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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.

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

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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. However, it will be important to include the House in the Administration's consultations on intelligence legislation. This process should begin with Tip O'Neill and then be expanded to appropriate members of the four House committees currently exercising intelligence oversight responsibilities.

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.

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During the campaign a commitment was made that the Carter Administration would support legislative charters.

I believe you should 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 Senate Resolution 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.

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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 Senate Armed Services, and Judiciary committees, and the Majority Leader, and with House Speaker Tip O'Neill. The principle points to be made: the Administration endorses the principle of intelligence legislation; 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; 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; the Administration has no intention of issuing an Executive Order on intelligence in the immediate aftermath of its own study.

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.

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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.



THE VICE PRESIDENT
WASHINGTON

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April 14, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: The Vice President and *W. J. [Signature]*
The Director of Central Intelligence *AT*

SUBJECT: Foreign Intelligence and Strategy with
the Congress

Over the past several weeks, we have been working with Cy Vance, Griffin Bell, Bob Lipshutz and Zbig Brzezinski on the steps required to ensure that you receive recommendations on needed reforms and policy actions based on the current review of major foreign intelligence activities and the organizational structure of the intelligence community.

Presidential Review Memorandum/NSC-11 on intelligence, which will contain overall recommendations on the intelligence program, is scheduled for completion in June.

In our opinion, preliminary decisions are now required regarding:

- the Administration's position on legislative charters for the intelligence agencies, and
- the approach to be taken with the Congress on intelligence legislation.

We recommend that you endorse the principle of intelligence legislation including the desirability of charters defining the missions, authorities and limitations for the intelligence agencies. Broad statutory authority supplemented by guidelines that receive the careful oversight of the Congress would give the country responsible as well as responsive

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intelligence agencies. The danger with endorsing charters is that the legislative drafting could get out of control in the Congress and result in excessive legislative detail that would limit flexibility in the use of intelligence agencies and hamper their effectiveness. However, the Congress is moving ahead. The Senate Select Committee on Intelligence is currently drafting intelligence legislation. Our judgment is that you should take the initiative on the principle of endorsing charters and legislation.

We believe it would be useful for you to schedule an early meeting with Senator Inouye and the members of the Committee -- and to schedule parallel consultations with Tip O'Neill -- to inform them of the basic direction your intelligence review is taking and to reach a preliminary understanding with the Congress on a schedule for legislation that will enable the Executive and Legislative branches to work together. Your purpose would be to:

- state that there is agreement on the general principle that there should be legislation that provides appropriately for Congressional oversight of intelligence activities;
- state that the Executive Branch currently has this issue together with the other facets of intelligence organization and management under review, and that you are expecting the results of this review in June;
- state that following your consideration of this review and sharpening of the Administration's position you will want the Administration to work closely with the key Congressional committees to reach agreement on the overall shape of intelligence legislation -- premature action by either branch would be counterproductive;
- urge the Senate and the House to proceed, at the same time that the Administration's review is underway, to organize themselves better for their intelligence oversight role;

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- propose a general timetable for action this year by the Executive and Legislative branches;
- issue a public statement following the meeting on the agreement reached on legislation and the timetable involved;
- in sum, to dispel any suggestion that the Administration is opposed to legislative charters, to assure the Congress that you want to work with it, and to head off premature efforts by the Congress to force the Administration's hand on the substance of such legislation.

We have also discussed the issue of continuing your Foreign Intelligence Advisory Board. We believe that its responsibilities can be adequately performed within the NSC system and by the Intelligence Community itself.

We also believe that the Intelligence Oversight Board should continue as it is presently structured and that now would be a good time to appoint a new Chairman of the Board. Cy Vance and Griffin Bell share our view that Thomas Farmer would be an ideal choice as Chairman. Farmer is a prominent Washington lawyer with extensive experience relating to the Intelligence Community. (Biography at Tab E)

A more detailed review of the issues is at Tab B. Talking points for the meetings with the Senate Committee and Tip O'Neill are at Tab A. A proposed schedule for Executive and Legislative action is at Tab C. A recommended public statement is at Tab D.

RECOMMENDATION

- 1) That you approve acceptance of the broad principle of intelligence legislation, recognizing that what is required is broad and clear statutory authority for the intelligence agencies but not a level of legislative detail that would infringe on your authority or hamper the agencies' effectiveness and flexibility.

APPROVE _____ DISAPPROVE _____

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- 2) That you schedule early meetings with the Senate Select Committee and with Tip O'Neill to reach agreement on the basic approach to be taken by the Administration and the Congress on the development of intelligence legislation.

APPROVE _____ DISAPPROVE _____

- 3) That you inform the Select Committee of your decision to abolish the Foreign Intelligence Advisory Board and to appoint Thomas Farmer as Chairman of the Intelligence Oversight Board.

APPROVE _____ DISAPPROVE _____

Attachments

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TALKING POINTS FOR MEETINGS WITH
MEMBERS OF THE CONGRESS

1. The Administration endorses the principle of intelligence legislation including the desirability of Charters defining the missions, authorities, and limitations for the intelligence agencies.
2. I 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.
3. 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.
4. As for timing, I 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.
5. I note that under that resolution, the Committee must report on the desirability of developing charters for the intelligence agencies, and I 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.
6. I think it very important that both Houses of the Congress take full responsibility to ensure that they are organized as efficiently and responsibly as possible to carry out their oversight responsibilities. My preference would be a single joint committee. I know others have suggested there should be a House Select Committee as well as the Senate Select Committee. I would welcome your views.
7. I can assure you that the Administration has no intention of issuing an Executive Order on intelligence in the immediate aftermath of our 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 my hope and expectation that the legislative process and the Executive Branch review will complement each other.

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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 the National Security Council system and the Intelligence Community itself can effectively review and assess United States foreign intelligence activities.

- 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 operations and other special activities. You might repeat your hope that the Congress will soon have one joint congressional committee on intelligence so that the Congress can be kept well informed and at the same time access to using sensitive data can be limited to a single committee.

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. Late April - Meetings with Congressional leaders
(Senator Inouye and Senate Select Committee,
and House Speaker Tip O'Neill).
2. White House public statement on legislation and time-
table following meetings with Inouye and O'Neill.
3. June - Completion of Presidential Review Memorandum/NSC-11
on Intelligence.
4. July 1 - Report of Senate Select Committee.
5. July-September - Sharpening of Administration's position,
consultations with key Congressional
committees aimed at reaching agreement
on legislation.
6. July-September - Parallel development of Executive Order
on Intelligence (date for signing and
publication of Executive Order will
require careful attention to ensure
that it supports Administration's
legislative objectives with Congress).
7. September 30 - Introduction of legislation.

STATEMENT BY PRESIDENT 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 legislative authority including statutory charters to govern the operations of the intelligence agencies.

I have met with Senator Inouye and members of the Senate Select Committee on Intelligence 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. I have also discussed these matters with Speaker Tip O'Neill of the House. It is 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 Congressional leaders and I have 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.

It was also agreed that both the Executive Branch and both Houses of the Legislative Branch should devote careful attention to ensuring that they are organized as effectively and responsibly as possible to carry out their respective responsibilities.

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 Executive Branch decisions which will complement the legislative mandate.

I am announcing the appointment of Mr. Thomas Farmer to be Chairman of the important Intelligence Oversight Board. This Board reports directly and exclusively to me. It is empowered to receive information directly from individual members of the Intelligence Community and receives periodic required reports from the Inspectors General and General Counsels of the Community. In announcing this appointment, I want to take this occasion to thank Ambassador Robert Murphy for his distinguished service as the first Chairman of the Intelligence Oversight Board, service which builds on his long career of distinguished service to his nation.

At the same time I intend to abolish the President's Foreign Intelligence Advisory Board, as the National Security Council system and the Intelligence Community itself can now effectively review and assess U.S. foreign intelligence activities.

THOMAS L. FARMER
1101 Sixteenth Street, N.W.
Washington, D.C. 20036

Foreign Policy and Foreign Intelligence Experience

- 1943-46 Military service - principally as member of
 The Military Intelligence Research Section,
 Combined (U.S.-British) Chiefs of Staff,
 Washington, D.C.
- 1951-54 Intelligence officer, Central Intelligence
 Agency - originated and directed specific
 overseas covert operations.
- 1954-
present Member, Council on Foreign Relations, New York.
- 1964-67 General Counsel, Agency for International
 Development (AID); also Special Counsel to
 Eugene Black, President Johnson's Special
 Representative for South East Asian Economic
 Development.
- 1968-73 Foreign Policy Advisor, Conference of Roman
 Catholic Bishops of the U.S.
- 1968-
present Founding member, Director and General Counsel,
 Overseas Development Council, Washington, D.C.
- 1968-
present Member of the International Committee and
 Chairman of Task Force on Foreign Investment
 in the U.S., National Chamber of Commerce
 of the U.S.
- 1975-
present Member of the Monetary Policy Group and the
 Economic Policy Group of the Atlantic Council.

Political Experience

Worked with John F. Kennedy campaign from October 1959
until November 1960; wrote speeches and did general
research in foreign policy area and prepared foreign
policy briefings for JFK television debates.

From November 10, 1960 until January 20, 1961, I was one of five full-time members of the so-called "talent hunt." My responsibilities were to make recommendations 1) for Defense Department appointments of Assistant Secretaries and Service Secretaries and 2) for the State Department I had overall responsibility for recommendations for all Presidential appointments except the Secretary and the Under Secretary.

Presently member of Democratic Advisory Committee (DAC) of Elected Officials and Co-chairman of the DAC Task Force on International Economic Policy.

Professional Experience

1946-50	Legal education - Oxford University, England and Harvard Law School.
1954-64	Associate, Simpson, Thacher and Bartlett, New York and Washington offices.
1968- present	Partner, Prather Seeger Doolittle Farmer and Ewing, Washington, D.C.

From the beginning my law practice has been a corporate practice heavily concentrated in the international trade and financial area and anti-trust litigation. At present my principal clients are the international departments of the U.S. commercial banks.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR

THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE DIRECTOR OF CENTRAL INTELLIGENCE

SUBJECT: Foreign Intelligence Electronic Surveillance Legislation

The President has reached the following decisions concerning foreign intelligence electronic surveillance legislation:

1. The basic structure of the bill should be as recommended by the Attorney General's PRM/NSC-11 Subcommittee report and endorsed by the SCC.
2. The report's recommendations on issues 1, 4, 5, 6 and 7 are accepted as endorsed by the SCC.
3. Concerning issue 2 in the report, the current electronic surveillance bill should not cover U.S. persons abroad. However, a statement should be made at the time of its introduction that the Department of Justice will proceed 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.
4. Concerning issue 3, warrants will be required for all electronic surveillance activities conducted within the U.S. However, the warrant requirement for surveillances directed against foreign powers will allow for substantially longer periods of time before reauthorization and application requirements will be designed to reduce the amount of sensitive information that will be transmitted to the judges (Option C with Justice Department recommended changes).

The Attorney General's Subcommittee should now assume responsibility for introduction of the Administration's bill in Congress and act as a tactical steering group while the bill is under consideration. Any significant proposed changes to the bill should, however, be referred to the SCC for consideration.

Zbigniew Brzezinski

APR 11 1977

Executive Summary

The attached report of the SCC subcommittee appointed by the Attorney General pursuant to PRM/NSC-11 concerns legislation governing electronic surveillance for foreign intelligence purposes within the United States.

The subcommittee's conclusion is that the Administration should introduce legislation on this subject. The Attorney General strongly favors such legislation, and a failure of the Administration to introduce legislation forthwith will result in unilateral initiatives by various members and committees of Congress. The SCC subcommittee further concludes that S. 3197, as reported by the Senate Intelligence Committee in the last session of Congress, should be the basis for the Administration's bill with certain changes. The report discusses seven policy issues for possible changes to S. 3197.

The issues and recommendations are:

(1) Whether the bill should include physical searches -- the recommendation is that it should not;

(2) Whether the bill should be expanded to cover electronic surveillance overseas -- the recommendation is that it should not;

(3) Whether the bill should include communications intelligence and, if so, in what way -- the recommendation is that the bill should authorize the President to approve

without a warrant communications intelligence activities when targeted against foreign powers and non-United States persons abroad subject to Attorney General approved minimization procedures, with judicial warrants required only when United States persons are targeted;*/

Option (a)

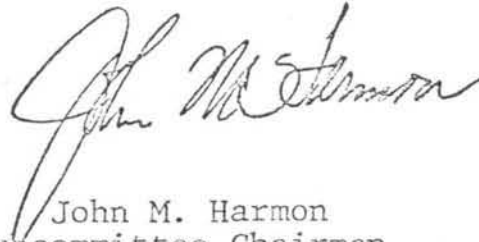
(4) Whether an explicit reservation of Presidential powers should be included in the bill -- the recommendation is that the bill should not include such a reservation;

(5) What should be the standard for targeting a United States person -- the recommendation is that a United States person should be able to be targeted (a) if he engages in criminal activity related to clandestine intelligence, sabotage, or terrorism or (b) if he engages in non-criminal activity which clearly evidences activities on behalf of a foreign intelligence service which threaten the national security or our foreign relations;

(6) Whether the Executive Branch certification to the judge when United States persons are targeted that the information sought is properly foreign intelligence information should be subject to judicial scrutiny -- the recommendation is that the judge should be able to review the certification but only to determine if it is clearly erroneous;

*/ The Department of Justice recommends that a warrant be required for communications intelligence activities within the United States, but that the standards for warrants for surveillance directed against foreign powers be changed from those applicable where United States persons are the target.

(7) What should be the standard for disclosure of sensitive information in judicial proceedings -- the recommendation is that the current, judicially-derived procedures for in camera determination by the court whether an electronic surveillance was lawful be codified in the bill.

A handwritten signature in dark ink, appearing to read "John M. Harmon". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Harmon" following in a similar style.

John M. Harmon
Subcommittee Chairman
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice



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