

FOREIGN INTELLIGENCE ELECTRONIC SURVEILLANCE ACT OF 1977

I. Political Situation:

We have negotiated long and hard within the Executive Branch to find an approach w to legitimizing our foreign intelligence and counterintelligence activities which also squared with the security needs of the intelligence community (protects sources and methods).

-Kennedy provided valuable leadership last year.

-Senate Intelligence Comm, espially Bayh, has given valuable input.

The bill is now being circulated to all parties on the key committees with a primary interest.

II. Statements:

1. The Justice Dept will proceed to attempt to draft a separate bill to extend legal safeguards to Americans overseas who are targeted for electronic surveillance for either intelligence or law enforcement purposes.

2. The Justice Department will also review the current ~~espionage~~ espionage laws to attempt to revise them to cover all modern forms of espionage (industrial espionage, etc.) so that the criminal law can be made comprehensive and clear enough to relieve the need for any non-criminal standard for clandestine intelligence activity.

III. ~~the~~ PROPOSED BILL:

1. Coverage of all intentional targeting of U.S. persons, including NSA watch listing of the international communications by Americans.-- Last year's bill didn't ~~cover~~ cover targeting international radio communications.

2. Warrant requirement for all electronic surveillance within the U.S..

A two-tier warrant system: a) detailed warrant application for ~~U~~ targeting U.S. persons and alleged agents of foreign powers.

b) less sensitive, less frequent warrant for the most sophisticated and insulated targets -- "official" foreign powers.

This ensures the security of our operations.

3. No clause reserving inherent presidential power to violate or circumvent the Act. The bill doesn't affect acquisition of ~~international~~ international communications outside the definition of electronic surveillance (i.e. international communications intercepts except where sent by a US person within the U.S. who is targeted). The bill is the exclusive means for elsur ~~within the~~ of domestic communications.

4. Judicial review of certification is now permitted where the target is a U.S. person. (certification that ~~the~~ foreign intelligence information is sought).

5. Criminal standard: Judge must find that target is a foreign power or agent. And also find probable cause ~~that~~ of clandestine intelligence, sabotage, or terrorist activity on behalf of a foreign power in violation of the law;

or -pursuant to the direction of a foreign power

-collecting or transmitting in a clandestine manner

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ACTION

Memo No. 821-77
April 13, 1977

MEMORANDUM FOR DIRECTOR OF CENTRAL INTELLIGENCE

ATTENTION: COMMANDER McMANN

FROM: Denis Clift /5/

SUBJECT: Memorandum for the President on Foreign
Intelligence and Strategy with the Congress

The Vice President would like to discuss the attached memorandum at tomorrow's meeting on intelligence, and would appreciate Admiral Turner's concurrence or comments.

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MEMORANDUM FOR : The President
FROM : The Vice President
SUBJECT : Congressional And Executive Review
of Major Foreign Intelligence Activities

The Executive Branch and Congress are both in the midst of a comprehensive review of major foreign intelligence activities and the organizational structure of the intelligence community. Prior to completion of the Executive Branch review the Select Committee on Intelligence may introduce legislation that, as now drafted, will be sharply resisted by many of the intelligence agencies and the Department of Defense. Such a decision on the part of the Select Committee holds promise of a major congressional/executive confrontation.

This memo addresses the problems raised by the dual review of intelligence activities and makes recommendations as to how to proceed.

Congress

On the Congressional side, the Select Committee on Intelligence is drafting--and has circulated to the Executive Branch for comment--the first few sections of the "National Intelligence Act of 1977." The proposed legislation--which does not as yet have the endorsement of the Select Committee itself--is designed to re-define the organizational structures of the intelligence community and to provide statutory charters for all foreign intelligence agencies.

The Select Committee is required under S. Res. 400 to report to the Senate no later than July 1st. on such matters as:

- the quality of the analytical capabilities of United States foreign intelligence agencies;
- the conduct of covert and clandestine activities;
- the organization of intelligence activities;
- and the "desirability" of developing charters for each intelligence agency and changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of secrets.

There is no requirement under S. Res. 400, for legislative proposals by July 1. The proposed Senate legislation is imprecise in defining the roles and responsibilities of the departments and agencies of the Executive Branch engaging in intelligence activities; but is so detailed in its description of duties and functions of Presidential appointments, staffs, committees and boards as to degrade, if not destroy, Executive flexibility.

There is presently no parallel activity or pressure for legislation from the House of Representatives.

The Executive Branch

Your Presidential Review Memorandum/NSC-11 on intelligence is scheduled for completion on June 1st.

At issue is whether the Executive Branch should actively seek to discourage Congressional efforts to establish in statute intelligence legislation charters for the intelligence community, or alternately should support the general principle of legislation with caveats as to the timing and the level of specificity.

Without substantial revision, the proposed legislation, even without direct Presidential resistance, is most unlikely to pass both Houses of Congress. Moreover, it is far from clear that any form of intelligence legislation will be enacted by Congress. But at the same time, there are risks in not openly and actively supporting statutory charters for the intelligence agencies. Without a declared policy of support for such legislation, there would be charges that this Administration is as reluctant as the Nixon administration was in 1971 or President Ford was in 1976 to involve the Congress in any reorganization of the intelligence community. It may also be asserted that the Carter administration is actually opposed to statutory charters delineating the missions, authorities, and limitations for the intelligence agencies. The specific concern of whether the proposed legislation is sensible and workable might soon be lost in a general controversy over whether the Administration is resisting Congressional oversight of intelligence activities.

You could endorse the broad principle of intelligence legislation while arguing that what is required is broad and clear statutory authority for the intelligence agencies--but not to a level of legislative detail that would hamper effectiveness and flexibility.

Once you have endorsed the idea of the need for intelligence legislation, including charter for the agencies, it should be easier to convince Congress that such legislation would be wiser and more effective if the process had the benefit of both the Congressional and Executive Branch studies before legislation was introduced. If the Executive Branch study completes the PRM-11 by mid-June (and the study produces adequate basis for Presidential decision), then the timing would not be difficult to reconcile, with the Senate Report required no later than July 1.

Recommendation

The Senate Committee may introduce intelligence legislation before completion of the PRM-11 process. In its present form, this legislation will provoke intense and justified criticism and resistance from within the Administration, particularly from the Department of Defense. As a result, the White House will be placed in the difficult position of seeming to be opposed to intelligence legislation. Moreover, the ensuing controversy could damage prospects for workable and sensible legislation which the President has publicly supported.

The immediate objective, therefore, should be to convince appropriate Senators that the introduction of any legislation should be deferred until the PRM-11 study is finished; and indeed, until the Select Committee itself has submitted its own report. (As noted, the report to the Senate only calls for a study of the "desirability" of legislation including charters so deferral would not be defiance of any mandate).

If the Senators were assured that the Executive Branch would not issue an Executive Order in the immediate wake of the PRM-11 process and would systematically consult with the Select Committee before any such issuance, it is most likely that a request for deferral would be well accepted.

It is, therefore, recommended that you meet at an early date with the members of the Senate Select Committee (including

the Minority Leader who is an ex officio member of the Committee), the Chairmen of the Armed Services, and Judiciary committees, and the Majority Leader and make the following points:

- The Administration endorses the principle of intelligence legislation including the desirability of Charters defining the missions, authorities, and limitations for the intelligence agencies.
- At the same time, you believe that what is required is broad and clear general statutory authority for the intelligence agencies, but not to a degree of legislative detail that would limit flexibility in the use of these agencies and possibly hamper their effectiveness. Broad statutory authority supplemented by guidelines that receive the careful oversight of the Congress would give the country responsible, as well as responsive intelligence agencies.
- As for timing, you should urge the Committee and the leadership to defer the introduction of any legislative proposals until the Executive Branch has completed its review of intelligence activities and the Select Committee has sent its own report to the Senate as called for under S. Res. 400. You might note that under that resolution, the Committee must report on the desirability of developing charters for the intelligence agencies, and you assume that the Committee will so recommend. Deferring the introduction of any legislation until after that report will give both branches an opportunity to work against the background of these reports and in a cooperative atmosphere.
- You can assure the Senators that the Administration has no intention of issuing an Executive Order on intelligence in the immediate aftermath of its own study. Once the study is completed, the Executive Branch will move only in the closest consultation with the Congress to revising the intelligence Executive Order if that should prove to be what is required. It is your hope and expectation that the legislative process and the Executive Branch review will complement each other.

Related Intelligence Matters

--Disclosure of Budget Information on the Intelligence Community.

You may be asked whether you support the idea of publication of the aggregate figure for national intelligence. The Church Committee recommended that annual publication of the aggregate figure, but decided on request of the Ford Administration not to publish the figure in its final report.

The recommendation here is that if asked, you tell the Committee that your administration has no objection to the publication of the aggregate figure for the National Foreign Intelligence Program, but caution the Committee that disclosure on any further budget details is another matter, and may involve serious security risks.

--The Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board (PFIAB).

You have publically supported and commended the Intelligence Oversight Board which was established by President Ford to prevent abuses in intelligence activities.

The meeting with the Congressional leaders would be an appropriate occasion to endorse again the idea of a strong oversight board and to state that you intend to appoint able and vigorous members to that board. You might announce the appointment of Tom Farmer as Chairman of the Board.

At the same time, you might be asked whether you intend to abolish the President's Foreign Intelligence Advisory Board (PFIAB). You might say here that you do intend to abolish the Foreign Intelligence Advisory Board believing that its oversight functions can and should be effectively taken over by the Senate Select Committee on Intelligence and hopefully, a corresponding committee in the House.

--Sharing of information with the Congress and secrecy legislation including criminal penalties for disclosure by government officials.

On the sharing of information with Congress, you can assure the Senators that you are committed to full and frank sharing with the appropriate committees of sensitive information on both covert operation and clandestine collection. You might repeat your hope that the Congress will soon have one joint congressional committee with a limited membership to whom we can reveal what is going on in its entirety.

As for legal sanctions for the protection of sources and methods, it is recommended that you state that the entire matter of protecting sensitive information is being carefully studied by an Executive Branch Committee chaired by the Attorney General, and that once that report is complete, we intend to consult actively and systematically with the Congress on how to proceed.

SCHEDULE

1. Middle of April - Meeting with Congressional leaders
2. 1 June - Completion of Presidential Review Memorandum
3. 1 July - Report of Senate Select Committee
4. July - Earliest time for introduction of intelligence legislation should Committee agree at April meeting to defer until completion of PRM and submission of Committee report.
5. 15 September - Executive Order on intelligence.

Statement on Intelligence Activities For Release After Meeting
With Congressional Leaders:

The American people have a right to know where the government stands on critical issues affecting the role of intelligence activities in our free society. They should know that this Administration believes that properly controlled and lawful intelligence is essential for the security of this country. They should also know that the Administration has concluded that there is a strong need for specific legislative authority including statutory charters to govern and control the operations of the intelligence agencies.

The President has met with Congressional leaders to discuss both the need for legislation and the comprehensive review of intelligence activities now under way in both the Senate and the Executive Branch. It was agreed that the old, vague, and overly broad notions of inherent authority operating outside of or above the law have not been consistent with our constitutional values or with the need for focused, controlled, effective, and lawful intelligence. The Administration endorses the view that the time has come to enact clear legislation, applicable to all of the intelligence agencies, which states what they may do and what they may not do. At the same time, the President and the Congressional leaders noted that while

legislation must lay out the necessary standards and controls, it is important that it not be so detailed on organizational and administrative matters as to hamper the effectiveness of the agencies in performing lawful and properly controlled assignments.

The Select Committee and the Administration have now agreed to move to complete their respective studies of intelligence activities by the end of June. Once these studies are completed, we will begin a period of active and intense consultation which we hope will lead, by the Fall, to both sound and effective legislation from the Congress and to Executive Branch decisions which will complement the legislative mandate.

The President also has announced the appointment of Mr. [redacted] to be Chairman of the important Intelligence Oversight Board. This Board reports directly and exclusively to the President. It is empowered to receive reports of violations of law or propriety directly from individual members of the Intelligence Community and receives periodic required reports from the Inspectors General and General Counsels of the Community.

The President further noted that with the creation of a Senate Select Committee on Intelligence, the advisory function


formerly performed by the President's Foreign Intelligence Advisory Board should, and would, be taken over by that committee and by whatever committee of the House of Representatives that is so designated. Thus the Foreign Intelligence Advisory Board will not be continued.

OFFICE OF THE VICE PRESIDENT
WASHINGTON~~OFFICIAL USE ONLY~~INFORMATION

Memo NO. 794-77

April 8, 1977

MEMORANDUM FOR THE VICE PRESIDENT

FROM: Denis Clift 

SUBJECT: Congressional and Executive Review of
Major Foreign Intelligence Activities.

Earlier today DCI Turner gave you the draft memorandum at Tab A providing a status report to the President on Congressional and Executive review of intelligence activities.

You told me that you want Fritz Schwarz to see this. I have been coordinating with Fritz Schwarz and Bill Bader on this document over the past several days, Fritz has contributed to the language including the proposed public statement on intelligence activities, and he has approved the document at Tab A subject to the following comments:

- It will be important to consult with appropriate members of the House of Representatives as well as with the Senate if the House nose is not to get out of joint. Fritz thinks that consultations should be held with O'Neill, Rodino, and appropriate Foreign Affairs/National Security/Defense members at the same time that you and the President are consulting with Inouye and his committee -- and before any public statement is issued.
- Fritz does not think that there should be an early Executive Order on intelligence while the Executive and legislative branches are holding their reviews and consulting. He believes that an early Executive Order would be ill received by the Congress, that it would be seen as pre-empting genuine consultations and cooperation.

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-- Fritz asked me to remind you of the paper he did on April 1 (Tab B). Many of these points are now covered in the memorandum Turner has given you at Tab A.

Schwarz will be in Washington at 1:00 p.m. on Wednesday, April 13, to review the wiretap papers being prepared for the April 14 SCC meeting.

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A

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formerly performed by the President's Foreign Intelligence Advisory Board should, and would, be taken over by that committee and by whatever committee of the House of Representatives that is so designated. Thus the Foreign Intelligence Advisory Board will not be continued.

Outline of Proposed White House Statement on
Schedule and General Principles Re Intelligence Legislation --
Together with Reasons for Issuing Statement

A. Reasons

1. Consistent with Administration Policy of letting people know direction of Government.
2. Counters charge Administration is dragging feet.
3. Lessens risk of being pushed by Congress into premature reactions. (Aim is to have them agree on statement and schedule.)
4. Ensures that debate within Administration is on making Intelligence legislation fair and workable and not on issue of whether there should be any such legislation.

B. Points to be Made in Statement

1. Need for Legislation

- Record of problems re Constitution/legality at home; reputation abroad; loss of efficiency and effectiveness.
- Executive Orders not enough.
- Praise role of Congress (but note certain limits to that role under separation of powers doctrine).

2. Broad Principles of Legislation

- What intelligence agencies can and cannot do both to be spelled out in legislation.
- No more vague and overbroad inherent authority.
- Procedural as well as substantive restraint (but sound a caution about excessive reorganization).
- Aim is to increase effectiveness as well as ensuring legality and propriety.

3. Proposed Schedule and Procedures

4/1/77

PROPOSED SCHEDULE RE INTELLIGENCE LEGISLATION*

	<u>DATE/EVENT</u>	<u>DISCUSSION/ISSUE</u>
	4/-/77 Meeting about schedule and General Principles between White House and Congressional Leaders.	Who besides Senate Intelligence? (Senate Judiciary. House Committee (which one) Leadership).
	4/-/77 Public statement concerning Schedule and General Principles of Legislation.	To be made after meeting with Congressional leaders. See attached draft outline, which also indicates reasons why such a statement would be desirable.
By	6/15/77 Completion of NSC Study and other Administration Analyses.	
	6/15/77-9/30/77 Sharpening of Administration's positions and attempt to reach agreement on legislation with key Congressional Committees.	
	9/30/77 Public Statement on Detailed Legislative Proposals (Introduction of Legislation.)	The aim would be to have this substantially agreed to and coordinated with key Congressional Committees.

* If the "Foreign Intelligence" Wiretap Bill is to be separately introduced, a number of additional entries relating to it would be added.



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