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February 17, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

For over a year, the Nation has engaged in exhaustive investigations into the activity of the CIA and other intelligence units of our government. Facts, hearsay, and closely held secrets -- all have been spread out on the public record.

We have learned many lessons from this experience, but we must not become obsessed with the deeds of the past. We must act for the future. Tonight, I am announcing plans for the first major reorganization of the Intelligence Community since 1947:

-- First, I am establishing by Executive Order a new command structure for foreign intelligence. Henceforth, overall policy directions for intelligence will rest in only one place: the National Security Council, consisting of the President, the Vice President, the Secretary of State and Secretary of Defense. Management of intelligence will be conducted by a single new committee. That committee will be chaired by the Director of Central Intelligence, George Bush. To monitor the performance of our intelligence operations, I am creating a new independent Oversight Board to be made up of private citizens. Former Ambassador Robert D. Murphy will chair the Board and two other distinguished citizens -- Stephen Ailes and Leo Cherne -- will serve as members. All three of these units -- the National Security Council, the Committee on Foreign Intelligence and the Oversight Board -- will be responsible to me, so that the President will continue to be ultimately accountable for our intelligence activities.

-- Second, to improve the performance of the intelligence agencies and to restore public confidence in them, I am issuing a comprehensive set of public guidelines which will serve as legally binding charters for our intelligence agencies. The charters will provide stringent protections for the rights of American citizens. I will soon meet with Congressional leaders to map out legislation to provide judicial safeguards against electronic surveillance and mail openings. I will also support legislation that would prohibit attempts on the lives of foreign leaders.

-- Third, tomorrow I will send to the Congress special legislation to safeguard critical intelligence secrets. This legislation would make it a crime for a government employee who has access to certain highly classified information to reveal that information improperly.

In taking these actions, I have been guided by two imperatives.

As Americans, we must not and will not tolerate actions by our government which abridge the rights of our citizens. At the same time, we must maintain a strong and effective intelligence capability in the United States. I will not be a party to the dismantling of the CIA and the other intelligence agencies.

(MORE)

To be effective, our foreign policy must be based upon a clear understanding of the international environment. To operate without adequate and timely intelligence information will cripple our security in a world that is still hostile to our freedoms.

Nor can we confine our intelligence to the question of whether there will be an imminent military attack. We also need information about the world's economy, about political and social trends, about food supply and population growth, and certainly about terrorism. To protect our security diplomatically, militarily and economically, we must have a comprehensive intelligence capability.

The United States is a peace-loving nation, and our foreign policy is designed to lessen the threat of war and of aggression. In recent years, we have made substantial progress toward that goal -- in the Middle East, in Europe, in Asia and elsewhere around the world. Yet we also recognize that the best way to secure the peace is to be fully prepared to defend our interests. I believe in peace through strength.

A central pillar of our strength is, of course, our armed forces. But another great pillar must be our Intelligence Community -- the dedicated men and women who gather vital information around the world and carry our missions that advance our interests in the world.

The overriding task now is to rebuild the confidence and capability of our intelligence services so that we can live securely in peace and freedom. That is my goal.

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February 18, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

The President's Actions Concerning
the Foreign Intelligence Community

SUMMARY

The President has today taken the following comprehensive actions to strengthen the United States foreign intelligence departments and agencies: (1) issued an Omnibus Executive Order establishing policy guidelines and restrictions for the intelligence agencies and a new command structure and oversight mechanism for the intelligence community; (2) proposed new legislation to protect the secrecy of particularly sensitive intelligence information, announced that he will meet with Congressional leaders to develop legislation concerning electronic surveillance and to prevent unauthorized opening of mail, and he endorsed legislation to prohibit assassinations of foreign leaders; and, (3) proposed a framework in which constructive Congressional oversight can be established without disclosing intelligence secrets.

OBJECTIVES OF THE PRESIDENT'S ACTIONS

The President's actions are designed to insure that:

- (1) The United States has a strong and effective capability to gather and evaluate foreign intelligence and conduct necessary covert operations; and
- (2) These activities are conducted in a Constitutional and lawful manner and never aimed at our own citizens.

The President's actions will strengthen our foreign intelligence capability and establish an effective process to prevent abuses by:

- (A) Setting forth in Executive Order, policy guidance for the foreign intelligence agencies which define what functions they are supposed to carry out and which clearly states what they are not permitted to do.
- (B) Creating a streamlined command structure for intelligence community leadership which makes specifically designated individuals accountable.
- (C) Requiring the NSC to conduct semi-annual reviews of the adequacy of the foreign intelligence product and establishing the Intelligence Oversight Board to monitor compliance with the restrictions which have been placed on the intelligence community's activities.

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OMNIBUS EXECUTIVE ORDER(1) Control and Direction of Intelligence Organizations

(A) Overall Policy Development

1. The National Security Council (NSC) will continue to exercise overall policy control over the foreign intelligence community.
2. Statutory members are:
 - The President
 - Vice President
 - Secretary of State
 - Secretary of Defense
3. The NSC will conduct a semi-annual policy review of foreign intelligence activities focused on, but not limited to, the following:
 - . Needs of government foreign policy-makers and the responsiveness of foreign intelligence to these needs, including the quality, scope and timeliness of the intelligence product,
 - . The effective and efficient use of resources in the collection of intelligence information; and
 - . The continued appropriateness of ongoing covert operations and sensitive intelligence collection missions.

The Assistant to the President for National Security Affairs will have staff responsibility for the semi-annual policy reviews. Heads of the departments and agencies which use foreign intelligence will be consulted.

(B) Management and Resource Control

1. Responsibility for management and resource control of the foreign intelligence community is vested by Executive Order in the Committee on Foreign Intelligence (CFI), which reports directly to the NSC.
2. Membership of the CFI is:
 - The Director of Central Intelligence (DCI),
Chairman
 - Deputy Secretary of Defense for Intelligence
 - Deputy Assistant to the President for
National Security Affairs

(NOTE: Staff support shall be provided by the intelligence community staff.)
3. The Committee on Foreign Intelligence shall:
 - . Control budget preparation and resource allocation for the National Foreign Intelligence Program (defined as excluding tactical intelligence).

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- . Establish management policies for the Foreign Intelligence Program.
 - . Carry out policy decisions of the NSC with particular emphasis on collection and production of national intelligence.
4. Decisions of the CFI may be reviewed by the NSC upon appeal by the Director of Central Intelligence or any member of the NSC.

(C) Production of National Intelligence

1. Responsibility for the production of substantive national (i.e., not tactical or departmental) intelligence is vested in the Director of Central Intelligence. The DCI is the President's primary advisor on foreign intelligence.
2. To assist in developing national intelligence requirements and priorities, and in developing finished national intelligence, the DCI shall establish such boards and committees (similar to the former USIB) of the intelligence community as will enable him most effectively to utilize the talent of the community to produce the best possible intelligence product.

(D) Covert Action and Other Special Operations

1. Responsibility to review and advise the President on covert operations and certain sensitive foreign intelligence collection missions is assigned by Executive Order to the Operations Advisory Group (Operations Group).
2. New membership is:
 - Assistant to the President for National Security Affairs, Chairman
 - Secretary of State
 - Secretary of Defense
 - Director of Central Intelligence
 - Chairman of the Joint Chiefs of Staff

Observers are:

Attorney General
Director of OMB

3. The Special Intelligence Operations Group shall:
 - . Consider and make recommendations to the President on all proposals for covert action and certain sensitive intelligence collection missions.
 - . Submit to the NSC a periodic review of ongoing covert operations and sensitive intelligence collection missions.
 - . Meet formally to carry out its responsibility to make recommendations to the President.

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(E) The following existing committees or organizations are abolished:

- (1) United States Intelligence Board
- (2) Intelligence Resources Advisory Committee
- (3) National Security Council Intelligence Committee
- (4) Executive Committee for resource control of certain intelligence collection activity
- (5) 40 Committee

(2) Responsibilities and Duties of the Intelligence Community

(A) The Senior Official of each organization of the intelligence community shall insure his organization operates in accordance with the Executive Order. He shall establish a system of independent inspection within the organization and provide information to the NSC, CFI and Intelligence Oversight Board. Other responsibilities as designated in Section IV of the Order.

(B) CIA is responsible, among other duties as defined in Section IV of the Order, for:

- . Production of national intelligence
- . Maintaining and improving a national intelligence analytic base
- . Collection by other than normal, overt means
- . Foreign counterintelligence activities
- . Undertaking activities defined in the Executive Order necessary to implement the above

(C) The Department of State is primarily responsible for overt collection of foreign, non-military information. Its Bureau of Intelligence and Research shall also produce departmental intelligence and contribute to national intelligence production.

(D) The Department of Treasury is responsible for overt collection of foreign, economic information.

(E) The Department of Defense is responsible for:

- . Overt collection outside the United States of foreign military and military-related information.
- . Producing that intelligence required to fulfill the responsibilities of DOD.
- . Managing the Defense Attache system.
- . Providing intelligence staff support to the Joint Chiefs of Staff.

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The National Security Agency is responsible for:

- . Full control over signals intelligence collection activities.
- . Production and dissemination of signals intelligence.
- . Providing communications security services to the U.S. Government.
- . Research and development related to signals intelligence.

(F) The Energy Research and Development Administration is responsible for producing intelligence relating to atomic and nuclear matters.

(G) The Federal Bureau of Investigation is responsible for:

- . Making available to foreign intelligence agencies foreign intelligence and foreign counterintelligence which it collects.
- . Conducting foreign counterintelligence activities within the United States.

(3) Restrictions on Intelligence Activities

The Executive Order prohibits or severely restricts the following activities by United States foreign intelligence agencies:

- . Collection and analysis of information on the domestic activities of United States citizens, corporations and organizations and permanent resident aliens (referred to as U.S. persons).
- . Physical or electronic surveillance or physical searches of United States persons.
- . Opening of United States mail in violation of law.
- . Illegally obtaining federal tax returns or information.
- . Infiltration of domestic groups for the purpose of influencing or reporting on them.
- . Experimentation with drugs on humans without the subject's informed consent.
- . Sharing among agencies information on the domestic activities of United States persons except in compliance with stringent safeguards.
- . Assignment of personnel to other agencies.
- . Providing assistance to law enforcement agencies in violation of law.
- . Testing of electronic surveillance equipment within the United States.

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Limited exceptions are permitted to allow the agencies to meet the legitimate foreign intelligence needs of the Nation. These narrow exceptions are expressed in detail in the Order. They are designed to permit the following activities under carefully defined circumstances:

- . Collection of information on the domestic activities of U.S. persons in order to: conduct security checks on intelligence agency employees, contractors, people who are given access to classified information and persons who may assist the agency in the future. Overt collection of certain foreign intelligence information from other government agencies.
- . Counterintelligence and counterespionage activities.

(4) Oversight of Intelligence Activities

1. Responsibility to assist the President, the NSC and the Attorney General in overseeing the intelligence community is assigned by Executive Order to the Intelligence Oversight Board (Oversight Board).
2. New membership consists of three members from the private sector designated by the President. One of these will be designated by the President to be Chairman. They will also be made members of the PFIAB.
3. The Board shall:
 - . Receive and consider reports by Inspectors General and General Counsels of the intelligence community concerning activities that raise questions of legality or propriety.
 - . Review periodically the practices and procedures of the intelligence community Inspectors General and General Counsels designed to assist the Oversight Board.
 - . Report periodically and in a timely manner, as appropriate, to the Attorney General and the President on any activities that raise serious questions about legality. It shall report to the President on activities that raise questions of propriety of intelligence community activities.
 - . Receive staff support from persons not connected with the intelligence community.

(5) Secrecy Protection

All persons given access to information containing intelligence sources and methods shall be required to sign an agreement that they will not disclose that information to persons not authorized to receive it.

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MESSAGE TO CONGRESS AND PROPOSED LEGISLATION(A) Message

Today the President sent a message to the Congress which:

- (1) Advised the Congress of the actions he has taken by Executive Order.
- (2) Transmitted the legislative proposal as indicated below.
- (3) Urged Congress to establish effective oversight consistent with the following general objectives:
 - . The oversight functions should be centralized in a Joint House-Senate Committee to provide better security.
 - . Both the House and Senate should adopt rules to insure that secrets will not be improperly disclosed.
 - . The President's injunction of secrecy over foreign intelligence information provided to the Congress by the Executive Branch should be respected.
 - . The Executive Branch should keep the Joint Oversight Committee fully informed of foreign intelligence matters, but there should be no requirement for prior notification of specific activities.
- (4) Section 662 of the Foreign Assistance Act should be ~~modified~~. This requires the intelligence agencies to brief over six committees of Congress on covert actions and has resulted in unauthorized disclosures of classified information.

(B) Legislation

The President submitted the following proposed legislation:

- . Secrecy of Sources and Methods

This bill provides for:

- . Criminal penalties for the disclosure to unauthorized persons of information relating to intelligence sources and methods.
- . Limits its coverage to persons whose access to such information **arise** out of their relationship to the Government (Government employees, contractors and contractor employees).
- . Injunctive relief where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

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The President endorsed the objectives of the legislation proposed by the Senate Select Intelligence Committee to prohibit the assassination of foreign officials in peacetime.

The President also will meet with Congressional leaders to develop acceptable proposed legislation to control electronic surveillance in the United States and mail openings for foreign intelligence purposes.

ACTIONS ALREADY TAKEN

The following are examples of agency actions:

- . CIA directives implementing the recommendations of the Rockefeller Commission and other reforms have been issued internally.
- . NSA reform directives have been issued internally.
- . FBI guidelines are being drafted. Some have already been made public.

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FEBRUARY 18, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

By virtue of the authority vested in me by Article II, Sections 2 and 3 of the Constitution, and other provisions of law, I have today issued an Executive Order pertaining to the organization and control of the United States foreign intelligence community. This order establishes clear lines of accountability for the Nation's foreign intelligence agencies. It sets forth strict guidelines to control the activities of these agencies and specifies as well those activities in which they shall not engage.

In carrying out my Constitutional responsibilities to manage and conduct foreign policy and provide for the Nation's defense, I believe it essential to have the best possible intelligence about the capabilities, intentions and activities of governments and other entities and individuals abroad. To this end, the foreign intelligence agencies of the United States play a vital role in collecting and analyzing information related to the national defense and foreign policy.

It is equally as important that the methods these agencies employ to collect such information for the legitimate needs of the government conform to the standards set out in the Constitution to preserve and respect the privacy and civil liberties of American citizens.

The Executive Order I have issued today will insure a proper balancing of these interests. It establishes government-wide direction for the foreign intelligence agencies and places responsibility and accountability on individuals, not institutions.

I believe it will eliminate abuses and questionable activities on the part of the foreign intelligence agencies while at the same time permitting them to get on with their vital work of gathering and assessing information. It is also my hope that these steps will help to restore public confidence in these agencies and encourage our citizens to appreciate the valuable contribution they make to our national security.

Beyond the steps I have taken in the Executive Order, I also believe there is a clear need for some specific legislative actions. I am today submitting to the Congress of the United States proposals which will go far toward enhancing the protection of true intelligence secrets as well as regularizing procedures for intelligence collection in the United States.

My first proposal deals with the protection of intelligence sources and methods. The Director of Central Intelligence is charged, under the National Security Act of 1947, as amended, with protecting intelligence sources and methods. The Act, however, gives the Director no authorities commensurate with this responsibility.

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Therefore, I am proposing legislation to impose criminal and civil sanctions on those who are authorized access to intelligence secrets and who willfully and wrongfully reveal this information. This legislation is not an "Official Secrets Act", since it would affect only those who improperly disclose secrets, not those to whom secrets are disclosed. Moreover, this legislation could not be used to cover up abuses and improprieties. It would in no way prevent people from reporting questionable activities to appropriate authorities in the Executive and Legislative Branches of the government.

It is essential, however, that the irresponsible and dangerous exposure of our Nation's intelligence secrets be stopped. The American people have long accepted the principles of confidentiality and secrecy in many dealings -- such as with doctors, lawyers and the clergy. It makes absolutely no sense to deny this same protection to our intelligence secrets. Openness is a hallmark of our democratic society, but the American people have never believed that it was necessary to reveal the secret war plans of the Department of Defense, and I do not think they wish to have true intelligence secrets revealed either.

I urge the adoption of this legislation with all possible speed.

Second, I support proposals that would clarify and set statutory limits, where necessary, on the activities of the foreign intelligence agencies. In particular, I will support legislation making it a crime to assassinate or attempt or conspire to assassinate a foreign official in peacetime. Since it defines a crime, legislation is necessary.

Third, I will meet with the appropriate leaders of Congress to try to develop sound legislation to deal with a critical problem involving personal privacy -- electronic surveillance. Working with Congressional leaders and the Justice Department and other Executive agencies, we will seek to develop a procedure for undertaking electronic surveillance for foreign intelligence purposes. It should create a special procedure for seeking a judicial warrant authorizing the use of electronic surveillance in the United States for foreign intelligence purposes.

I will also seek Congressional support for sound legislation to expand judicial supervision of mail openings. The law now permits the opening of United States mail, under proper judicial safeguards, in the conduct of criminal investigations. We need authority to open mail under the limitations and safeguards that now apply in order to obtain vitally needed foreign intelligence information.

This would require a showing that there is probable cause to believe that the sender or recipient is an agent of a foreign power who is engaged in spying, sabotage or terrorism. As is now the case in criminal investigations, those seeking authority to examine mail for foreign intelligence purposes will have to convince a federal judge of the necessity to do so and accept the limitations upon their authorization to examine the mail provided in the order of the court.

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Fourth, I would like to share my views regarding appropriate Congressional oversight of the foreign intelligence agencies. It is clearly the business of the Congress to organize itself to deal with these matters. Certain principles, however, should be recognized by both the Executive and Legislative Branches if this oversight is to be effective. I believe good Congressional oversight is essential so that the Congress and the American people whom you represent can be assured that the foreign intelligence agencies are adhering to the law in all of their activities.

Congress should seek to centralize the responsibility for oversight of the foreign intelligence community. The more committees and subcommittees dealing with highly sensitive secrets, the greater the risks of disclosure. I recommend that Congress establish a Joint Foreign Intelligence Oversight Committee. Consolidating Congressional oversight in one committee will facilitate the efforts of the Administration to keep the Congress fully informed of foreign intelligence activities.

It is essential that both the House and the Senate establish firm rules to insure that foreign intelligence secrets will not be improperly disclosed. There must be established a clear process to safeguard these secrets and effective measures to deal with unauthorized disclosures.

Any foreign intelligence information transmitted by the Executive Branch to the Oversight Committee, under an injunction of secrecy, should not be unilaterally disclosed without my agreement. Respect for the integrity of the Constitution requires adherence to the principle that no individual member, nor committee, nor single House of Congress can overrule an act of the Executive. Unilateral publication of classified information over the objection of the President, by one committee or one House of Congress, not only violates the doctrine of separation of powers, but also effectively overrules the actions of the other House of Congress, and perhaps even the majority of both Houses.

Finally, successful and effective Congressional oversight of the foreign intelligence agencies depends on mutual trust between the Congress and Executive. Each branch must recognize and respect the rights and prerogatives of the other if anything is to be achieved.

In this context, a Congressional requirement to keep the Oversight Committee "fully" informed is more desirable and workable as a practical matter than formal requirements for notification of specific activities to a large number of committees. Specifically, Section 662 of the Foreign Assistance Act, which has resulted in over six separate committee briefings, should be modified as recommended by the Commission on the Organization of the Government for the Conduct of Foreign Policy, and reporting should be limited to the new Oversight Committee.

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Both the Congress and the Executive Branch recognize the importance to this Nation of a strong intelligence service. I believe it urgent that we take the steps I have outlined above to insure that America not only has the best foreign intelligence service in the world, but also the most unique -- one which operates in a manner fully consistent with the Constitutional rights of our citizens.

GERALD R. FORD

THE WHITE HOUSE,

February 18, 1976.

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A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled, that
3 Section 102 of the National Security Act of 1947, as amended,
4 (50 U.S.C.A. 403) is further amended by adding the following
5 new subsection (g):

6 (g) In the interests of the security of the foreign
7 intelligence activities of the United States, and in order further
8 to implement the proviso of section 102(d)(3) of the Act that the
9 Director of Central Intelligence shall be responsible for
10 protecting intelligence sources and methods from unauthorized
11 disclosure--

12 (1) Whoever, being or having been in duly
13 authorized possession or control of information relating
14 to intelligence sources and methods, or whoever, being
15 or having been an officer or employee of the United States,
16 or member of the Armed Services of the United States,
17 or a contractor of the United States Government, or an
18 employee of a contractor of the United States Government,
19 and in the course of such relationship becomes possessed



1 of such information imparts or communicates it by any
2 means to a person not authorized to receive it or to the
3 general public shall be fined not more than \$5,000 or
4 imprisoned not more than five years; or both;

5 (2) For the purposes of this subsection, the
6 term "information relating to intelligence sources and
7 methods" means any information, regardless of its origin, that
8 is classified pursuant to the provisions of a statute or Executive
9 order, or a regulation or a rule issued pursuant thereto as
10 information requiring a specific degree of protection against
11 unauthorized disclosure for reasons of national security and
12 which, in the interest of the foreign intelligence activities
13 of the United States, has been specifically designated by
14 a department or agency of the United States Government
15 which is authorized by law or by the President to engage
16 in foreign intelligence activities for the United States as
17 information concerning--

18 (A) methods of collecting foreign intelligence;

19 (B) sources of foreign intelligence, whether
20 human, technical, or other; or

21 (C) methods and techniques of analysis

1 and evaluation of foreign intelligence.

2 3) A person who is not authorized to receive
3 information relating to intelligence sources and methods is
4 not subject to prosecution for conspiracy to commit an
5 offense under this subsection, or as an accomplice, within
6 the meaning of sections 2 and 3 of Title 18, United States
7 Code, in the commission of an offense under this
8 subsection, unless he became possessed of such information
9 in the course of a relationship with the United States Govern-
10 ment as described in paragraph (1): Provided, however, That
11 the bar created by this paragraph does not preclude the
12 indictment or conviction for conspiracy of any person who is
13 subject to prosecution under paragraph (1) of this subsection.

14 (4) It is a bar to prosecution under this subsection that:

15 (A) at the time of the offense there did not
16 exist a review procedure within the Government
17 agency described in paragraph (2) of this subsection
18 through which the defendant could obtain review
19 of the continuing necessity for the classification
20 and designation;

21 (B) prior to the return of the indictment or the

1 iling of the information, the Attorney General and the
2 Director of Central Intelligence did not jointly certify
3 to the court that the information was lawfully classified
4 and lawfully designated pursuant to paragraph (2)
5 at the time of the offense;

6 (C) the information has been placed in the public
7 domain by the United States Government; or

8 (D) the information was not lawfully classified
9 and lawfully designated pursuant to paragraph (2)
10 at the time of the offense.

11 (5) It is a defense to a prosecution under this
12 subsection that the information was communicated only to a
13 regularly constituted subcommittee, committee or joint
14 committee of Congress, pursuant to lawful demand.

15 (6) Any hearing by the court for the purpose of
16 making a determination whether the information was lawfully
17 classified and lawfully designated, shall be in camera;

18 (A) at the close of any in camera review, the
19 court shall enter into the record an order pursuant
20 to its findings and determinations;

21 (B) any determination by the court under this

1 paragraph shall be a question of law.

2 (7) Whenever in the judgment of the Director of
3 Central Intelligence any person is about to engage in any
4 acts or practices which will constitute a violation of this
5 subsection, the Attorney General, on behalf of the United
6 States, may make application to the appropriate court for an
7 order enjoining such acts or practices, and upon a showing
8 that such person is about to engage in any such acts or
9 practices, a permanent or temporary injunction, restraining
10 order, or other order may be granted. In the case of an
11 application for an order under this paragraph;

12 (A) the court shall not hold an in camera hearing
13 for the purpose of making a determination as to the
14 lawfulness of the classification and designation of the
15 information unless it has determined after giving due
16 consideration to all attending evidence that such
17 evidence does not indicate that the matter has been
18 lawfully classified and designated;

19 (B) the court shall not invalidate the classification
20 or designation unless it finds that the judgment of the
21 department or agency, pursuant to paragraph (2),

1 as to the lawfulness of the classification and
2 designation was arbitrary, capricious and without
3 a reasonable basis in fact.

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. The new subsection draws upon existing concepts of law found within 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provisions. It also recognizes the authority of the Director and heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as

unlawful only the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection provides that no prosecution may be instituted unless the Attorney General and the Director of Central Intelligence first jointly certify to the court that the information was lawfully classified and lawfully designated for limited dissemination; the information was not placed in the public domain by the Government; an agency review procedure existed whereby the defendant could have secured a review of the information in question for a determination on public releasability; and the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

Paragraph (5) of the new subsection provides a defense to prosecution if the information was only provided to a regularly constituted committee, joint committee or joint committee of Congress, pursuant to lawful demand.

Paragraph (6) of the new subsection provides that any hearing by the court to determine whether the information was lawfully classified and lawfully designated shall be in camera and such determination shall be a question of law.



Paragraph (7) of the new subsection permits the Attorney General to petition a court to enjoin injunction any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U. S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods and techniques from unauthorized disclosure. This paragraph also provides that in any hearing for such an order the court shall not hold an in camera hearing to determine the lawfulness of the classification and designation of the information unless it has first considered all attending evidence and determined that the evidence does not indicate that the matter has been lawfully classified and lawfully designated. The paragraph further provides that the court may invalidate a classification or designation if it finds the judgment of the department or agency head was arbitrary, capricious and without a reasonable basis in fact.

File

PROPOSED LEGISLATION
UNAUTHORIZED DISCLOSURE
OF
INTELLIGENCE SOURCES AND METHODS



BILL



A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled, that
3 Section 102 of the National Security Act of 1947, as amended,
4 (50 U.S.C.A. 403) is further amended by adding the following
5 new subsection (g):

6 (g) In the interests of the security of the foreign
7 intelligence activities of the United States, and in order further
8 to implement the proviso of section 102(d)(3) of the Act that the
9 Director of Central Intelligence shall be responsible for
10 protecting intelligence sources and methods from unauthorized
11 disclosure--

12 (1) Whoever, being or having been in duly
13 authorized possession or control of information relating
14 to intelligence sources and methods, or whoever, being
15 or having been an officer or employee of the United States,
16 or member of the Armed Services of the United States,
17 or a contractor of the United States Government, or an
18 employee of a contractor of the United States Government,
19 and in the course of such relationship becomes possessed

1 of such information imparts or communicates it by any
2 means to a person not authorized to receive it or to the
3 general public shall be fined not more than \$5,000 or
4 imprisoned not more than five years, or both;

5 (2) For the purposes of this subsection, the
6 term "information relating to intelligence sources and
7 methods" means any information, regardless of its origin, that
8 is classified pursuant to the provisions of a statute or Executive
9 order, or a regulation or a rule issued pursuant thereto as
10 information requiring a specific degree of protection against
11 unauthorized disclosure for reasons of national security and
12 which, in the interest of the foreign intelligence activities
13 of the United States, has been specifically designated by
14 a department or agency of the United States Government
15 which is authorized by law or by the President to engage
16 in foreign intelligence activities for the United States as
17 information concerning--

18 (A) methods of collecting foreign intelligence;

19 (B) sources of foreign intelligence, whether
20 human, technical, or other; or

21 (C) methods and techniques of analysis

1 and evaluation of foreign intelligence.

2 (3) A person who is not authorized to receive
3 information relating to intelligence sources and methods is
4 not subject to prosecution for conspiracy to commit an
5 offense under this subsection, or as an accomplice, within
6 the meaning of sections 2 and 3 of Title 18, United States
7 Code, in the commission of an offense under this
8 subsection, unless he became possessed of such information
9 in the course of a relationship with the United States Govern-
10 ment as described in paragraph (1): Provided, however, That
11 the bar created by this paragraph does not preclude the
12 indictment or conviction for conspiracy of any person who is
13 subject to prosecution under paragraph (1) of this subsection.

14 (4) It is a bar to prosecution under this subsection that:

15 (A) at the time of the offense there did not
16 exist a review procedure within the Government
17 agency described in paragraph (2) of this subsection
18 through which the defendant could obtain review
19 of the continuing necessity for the classification
20 and designation;

21 (B) prior to the return of the indictment or the

1 filing of the information, the Attorney General and the
2 Director of Central Intelligence did not jointly certify
3 to the court that the information was lawfully classified
4 and lawfully designated pursuant to paragraph (2)
5 at the time of the offense;

6 (C) the information has been placed in the public
7 domain by the United States Government; or

8 (D) the information was not lawfully classified
9 and lawfully designated pursuant to paragraph (2)
10 at the time of the offense.

11 (5) It is a defense to a prosecution under this
12 subsection that the information was communicated only to a
13 regularly constituted subcommittee, committee or joint
14 committee of Congress, pursuant to lawful demand.

15 (6) Any hearing by the court for the purpose of
16 making a determination whether the information was lawfully
17 classified and lawfully designated, shall be in camera;

18 (A) at the close of any in camera review, the
19 court shall enter into the record an order pursuant
20 to its findings and determinations;

21 (B) any determination by the court under this

1 paragraph shall be a question of law.

2 (7) Whenever in the judgment of the Director of
3 Central Intelligence any person is about to engage in any
4 acts or practices which will constitute a violation of this
5 subsection, the Attorney General, on behalf of the United
6 States, may make application to the appropriate court for an
7 order enjoining such acts or practices, and upon a showing
8 that such person is about to engage in any such acts or
9 practices, a permanent or temporary injunction, restraining
10 order, or other order may be granted. In the case of an
11 application for an order under this paragraph;

12 (A) the court shall not hold an in camera hearing
13 for the purpose of making a determination as to the
14 lawfulness of the classification and designation of the
15 information unless it has determined after giving due
16 consideration to all attending evidence that such
17 evidence does not indicate that the matter has been
18 lawfully classified and designated;

19 (B) the court shall not invalidate the classification
20 or designation unless it finds that the judgment of the
21 department or agency, pursuant to paragraph (2),

1 as to the lawfulness of the classification and
2 designation was arbitrary, capricious and without
3 a reasonable basis in fact.

SECTIONAL ANALYSIS AND EXPLANATION

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. The new subsection draws upon existing concepts of law found within 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provisions. It also recognizes the authority of the Director and heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as

unlawful only the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection provides that no prosecution may be instituted unless the Attorney General and the Director of Central Intelligence first jointly certify to the court that the information was lawfully classified and lawfully designated for limited dissemination; the information was not placed in the public domain by the Government; an agency review procedure existed whereby the defendant could have secured a review of the information in question for a determination on public releasability; and the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

Paragraph (5) of the new subsection provides a defense to prosecution if the information was only provided to a regularly constituted committee, joint committee or joint committee of Congress, pursuant to lawful demand.

Paragraph (6) of the new subsection provides that any hearing by the court to determine whether the information was lawfully classified and lawfully designated shall be in camera and such determination shall be a question of law.

Paragraph (7) of the new subsection permits the Attorney General to petition a court to enjoin injunction any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U. S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods and techniques from unauthorized disclosure. This paragraph also provides that in any hearing for such an order the court shall not hold an in camera hearing to determine the lawfulness of the classification and designation of the information unless it has first considered all attending evidence and determined that the evidence does not indicate that the matter has been lawfully classified and lawfully designated. The paragraph further provides that the court may invalidate a classification or designation if it finds the judgment of the department or agency head was arbitrary, capricious and without a reasonable basis in fact.

CHANGES IN EXISTING LAW

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman: new matter is underscored.

NATIONAL SECURITY ACT OF 1947 as amended (50 U.S.C.A. 403)

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TITLE I--COORDINATION FOR NATIONAL SECURITY

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CENTRAL INTELLIGENCE AGENCY

SEC. 102

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(g) In the interests of the security of the foreign intelligence activities of the United States, and in order further to implement the proviso of section 102(d)(3) of the Act that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure--

(1) Whoever, being or having been in duly authorized possession or control of information relating to intelligence sources and methods, or whoever, being or having been an officer or employee of the United States, or member of the Armed Services of the United States, or a contractor of the United States Government, or an employee of a contractor of the United States Government, and in the course of such relationship becomes possessed of such information imparts or communicates it by any means to a person not authorized to receive it or to the general public shall be fined not more than \$5,000 or imprisoned not more than five years, or both;

(2) For the purposes of this subsection, the term "information relating to intelligence sources and methods" means any information, regardless of its origin, that is classified pursuant to the provisions of a statute or Executive order, or a regulation or a rule issued pursuant thereto as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security and which, in the interest of the foreign intelligence activities of the United States, has been specifically designated by a department or agency of the United States Government which is authorized by law or by the President to engage in foreign intelligence activities for the United States as information concerning--

(A) methods of collecting foreign intelligence;

(B) sources of foreign intelligence, whether human, technical, or other; or

(C) methods and techniques of analysis and evaluation of foreign intelligence.

(3) A person who is not authorized to receive information relating to intelligence sources and methods is not subject to prosecution as an accomplice within the meaning of sections 2 and 3 of Title 18, United States Code, or to prosecution for conspiracy to commit an offense under this subsection, unless he became possessed of such information in the course of a relationship with the United States Government as described in paragraph (1): Provided, however, That the bar created by this paragraph does not preclude the indictment or conviction for conspiracy of any person who is subject to prosecution under paragraph (1) of this subsection.

(4) It is a bar to prosecution under this subsection that:

(A) at the time of the offense there did not exist a review procedure within the Government agency described in paragraph (2) of this subsection, through which the defendant could obtain review of the continuing necessity for the classification and designation;

(B) prior to the return of the indictment or the filing of the information, the Attorney General and the Director of Central Intelligence did not jointly certify to the court that the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense;

(C) the information has been placed in the public domain by the United States Government; or

(D) the information was not lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

(5) It is a defense to a prosecution under this subsection that the information was communicated only to a regularly constituted subcommittee, committee or joint committee of Congress, pursuant to lawful demand.

(6) Any hearing by the court for the purpose of making a determination whether the information was lawfully classified and lawfully designated, shall be in camera;

(A) at the close of any in camera review, the court shall enter into the record an order pursuant to its findings and determinations;

(B) any determination by the court under this paragraph shall be a question of law.

(7) Whenever in the judgment of the Director of Central Intelligence any person is about to engage in any acts or practices which will constitute a violation of this subsection, the Attorney General, on behalf of the United States, may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing that such person is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. In the case of an application for an order under this paragraph;

(A) the court shall not hold an in camera hearing for the purpose of making determination as to the lawfulness of the classification and designation of the information unless it has determined after giving due consideration to all attending evidence does not indicate that the matter has been lawfully classified and designated;

(B) the court shall not invalidate the classification or designation unless it finds that the judgment of the department or agency, pursuant to paragraph (2), as to the lawfulness of the classification and designation was arbitrary, capricious and without a reasonable basis in fact.

COST ANALYSIS

COST ANALYSIS

This legislation does not involve any measurable costs. Any court costs to the Government would be more than offset by the savings that would result if the legislation deters the compromise of sensitive sources and methods which, if compromised, would require extensive and costly counteractions to mitigate the damage and to offset the advantages to the opposition.