601.102 Applicability and coverage.

(a) The Postal Contracting Manual applies to all Postal Service procurements of property and services.

(b) The Postal Contracting Manual supersedes interim regulations on the procurement of property and services published in the FEDERAL REGISTER of June 30, 1971 (36 F.R. 12451).

[36 F.R. 23217, Dec. 7, 1971, as amended at 37 F.R. 1215, Jan. 11, 1973]

§ 601.103 Content of Postal Contracting Manual.

The Postal Contracting Manual consists of 27 sections, some of which are reserved for subsequent use, and two appendices, as follows:

(a) Section 1 covers general procurement policies, including the delegation of procurement responsibilities and authorities; procedures for contracting with small and minority-owned business concerns, and concerns in labor surplus areas; and Buy American Act

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International Life Ins. Co., supra, 355 U.S. 220, 223. However, we cannot overlook the fact that defendant's contacts with California, although insufficient to justify general jurisdiction over him, are far more extensive than those of the defendant in *McGee.*[7] The question of jurisdiction cannot be decided by the application of some precise formula. The seminal case of *Internat. Shoe Co. v. Washington, supra,* 326 U.S. 310, 319 [90 L.Ed. 95, 103-104], pointed out that it is not a question whether the defendant's activity within the state "is a little more or a little less." The court there rejected a rigid test in favor of a flexible approach grounded in the quality and nature of the activity of the defendant in the state seeking to exercise jurisdiction over him, fairness to the parties, and the orderly administration of the law. Under this principle, the exercise of jurisdiction over defendant would not violate the dictates of due process if the factors of convenience discussed below weigh in plaintiff's favor.[8]

We next consider whether it would be fair and reasonable to subject defendant to the jurisdiction of California in light of the inconvenience to him in defending an action in this state, when balanced against the interests of plaintiff in suing locally and of the state in assuming jurisdiction.

(4) Preliminarily, we note plaintiff's assertion that we are precluded from considering the balance of these conveniences because defendant did not move to dismiss the action on the ground of *forum non conveniens.* (Code Civ. Proc., §§ 410.30, subd. (a), 418.10, subd. (a)(2).)

Traveler's Health Assn. v. Virginia, supra, 339 U.S. 643; *Buckeye,* and *Fisher* all indicate that at least in situations when, as here, justification for the exercise of jurisdiction is not obvious, the convenience of the

[7] *McGee* also involved a nonresident defendant over whom the forum did not have general jurisdiction. There, the defendant insurance company was required to defend an action in California, the state of plaintiff's residence, even though the insurer's sole contact with California was the solicitation of, and receipt of premiums for, the life insurance contract being sued on. It was held that, notwithstanding the attenuated nature of the relationship between defendant and California, the contract sued upon had a "substantial connection" to defendant's activities here and that California had an interest in providing effective redress for its residents when nonresident insurers refused to pay claims on insurance solicited here.

[8] Defendant relies on *Watson's Quality Turkey Products, Inc. v. Superior Court* (1974) 37 Cal.App.3d 360 [112 Cal.Rptr. 345], in arguing for a contrary result. The case is not apposite. In *Watson's* it was held that there was no jurisdiction over a nonresident corporation because its only relationship to the state was a subsidiary doing business in the state, approximately three years of sporadic business unrelated to the cause of action and rental of an office for a few months.

"E"
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parties is a factor to be considered in determining whether it would be fair to exercise jurisdiction over a defendant who resides in another state. (See *Martin* v. *Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472, 476 [108 Cal.Rptr. 23].)

In *Fisher* we listed some of the considerations involved in this balance: the relative availability of evidence and the burden of defense and prosecution in one place rather than another; the interest of a state in providing a forum for its residents or regulating the business involved; the ease of access to an alternative forum; the avoidance of a multiplicity of suits and conflicting adjudications; and the extent to which the cause of action arose out of defendant's local activities.

(3b) In the circumstances of this case the consideration weighing most strongly in favor of a California forum is the relative burden of defense and prosecution on defendant and plaintiff. Defendant states that Nevada is a convenient forum because the witnesses to the accident reside there. While some of the witnesses who will testify at the trial reside in Nevada, plaintiff was also a witness to the accident and she is a California resident. Moreover, there is evidence in California on the amount of plaintiff's damages; and from the perspective of a Nebraska resident faced with litigation outside his state, there is little difference in the burden between defending in Nevada or California. (Cf. *Fisher Governor Co. v. Superior Court, supra,* 53 Cal.2d 222, 226.) California has an interest in providing a forum since plaintiff is a California resident.

The interstate character of defendant's business is also significant in this balance. Defendant's operation, by its very nature, involves a high degree of interstate mobility and requires extensive multi-state activity. A necessary incident of that business was the foreseeable circumstance of causing injury to persons in distant forums. While the existence of an interstate business is not an independent basis of jurisdiction which, without more, allows a state to assert its jurisdiction, this element is relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here. (See von Mehren & Trautman, *Jurisdiction to Adjudicate* (1966) 79 Harv.L.Rev. 1121, 1167-1169, note also the emphasis placed on doing a pervasive multi-state business in New York Civ. Practice Law and Rules § 302 (a)(3)(ii), discussed in Homburger & Laufer, *Expanding Jurisdiction* (1966) 16 Buffalo L.Rev. 68, 72.)

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN, etc., et al., Plaintiff, vs. JOHN McCONE; RICHARD HELMS; JAMES SCHLESINGER; J. EDWARD DAY; WILLIAM COTTER; THOMAS KARAMESSINES; GEORGE BUSH, DIRECTOR OF CENTRAL INTELLIGENCE; JOHN MITCHELL; UNITED STATES OF AMERICA; and an unknown number of unnamed present and former employees of the United States, Defendants.	NO. C-75-1211 CBR AFFIDAVIT OF PLAINTIFF CONCERNING AIRMAIL

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAN FRANCISCO)

STEPHANIE KIPPERMAN, being first duly sworn, deposes and says:

I am the Plaintiff in this action.

Of my correspondence to the Soviet Union all or virtually all of such correspondence was by airmail. I either personally used aerograms, posted envelopes myself with airmail postage or directed that my mail be sent airmail. On one occasion

I sent the mail by some special type of mail which I believe was registered airmail. Many if not most of my letters were on aerograms.

Of my correspondence received from the Soviet Union, most of it has been airmail and I can recall no instance of receiving anything but airmail. Much of this mail was in pre-printed envelopes bearing the printed words "par avion" and pre-printed or pre-embossed stamp(s) or postage.

Stephanie Kipperman
STEPHANIE KIPPERMAN

Subscribed and sworn to before me this 5th day of March, 1976.

Lynne Becker
NOTARY PUBLIC

OFFICIAL SEAL
LYNNE BECKER
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Commission expires Nov. 25, 1979

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN, etc., et al.,

Plaintiff,

vs.

JOHN McCONE; RICHARD HELMS; JAMES SCHLESINGER; J. EDWARD DAY; WILLIAM COTTER; THOMAS KARAMESSINES; GEORGE BUSH, DIRECTOR OF CENTRAL INTELLIGENCE; JOHN MITCHELL; UNITED STATES OF AMERICA; and an unknown number of unnamed present and former employees of the United States,

Defendants.

NO. C-75-1211 CBR

AFFIDAVIT OF COUNSEL OPPOSING MOTION FOR DISMISSAL OR SUMMARY JUDGMENT

I, WILLIAM A. BROCKETT, first duly being sworn, depose and say that:

1. I am attorney for Plaintiff in the above-captioned action.

2. I have no information at this time enabling me to present facts directly controverting statements contained in the Affidavits of William E. Colby, Ethel Mendoza, and Sidney Stembridge, filed by Defendants herein.

3. The reason I am unable to directly controvert these Affidavits is that they are based on reviews of files of the Central Intelligence Agency. Defendants have resisted, and continue to resist, any inspection of said records by Plaintiff. Until I have had an opportunity for thorough discovery, along the lines suggested in my Proposed Discovery, filed February 23, 1976, it is impossible for me to directly contradict the claims made by the above-named affiants.

4. Based upon my knowledge of statistical sampling techniques, and my belief that such techniques are valid, if the data provided is accurate, I believe and thereon allege that the statistics provided in the Affidavit of Ethel Mendoza, subscribed and sworn to on February 25, 1976, are not reconcilable with the data provided in the Affidavit of Sidney Stembridge, dated February 26, 1976, and the information contained in Chapter 9 of the "Report to the President by the Commission on CIA Activities Within the United States", dated June, 1975 (hereinafter "Rockefeller Report").

5. I have prepared the Third Amended Complaint in the above-captioned action, and a Proposed Discovery application. In proceeding in these matters, I have relied upon information and belief provided to me from the following sources:

a. Chapter 9 of the above cited Rockefeller Report, attached to the Motion of Defendant United States for Stay of Proceedings, filed August 6, 1975, which excerpt is incorporated herein by reference.

b. Page 142-143 of the Rockefeller Report, discussing the existence of CHAOS computerized files, containing 300,000 names of American citizens, many of which whom, according to a common sense reading of this part of the report, must have come from the CIA New York mail intercept. A true copy of the pages relied upon are attached hereto as Exhibit A. In this,

and other exhibits, I have marked those portions to which I have attached greatest significance.

c. An undated newspaper story from the San Francisco Chronicle of August, 1975, datelined "Washington." A true copy of this news article is attached hereto as Exhibit B.

d. A UPI news story printed October 23, 1975, a true copy attached hereto as Exhibit C.

e. An associated press release, datelined "Washington" printed in the San Francisco Chronicle October 22, 1975. A true copy of this article is attached hereto as Exhibit D.

f. A New York Times news story, dated July 17, 1975, a true copy attached hereto as Exhibit E.

DATED: MAR 9 - 1976

WILLIAM A. BROCKETT

Subscribed and sworn to before me this 9TH day of March, 1976.

NOTARY PUBLIC, In and For the State of California.

ployed or directed the domestic use of any personal or electronic surveillance, wiretaps or unauthorized entries against any dissident group or individual. Any reporting by CHAOS agents in the United States was based upon information gained as a result of their personal observations and acquaintances.

G. Collection, Indexing, and Filing of Information by Operation CHAOS

The volume of information passing through the CHAOS group by mid-1969 was great. As Director Helms pointed out in his September 6, 1969, memorandum to the Directorates, the Operation's main problem was a backlog of undigested raw information which required analysis and indexing.

Not only was the Agency receiving FBI reports on antiwar activities, but with the rise of international conferences against the war, and student and radical travel abroad, information flowed in from the Agency's overseas stations as well.

The Operation had gathered all the information it could from the Agency's central registry. According to the Chief of the Operation, that information for the most part consisted of raw data gathered on individuals by the FBI which had not been analyzed by the Agency because the information contained nothing of foreign intelligence value.

CHAOS also availed itself of the information gained through the CIA's New York mail intercept. The Operation supplied a watch list of United States citizens to be monitored by the staff of the mail intercept. The number of mail items intercepted and sent to CHAOS during its operation were sufficient in number to have filled two drawers in a filing cabinet. All of these items were letters or similar material between the United States and the Soviet Union.

In addition, Operation CHAOS received materials from an international communications activity of another agency of the government. The Operation furnished a watch list of names to the other agency and received a total of approximately 1100 pages of materials overall. The program to furnish the Operation with these materials was not terminated until CHAOS went out of existence. All such materials were returned to the originating agency by the CIA in November 1974 because a review of the materials had apparently raised a question as to the legality of their being held by CIA. The materials concerned for the most part anti-war activities, travel to international peace conferences and movements of members of various dissident

Exhibit A

CPYRGHT

groups. The communications passed between the United States and foreign countries. None was purely domestic.

During one period, Operation CHAOS also appears to have received copies of booking slips for calls made between points in the United States and abroad. The slips did not record the substance of the calls, but rather showed the identities of the caller and the receiver, and the date and time of the call. The slips also indicated whether the call went through.

Most of the officers assigned to the Operation were analysts who read the materials received by it and extracted names and other information for indexing in the computer system used by the Operation and for inclusion in the Operation's many files. It appears that, because of the great volume of materials received by Operation CHAOS and the time pressures on the Operation, little judgment could be, or was, exercised in this process. The absense of such judgment led, in turn, to the inclusion of a substantial amount of data in the records of the Operation having little, if anything, bearing upon its foreign intelligence objective.

The names of all persons mentioned in intelligence source reports received by Operation CHAOS were computer-indexed. The computer printout on a person or organization or subject would contain references to all documents, files or communications traffic where the name appeared. Eventually, approximately 300,000 names of American citizens and organizations were thus stored in the CHAOS computer system.

The computerized information was streamed or categorized on a "need to know" basis, progressing from the least sensitive to the most sensitive. A special computer "password" was required in order to gain access to each stream. (This multistream characteristic of the computer index caused it to be dubbed the "Hydra" system.) The computer system was used much like a library card index to locate intelligence reports stored in the CHAOS library of files.

The files, like the computer index, were also divided into different levels of security. A "201," or personality, file would be opened on an individual when enough information had been collected to warrant a file or when the individual was of interest to another government agency that looked to the CIA for information. The regular 201 file generally contained information such as place of birth, family, occupation and organizational affiliation. In addition, a "sensitive" file might also be maintained on that same person. The sensitive file generally encompassed matters which were potentially embarrassing to the Agency or matters obtained from sources or by methods which the

Exhibit A

"Z-Covers"

Secret Mail-Opening Program by FBI — First Disclosure

Washington

FBI agents opened and photographed foreign and domestic mail beginning in 1958 and continued until possibly 1970, according to a source with direct knowledge of the secret operation.

The source said yesterday that the openings were centered in New York and Washington, where they involved chiefly mail adderessed to Soviet-bloc embassies and missions to the United Nations, but occurred also in other cities, including San Francisco.

He said that the openings, known within the FBI as "Z-covers," were accomplished without the authority of judicial search warrants, and were thus a violation of federal statutes prohibiting obstruction of the mails.

He added that the openings had been made with the assistance of "certain officials of the Post Office (who) knew what the FBI was doing."

Asked about the source's assertions, an FBI spokesman issued the following statement:

"In connection with its foreign counterintelligence responsibilities, the FBI did engage in opening of mail until 1966, when former Director J. Edgar Hoover ordered the activity to be discontinued.

"The motive behind it was solely to carry out FBI counterintelligence responsibilities in order to thwart espionage efforts directed against the United States by foreign powers.

"No activities of this nature were undertaken by the FBI after 1966."

A spokesman for the Postal Service said his agency would have no comment on the report "at this time."

The source's account and the FBI's unusual confirmation of part of his account represent the first disclosure that, like the Central Intelligence Agency, the FBI also participated in the opening and photographing of parcels and letters it believed to be of some intelligence value.

Asked whether any attempt had been made to obtain search warrants in the "Z-cover" program, the source said that the senders and recipients of the letters had not been the subjects of a criminal investigation by the bureau.

"How could you get a warrant?" We asked rhetorically.

The cutoff date of 1966 given by the FBI spokesman for the mail-opening operation is the same year in which Clarence M. Kelley, the FBI director, asserted at a recent press conference that bureau agents had ceased committing burglaries to gain foreign intelligence information.

There have been reports, however, that although former Director J. Edgar Hoover apparently trimmed back the bureau's counterespionage effort in 1966, such break-ins continued on a less formal basis, and there are also indications that the mail openings persisted as well.

The source cited, for example, a copy of a letter that was stolen from the FBI's office in Media, Pa., in 1971 and subsequently made available to several newspapers.

That letter, dated Nov. 30, 1970, was from Thomas E. Ingerson, a Boy Scout leader from Moscow, Ida., to the Soviet embassy in Washington, and contained a request for information about a prospective visit to the USSR the following summer by his troop of six Explorer Scouts.

Asked how, if the mail-opening operation was halted in 1966, the 1970 letter found its way to the FBI's files, the bureau spokesman replied that his agency would stand on its statement.

One well-informed source said he was virtually certain that the Idaho letter, which he said was "discussed quite a bit" within the bureau after it became public, had been obtained by the FBI as a result of a "Z-cover."

Another well-placed source said, however, that after 1966 the FBI continued to receive copies of correspondence produced by the CIA's mail interception program, which at that time was also centered in New York City and San Francisco.

Exhibit "B"

Ex-CIA Boss Helms Defends Mail Spying

WASHINGTON — (UPI) — Former CIA Director Richard Helms said Wednesday the spy agency conducted illegal mail snooping operations because "we were trying to get on with our job" of protecting the United States from penetration by Soviet agents.

Helms, testifying before the Senate Intelligence Committee, also said he might have told President Lyndon B. Johnson about the secret mail surveillance but he could not recall whether he had told President Richard M. Nixon directly.

In earlier testimony Wednesday, former Postmaster General J. Edward Day said he rejected CIA attempts to brief him on the mail project, saying: "Do I have to know about it?"

COMMITTEE chairman Frank Church, D-Idaho, questioned Helms closely about the CIA's secret surveillance of mail between American citizens and correspondents in communist nations, a project that intercepted millions of pieces of mail for 20 years until it was stopped in 1973.

"You were aware mail openings were illegal?" Church asked.

"I'm not a lawyer," Helms responded. "We were given a charge in the late '40s and early '50s . . . of protecting the U.S. government, the CIA and its installations against penetration."

Helms said few techniques existed for doing this "most difficult job" in the early Cold War years, before sophisticated electronic eavesdropping methods were developed. Therefore, he said, the CIA turned to the interception of telephone calls, cables and mail.

"We were the No. 1 target of the KGB and the GRU," he said, referring to Soviet intelligence and its military counterpart.

"Acknowledging your difficulties," Church asked, "do you believe that this (the CIA) is an agency that doesn't need to obey the law?"

"No, we were trying to get on with our jobs," Helms said. "It's not black and white. I'm not a lawyer, rather let it go at that."

Helms did say, however, that he was conscious of "serious illegalities" in some of the agency's operations.

Helms, CIA director from 1966 to 1973 and a CIA official since 1949, is now ambassador to Iran.

He said he did not know whether earlier CIA directors had informed Presidents Dwight D. Eisenhower, John F. Kennedy or Johnson of the mail operations.

HE SAID he might have told Johnson about them during a discussion of CIA projects in 1967, but added, "I have no written record of what I told Johnson."

"Did you tell Nixon?" asked Frederick Schwartz, the committee's general counsel.

"I don't recall telling him," Helms said. "I don't recall if he knew — he was involved in a lot of these things when he was vice-president."

Helms said he did inform Nixon's attorney general, John N. Mitchell, about the mail surveillance in 1971.

A committee spokesman said Mitchell had been subpenaed to appear before the panel Friday. But William Hndley, Mitchell's attorney, asked that he be allowed to see the committee first Thursday to request lifting of the subpena because an appearance might prejudice Mitchell's appeal of a perjury conviction.

J. EDWARD DAY: "Do I have to know about it?"

RICHARD HELMS: "Trying to get on with our job."

EARLIER, Day and two other former postmasters general testified to varying degrees of knowledge of the CIA mail scheme.

Winton M. Blount, postmaster general from 1969 to 1971, said the CIA led him to believe that it was merely recording the outsides of the envelopes and that then-Attorney General John Mitchell approved the operation.

On that basis, Blount said, he decided there was "no problem as regards to legality" of the program.

John A. Gronouski, postmaster general from 1963 to 1965, said he never knew about the CIA mail operation and would have opposed it if he had.

BUT DAY, who ran the Postal Service from 1961 to 1963, said he considered the CIA outside his control and turned a blind eye to its activities.

He disputed a CIA memorandum dated Feb. 16, 1961, which said he had been informed of the mail opening project at a briefing with Allen Dulles, then the CIA director, and two of Dulles' deputies.

"I'm sure from my recollection I wasn't told anything," Day said.

"Dulles said he wanted to tell me something very secret. I asked, 'Do I have to know about it?' He said, 'No.'

"I figured the CIA has its own line of authority and I had absolutely no more control over them than the Air Force."

Church said he found it "astonishing and unsettling" that a postmaster general did not want to know what the CIA was doing.

Exhibit "C"

CIA Opened 215,000 Russ Letters

Washington

The Central Intelligence Agency opened and read more than 215,000 letters to and from the Soviet Union for more than 20 years despite advice that the operation was illegal and worthless, former CIA officials testified yesterday.

They told the Senate intelligence committee that they filed reports with top CIA officials in 1961 and 1969 saying the program was of little value but the clandestine mail openings continued until 1973.

One witness, Howard J. Osborne, former director of security for CIA, also said that he was misled by CIA director Richard Helms and other top agency officials about the nature of another mail opening project at the San Francisco post office. No figures were given for this operation.

Osborne said he had been led to believe agents were merely photographing the outsides of envelopes coming from "a country in the Far East."

He said he later learned that many of the Far Eastern letters actually were opened and their contents read and photgraphed.

In a deposition read into the record, Osborne also said he warned his CIA superiors to close down the full mail-opening project.

"This thing is illegal as hell and we ought to knock it off right

Back Page Col. 5

CIA OPENED LETTERS

From Page 1

now in the light of the Watergate climate," Osborne claims he said.

He said agency officials recognized that disclosure would be a tremendous embarrassment to the agency, especially during Watergate.

"In light of some of the disclosures during Watergate it came to the attention of CIA officials that the government shouldn't do things that were illegal," Osborne testified.

Chairman Frank Church (Dem-Idaho) made public CIA documents showing that from 1953 through 1973 CIA agents opened and photographed the contents of 215,820 letters sent to and from the Soviet Union.

Of these, the photographs of 57,846 were sent to the FBI, 31,438 were sent to the Soviet division of the CIA, and 57,894 were sent to other CIA departments.

Osborne said that his connection with the Russian mail-opening operation was to provide the manpower and assistance that kept it going.

"They built the Cadillac and they drove it," he said of his CIA superiors. "I maintained it. I greased it and I changed the oil. I had no authority to say where it was going."

In response to a question, Osborne said: "The maintenance was very good. The product was worthless as far as my opinion went."

Thomas Abernathy said that in February, 1961, as a member of the CIA Inspector General's office, he prepared a study showing that no tangible operational benefits had accrued from the Soviet mail opening project.

John Glennon conducted a similar study in 1969, which reached an identical conclusion.

"We assumed everybody realized it was illegal," Glennon testified when asked why his report hadn't dwelt on that point.

Gordon Stewart, who was the chief inspector general in 1969, said he understood that Helms, now U.S. ambassador to Iran, knew the mail opening project was illegal.

Helms was sitting in the front room of the hearing room audience as Stewart testified. He is scheduled to testify on the matter today.

Church introduced into evidence CIA files showing that 28,322,796 pieces of mail went through the hands of CIA investigators in New York alone. The envelopes of 2,705,726 letters were photographed.

Church said the testimony presents the clearest example which can be drawn "that the CIA lives outside the law and although all others must obey the law the CIA sits above it."

"You can't run a free society that way," Church said.

Associated Press

Exhibit "D"

MAIL SEIZED IN '14 IS FOUND BY C.I.A.

Colby Apologizes to Postal Chief Over Discovery on Shelf of an Office

Special to The New York Times

WASHINGTON, July 17—Postmaster General Benjamin F. Bailar disclosed late today that 85 postcards and 25 letters intercepted more than three years ago by the Central Intelligence Agency had just been found on a shelf at an agency office.

The mail, all from the Soviet Union to United States residents, had been opened, read and relayed to Washington through Latin America in an inexplicable process, according to an apologetic letter to Mr. Bailar yesterday from William E. Colby, the Director of Central Intelligence.

Mr. Bailar made public the Colby letter, along with the Postmaster General's angry reply that "it is an understatement to tell you I am shocked."

The Postmaster General announced that both the Department of Justice and the Postal Inspection Service would investigate the mail interception. He said that the postcards and letters had already been seized by the Justice Department "pending possible legal action against those responsible for opening and detaining it."

"The events you describe in your letter," Mr. Bailar wrote to Mr. Colby, "stand in clear violation of the sanctity of the mails and threaten to shake public confidence in the integrity of the mail."

Other Information Sought

He urged the C.I.A. director to determine whether other mail had unaccountably been detained as a result of the agency's interception of mail to and from the Soviet Union from 1953 to 1973. The interception of millions of pieces of mail was disclosed last month by the Rockefeller commission, in a report that termed the activity "unlawful."

The letter to Mr. Bailar from Mr. Colby, dated yesterday, said that the mail had been found "on a shelf in a securely vaulted area" of an unidentified agency office facility. Mr. Colby said that the mail, along with a registered mail receipt and two Hungarian and one Swedish customs declaration, had been attached to "a dispatch from one of our installations in Latin America dated March 27, 1972."

Mr. Colby's letter said that the dispatch, evidently from a C.I.A. agent stationed in Latin America, reported that the intercepted mail had been sent in a package mailed by an unnamed "New York firm" to a United States resident of the Latin-American country.

Although Mr. Colby said there was no indication how or why the mail had been sent to the individual, it eventually was passed on to the C.I.A. and the contents recorded in files of the Soviet mail intercept that the agency operated secretly in New York City.

Forwarded for Mailing

Mr. Colby's letter said that the mail had been discovered "in the course of a recent, routine change in office space assigned to a unit" of the intelligence agency. The letter said that the C.I.A. files bore no information as to why the mail had been left on the shelf.

"As it is clear that the senders of this mail intended it to be delivered," Mr. Colby wrote Mr. Bailar, "I am forwarding it to you for appropriate handling."

He suggested that Mr. Bailar notify the intended recipients that the fault was the C.I.A.'s and that Mr. Colby extended a "sincere apology."

The mail having been seized by investigators, Mr. Bailar said he had drafted letters to the intended recipients explaining the situation and declaring that the Postal Service "considers this incident a serious violation of your rights."

The Postmaster General said he was assured by Mr. Colby last spring that the C.I.A. had discontinued its mail intercept operations. As distressing as that discovery was, Mr. Bailar said, "the revelation that mail was removed from the international mail stream, opened and retained indefinitely is doubly disturbing."

He demanded of Mr. Colby that "any such mail still held by the Central Intelligence Agency immediately be turned over to the Postal Service for delivery."

Exhibit "E"

PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to this action. My business address is:

407 Sansome Street, Suite 400
San Francisco, California 94111

On the date specified below, I served the attached PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL OR FOR SUMMARY JUDGMENT (WITH SUPPORTING AFFIDAVITS)

by placing a true copy thereof (to which was attached a copy of this document) in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to each of the following:

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Executed on March 9, 1976, at San Francisco, California.

I, ROBERTA HEIDT, declare, under penalty of perjury that the foregoing is true and correct.

Roberta Heidt
ROBERTA HEIDT

Next 1 Page(s) In Document Exempt

STATINTL

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