

MEMORANDUM

OFFICE OF THE VICE PRESIDENT
WASHINGTON

~~ADMINISTRATIVELY~~
~~CONFIDENTIAL~~

ACTION

Memo No. 911-77
April 27, 1977

MEMORANDUM FOR THE VICE PRESIDENT

FROM: Denis Clift *DC*
SUBJECT: Tactics For Wiretap Legislation

Fritz Schwarz has a call in to you to discuss tactics that he and Frederick Baron are recommending for introduction of the electronic surveillance bill to the Congress.

On Thursday, April 28, Justice would propose to give copies of the bill informally to five or six key people in the Congress -- Fritz wants your political judgment on the Senators and Representatives to receive the bill.

On Monday, May 2, Justice would propose to send the legislation formally to the Hill.

Frederick Baron and I have discussed the roles that Justice and you might play with the press at the time the bill goes to the Hill. Our current thinking is that Justice -- perhaps the Attorney General -- would issue a statement when the bill goes up formally next week. You might wish to have a background session with selected members of the press this Friday. A draft statement for you to draw on in such a session has been prepared, coordinated with Fritz Schwarz, and is at Tab A.

Steps Required:

First, I recommend that you speak to Fritz Schwarz -- he and Baron spent some time on this issue yesterday.

Secondly, if you are agreed on the proposed tactics with the Hill, I recommend that Frederick Baron be informed as soon as possible -- Justice is awaiting your okay.

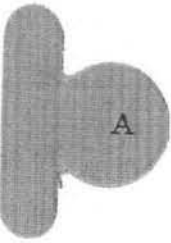
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Thirdly, on background and the press, I recommend that you call the Attorney General to ask if he is agreed that it would be useful for you to talk to Tony Lewis and a few other reporters this Friday on a background basis. (Frederick Baron thinks a backgrounder by you would be excellent.)

Fourthly, If you do wish to proceed with the backgrounder, we will have to make arrangements to have Schwarz and Baron available.

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Draft/4/26/77

*OKed
by Fritz Schwarz*

Vice President's Statement

*W
Pres
Aurhach*

The electronic surveillance bill drafted and supported by this Administration is designed to further two inter-related purposes -- first, ensure that electronic surveillance within the United States is limited to those situations in which it is clearly proper and, second, legitimize that restricted electronic surveillance so there will be no question as to its legality and propriety. To accomplish these dual objectives, the bill requires that all electronic surveillance within the United States for foreign intelligence purposes be conducted pursuant to a judicial warrant.

If this bill is passed it will mean that there will be no more warrantless wiretapping for any purpose within the United States. We believe that judicial safeguards are necessary in light of the record of past excesses and that they comply with the Fourth Amendment of the Constitution.

Before any American can be subjected to electronic surveillance in this country a judge ~~will have~~ ^{*must*} to find probable cause that he is an agent of a foreign power and that he is engaging in specified ~~dangerous~~ conduct. The conduct covered is certain crimes such as sabotage,

For [unclear]
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terrorism or (espionage) or the knowing and secret collections of (foreign intelligence) information for and at the direction of a foreign intelligence service in a manner designed to conceal the activity and under circumstances indicating the activity may harm the security of the United States. In addition, the judge will review the Executive certification that foreign intelligence information is sought. The judge must also require minimization procedures to ensure that the information is acquired and used in a way consistent with citizens' privacy as well as the enforcement of the law.

True?

This bill is, in my view, a substantial improvement over the bill proposed by the last administration. First, and most significantly, whereas that bill did not cover NSA activities, this bill will require a warrant before NSA targets the international communications of a United States person in the United States. This goes a long way to implementing the Senate Select Committee's recommendations with regard to NSA. Second, whereas the last bill insulated from any judicial review the Executive certification that foreign intelligence information was sought, this bill provides for a review of that certification where the target of the surveillance is a United States person.

Third, the reservation of "inherent authority" of the President to conduct electronic surveillance without warrants has been removed. There are other changes as well which will strengthen the legitimate electronic surveillance of our intelligence agencies, but these changes do not affect the rights and privileges of Americans or interfere with the principle of judicial review.

There are two aspects of the bill, however, which do not provide all the protection for Americans to which this Administration is committed. First, the bill does not apply to ~~overseas surveillances~~ ^{annullances} of American citizens. And second, an American can be the subject of electronic surveillance in the United States not only where a crime is involved but in the very limited additional circumstances that I mentioned earlier.

- a. Commitment to Extend Overseas. This administration is firmly committed to the proposition that a citizen is to be protected from warrantless searches by his government anywhere in the world, whether for intelligence or law enforcement purposes. There are, however, particular, specific problems with American surveillance abroad which require particular, specific treatment. They might unnecessarily complicate and delay the passage of this bill which, I believe, should be passed as soon as possible to

provide protection within this country for lawful surveillance. At the same time, the Department of Justice, in coordination with other agencies, is already beginning the drafting of legislation to cover overseas electronic surveillance for both law enforcement and intelligence purposes. We are committed to having such language introduced in the ~~relatively~~ near future. In the meantime, I have been assured that the U.S. Government is not now targetting any American abroad for electronic surveillance.

- b. ^{+ other} Need to Amend Espionage Laws ~~to~~ to Eliminate Non-Criminal Aspect. As to the second issue, it is ^h my ² firm belief that as a matter of principle Americans should not be subjected to electronic surveillance unless they have committed or are about to commit a crime. But I have become convinced, as members of the Senate Intelligence Committee and the Senate Judiciary Committee were convinced last year, that our present espionage ^{rather} laws are inadequate to cover at least a certain very limited area of activity which should be criminal and which should justify a person being subjected to electronic surveillance. ¹

Redrafting our espionage laws, however, is not a task lightly undertaken or accomplished -- the danger of making them overbroad is very real. Again, because I believe the passage of this bill as soon as possible is most important both to safeguard our privacy and our nation, I do not believe it should await the difficult and controversial redrafting of our espionage laws. I am convinced, however, that our espionage laws can be redrafted in a manner which will criminalize conduct which should be criminalized and not criminalize conduct which should not be criminalized. A task force under ^{my} direction shall shortly begin that undertaking. In the interim, this bill would allow electronic surveillance against Americans not engaged in criminal activity only in a very narrow and carefully circumscribed area.

Physical Surveillance

Other Matters
IOB; Charter



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