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**MEETING WITH
CONGRESSIONAL LEADERS ON
ELECTRONIC SURVEILLANCE**

Tuesday, March 23, 1976

11:00 A. M.

THE PRESIDENT HAS SEEN . . .

MAX

Should call on McClellan
who is chairman of Criminal
Law Subcommittee and
principal author of
1968 Act.

~~THE PRESIDENT HAS SEEN~~

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

March 22, 1976

MEETING WITH CONGRESSIONAL LEADERS
ON ELECTRONIC SURVEILLANCE LEGISLATION

Tuesday, March 23, 1976
11:00 a.m. (60 minutes)
The Cabinet Room

From: Jack Mars 

I. PURPOSE

To meet with Congressional leaders (particularly Judiciary Committee members) in an attempt to reach agreement on legislation which has been drafted by Justice Department, providing the judicial warrants in the case of certain electronic surveillance for national security purposes.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

- A. Background. On February 18, you sent a Message to Congress as part of your intelligence "package" and in it said that you would be working with Congressional leaders in an attempt to develop sound legislation establishing "...a procedure for undertaking electronic surveillance for foreign intelligence purposes."

Since the time of your Message, Attorney General Levi has been working very closely with Members of Congress, particularly the Senate Judiciary Committee. As a result of this effort, he has developed draft legislation which was submitted to you last week for final decisions.

The Attorney General has gotten tentative agreement by all key members of the Senate Judiciary Committee and, in addition, he has consulted with House leaders. He has worked particularly closely with Senator Kennedy and if final agreement is reached between the Executive and the Members of Congress consulted, we expect the bill to be introduced in the Senate and co-sponsored by: Senators Kennedy, McClellan, Byrd, Hruska, Hugh

Scott and Mathias. House support is less firm but Levi expects the bill to be introduced by Representatives Hutchinson, Railsback, Wiggins and perhaps Rodino and Kastenmeier.

We have been advised that there has been some discussion, at least among the members of the Senate Judiciary Committee, of whether or not the proposed electronic surveillance legislation should be tied into S.1 (the omnibus bill to codify all the criminal laws in Title 18). The Attorney General wants to avoid this because of the controversy surrounding S.1 and because of the extreme sensitivity of the electronic surveillance legislation.

See Tab A for additional background information.

- B. Participants. See Tab B.
- C. Press Plan. There will be a press photo at the beginning of the meeting.

III. FORMAT

- You may wish to open the meeting with brief comments on the importance you attach to this legislation and the need for it to be developed in a bipartisan spirit of cooperation between the two Branches. (See Tab C for suggested remarks.)
- After you've completed your remarks, you may wish to ask Attorney General Levi if he has any additional comments he wants to make.
- After the Attorney General speaks briefly, you may wish to call on the Members of Congress present for their comments.

(Only the fourth page of this memorandum is classified)

BACKGROUND INFORMATION FOR THE PRESIDENT

The Legislative Situation

After your announcement on February 18 that the Administration would work with Congressional leaders to develop legislation on electronic surveillance, the Attorney General consulted key members of Congress. Senators McClellan and Hruska advised the Attorney General that a reasonable bill in this area would succeed only if the Administration was able to secure the support of a number of the more liberal Senators, particularly Senator Kennedy who had been working in this area for some time. This advice has been followed and after numerous discussions with the Senator, his staff and other Senators on both the liberal and conservative sides, Senator Kennedy has indicated that he would like to introduce the bill. This is an important point and Senators Hruska and McClellan believe that this is the correct approach. Senators McClellan, Hruska, Scott (Pa.), Mathias and Byrd have indicated that they will co-sponsor the bill. Senators Nelson, Bayh, Tunney, and Abourezk are seriously considering co-sponsoring and Senator Kennedy has been helpful in seeking their support. Senators Thurmond and Fong are like to support the bill as well. In discussions with the key members, the

~~TOP SECRET~~

Classified by the Attorney General
Exempt from GDS, Categories 2 and 3
Date of Declassification Indefinite

Attorney General has consistently pointed out that since this legislation deals with a subject that necessarily is shrouded in secrecy, the bill and the debate on it must be responsibly and carefully handled. All of the indications are that the bill will be handled in this manner and Senators McClellan, Hruska and Kennedy have promised quick action in the Senate Judiciary Committee.

In the House of Representatives, Congressmen Albert, Rhodes, O'Neill, Rodino, Hutchinson, Edwards, Kastenmeier (Chairman of the Subcommittee to which the bill will be referred), and Railsback, (ranking minority member of the Subcommittee) have been visited by the Attorney General. Although the Congressmen have not had the time to go over the details, each member indicated that he welcomed this kind of legislative proposal.

The approach taken to date has been to enlist broad-based and bipartisan support of the bill before it is introduced, to move the bill quickly through the Senate and to deliver a strongly supported, Senate-passed bill to the House.

The Constitutional Authority of the President

Currently, electronic surveillance of foreign powers or their agents is conducted pursuant to the constitutional authority of the President. This legislation is intended to leave this constitutional power undisturbed where the facts and circumstances are beyond the scope of the bill. Indeed, the extent of the constitutional power of the President can only be settled by the courts, not by a legislative judgment.

In a letter which will accompany the legislation the Attorney General intends to explain the provision relating to the constitutional power of the President as follows:

This provision would represent the expression of congressional and Presidential intent that the President use the procedures established by the bill for all national security electronic surveillance which falls within the scope of this legislation. At the same time, it would assure that every situation important to the national interest would be covered -- either by the warrant procedure of the bill or by the President's inherent constitutional power to conduct electronic surveillance with respect to foreign powers. I reaffirm, however, what I have previously advised you orally: that it will be the policy and intent of the Department of Justice, if this bill is enacted, to proceed exclusively pursuant to judicial warrant with respect to all electronic surveillance against domestic communications of American citizens or permanent resident aliens.

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PARTICIPANTS

SENATE

Majority

Mike Mansfield
Robert Byrd
Frank Moss
Walter Mondale
James Eastland
John McClellan
Edward Kennedy
Quentin Burdick
James Abourezk
Gaylord Nelson

Minority

Hugh Scott
Robert Griffin
Howard Baker
Carl Curtis
Roman Hruska
Hiram Fong
Strom Thurmond
William Scott

HOUSE

Carl Albert
Thomas O'Neill
John McFall
Otis Pike
Phillip Burton
Peter Rodino
Joshua Eilberg
Robert Kastenmeier
William Hungate

John Rhodes
Robert Michel
John Anderson
Edward Hutchinson
Thomas Railsback
Carlos Moorhead
Caldwell Butler
Robert McClory
Charles Wiggins

ADMINISTRATION

Attorney General Levi
Secretary Rumsfeld (or Bob Ellsworth)
Mitch Rogovin (for George Bush who is out of
the country)
Monroe Leigh (State Department)
Jack Marsh
Brent Scowcroft
Dick Cheney
Max Friedersdorf
Ed Schmults
Mike Duval
Bob Wolthuis
Bill Kendall
Charlie Leppert

SUGGESTED TALKING POINTS

- We need legislation such as has been worked out by Attorney General Levi and many of you who are here today. After a year of reviewing the Intelligence Community activities, I think we are much closer to achieving the goals which I have felt are so critical for the Nation.

First, we must have a strong foreign intelligence capability, and

Second, it must not be directed against American citizens.

Unfortunately, we must exist in a real world which does contain hostile elements to the United States. We cannot afford to operate without adequate and timely intelligence information at a time when we face not only military challenges, but also economic, political and other threats such as terrorism.

I believe that this legislation will enable us to get the kind of intelligence we must have without infringing on the personal rights of American citizens.

- This is, of course, an extraordinarily sensitive area. Just as the National Security Act of 1947 was moved through the Congress in a bipartisan spirit, so too must this legislation specifically covering electronic surveillance for foreign intelligence purposes be developed in a serious manner. I am particularly pleased by the cooperation the Attorney General has received thus far from the Congress. I want you to know that I will lend all my support to this endeavor, and the emphasis from the Executive Branch will continue to be cooperation and bipartisanship in this very sensitive area.
- Concerning the substance of the legislation we need, as you know, at the present time requests for the use of electronic surveillance within the United States for foreign intelligence and counterintelligence purposes are subject to the approval of the Attorney General, pursuant to the Constitutional power of the President and explicit authorization by me in cases involving agents and collaborators of foreign powers.

The proposed bill would create a procedure for seeking a judicial warrant approving the use of electronic surveillance in foreign intelligence cases within the United States. Its basic purpose is to reassure the public that communications, whether by telephone, orally or otherwise, will be intercepted only pursuant to regular procedures and after a judicial warrant has been obtained.

The bill would thus safeguard civil liberties of United States citizens and resident aliens, while at the same time insuring that I will be able to discharge my responsibility in gathering foreign intelligence information necessary to protect the Nation's safety from foreign threats.

The proposed legislation would authorize the Chief Justice to designate seven District Court Judges to hear applications for warrants. Once an application is authorized by the Attorney General, the Judge would issue the warrant if he found there was probable cause to believe that the target of the surveillance is a foreign power or an agent of a foreign power. In order to subject an American citizen to electronic surveillance under this bill, the Judge must find probable cause that he is engaging in clandestine intelligence activities, sabotage or terrorist activities.

Under this procedure, the Executive Branch would certify to the court that the information sought is foreign intelligence information that is necessary for the safety of the Nation or the conduct of foreign affairs, or is necessary to protect the Nation against the clandestine intelligence activities of foreign powers.