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ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00728

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS, National security restriction
Type of Material : MEM, Memo(s)
Creator's Name : James Connor
Receiver's Name : Philip Buchen and Jack Marsh
Description : re proposed legislation on electronic surveillance
Creation Date : 03/17/1976
Volume (pages) : 1
Date Withdrawn : 05/17/1988

*excised
6/6/2000*



THE WHITE HOUSE

WASHINGTON

March 17, 1976

~~SECRET/SENSITIVE~~
XGDIS

MEMORANDUM FOR:

PHILIP BUCHEN
JACK MARSH

FROM:

JAMES E. CONNOR 

SUBJECT:

Proposed Legislation on Electronic
Surveillance

The President reviewed the recommendations presented to him concerning Proposed Legislation on Electronic Surveillance and made the following decisions:

1. Should the bill require a judicial warrant for surveillance of
.....

Approved - "Support legislation such as drafted by Attorney General Levi which would require judicial warrant for surveillance
.....
.....

2. Should the standard which the Executive Branch must meet to seek a warrant be for information which is "essential" or "important"?

Approved - "Support language proposed by Attorney General Levi."

Please follow-up with appropriate action.

cc: Brent Scowcroft
Dick Cheney

~~SECRET/SENSITIVE~~
XGDIS

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With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c)

MR 94-152, #59; NSL letter 9/8/98
By lit, NARA, Date 6/2000

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00729

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS, National security restriction
Type of Material : MEM, Memo(s)
Creator's Name : Jack Marsh
Receiver's Name : President
Description : re proposed legislation on electronic surveillance
Creation Date : 03/16/1976
Volume (pages) : 4
Date Withdrawn : 05/17/1988

*excised
let 4/2000*

~~SECRET/SENSITIVE~~
XGDIS

THE WHITE HOUSE
WASHINGTON

DECISION

March 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JACK MARSH *Jack*

SUBJECT: Proposed Legislation on Electronic Surveillance

PURPOSE

The attached memoranda present for your decision two substantive issues concerning the legislation which you have announced a willingness to support in the area of electronic surveillance for foreign intelligence purposes.

BACKGROUND

On February 18th in a Message to the Congress you stated that you will meet with the appropriate leaders of Congress to "...develop a [statutory] procedure for undertaking electronic surveillance for foreign intelligence purposes..." which would include procedures "...for seeking a judicial warrant authorizing the use of electronic surveillance in the United States for foreign intelligence purposes."

Ed Levi has developed a draft bill in coordination with members of the Senate Judiciary Committee, particularly Senator Kennedy.

Secretaries Kissinger and Rumsfeld, supported by George Bush and Brent Scowcroft, object to the scope of the Levi bill.

We have been informed that the New York Times may run a story to the effect that the Administration has been trying to reach a consensus position with Senate Liberals. Such a story, in Ed Levi's view, may result in certain Liberals opposing the compromise bill. Accordingly, Levi is anxious that you resolve this issue quickly so that the meeting with the Congressional leaders can proceed before the broad support that he feels he has for the compromise bill begins to erode.

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E.O. 12958 Sec. 1.5 (c)

MR 94-152, #60; NSC WKA 9/8/98

By let, NARA, Date 6/20/00

Attached are the positions of your advisers:

TAB A - The Attorney General (with Buchen cover memorandum)

TAB B - Brent Scowcroft

TAB C - State Department

TAB D - Defense Department

(Note: George Bush wants these operations expanded. He wants to preserve Presidential powers but cannot assess what the courts may do.)

ISSUES FOR DECISION:

1. Should the bill require a judicial warrant for surveillance of
.....

Arguments in Favor:

This is the position which Ed Levi strongly urges you to accept. He is supported by Phil Buchen and Jack Marsh.

Levi argues that the courts may eventually decide a warrant is necessary for such cases but, more importantly, this must be included in the legislation in order to get broad support in Congress (principally from Kennedy et al). Otherwise, the legislation would only cover surveillance of..... which would make it look (to some in Congress) too repressive. Levi also argues that the legislation as drafted in no way would compromise Constitutionally-based Presidential powers and a warrant would issue almost automatically in appropriate cases. He further argues there would actually be an increased "take" from such surveillance because the communications companies involved would be more likely to cooperate under the warrant procedure. (Right now, one company, Western Union, will not cooperate in certain sureveillance, possibly as a reaction to the recent publicity and Congressional hearings.)

Arguments in Opposition:

Secretaries Kissinger and Rumsfeld, along with Brent Scowcroft, argue that the legislation should only require judicial warrant for surveillance of.....

..... They argue that the extension proposed by Levi would primarily cover situations where we wish to intercept communications.....

..... They argue that the intercept of such communications..... has always been the prerogative of the Executive and should not be made subject to judicial warrant.

DECISION

Support legislation such as drafted by Attorney General Levi which would require judicial warrant for surveillance of.....
.....

APPROVE RL7 [Levi, Buchen and Marsh]

DISAPPROVE _____ [Kissinger, Rumsfeld and Scowcroft]

2. Should the standard which the Executive Branch must meet to seek a warrant be for information which is "essential" or "important"?

Arguments in Favor:

Ed Levi has worked out a compromise with members of the Senate Judiciary Committee which uses the following language:

" [information sought] which because of its importance is deemed essential to the security or national defense of the Nation or to the conduct of foreign affairs of the United States. "

Levi reports that he has been assured that the Committee report will make it clear that the controlling word in this text is "importance." He does not believe that any lesser standard will meet with Committee approval.

Arguments in Opposition:

State and Defense and Brent Scowcroft believe that the language supported by the Attorney General is too strick and they are unwilling to rely on legislative history to rectify the problem. They believe that the proposed standard is unreasonable.

DECISION

Support language proposed by Attorney General Levi.

APPROVE RR 7 [Levi, Buchen and Marsh]

DISAPPROVE _____ [Kissinger, Rumsfeld, Scowcroft]

NOTE:

A third issue raised by the Attorney General concerning the definitions in the proposed bill has been resolved between the agencies and does not involve a matter which you need to decide.

ATTACHMENTS:

~~TOP SECRET~~

THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN 

SUBJECT: Legislation on Electronic Surveillance for Foreign Intelligence Purposes

Attached is a memorandum (Tab II) to you from the Attorney General on the above subject. It deals with the three remaining issues which, along with my summary of pros and cons for each, are listed at Tab I.

In an effort to resolve these differences, Jack Marsh and I held a meeting on Friday, March 12 with Henry Kissinger, Don Rumsfeld, Ed Levi, Brent Scowcroft and George Bush. After a lengthy discussion, the others had a better understanding as to why Ed Levi, Jack Marsh and I favor the legislation as it is now drafted (which applies the warrants to foreign installations and diplomats and which reflects option #1 on the second issue and option #2 on the third issue). As a result, I detect no adamant opposition to the legislation as now drafted. Those who had previously questioned aspects of the proposed legislation declined to register any votes on the issues. Therefore, I recommend that you deal with the three issues on the Levi memorandum (Tab II) as follows:

1. By approving applications of warrants to foreign installations and diplomats (page 5 at Tab II);
2. By approving option #1 (page 6 of Tab II); and
3. By approving option #2 (page 7 of Tab II).

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E.O. 12958 Sec. 3.6

MR 94-154, #61 NSR Ltr 5/15/98

By KBH, NARA, Date 7/22/98

The main concern was whether this legislative initiative would succeed or whether, as some feared, the legislation which is actually passed would depart in objectionable ways from the present draft. On this point, the Attorney General feels confident that the matter can be effectively handled through a meeting by you with members of the Senate and House Judiciary Committees and the top leadership of the two Houses.

Already, the Attorney General has found the key members of the Senate Judiciary Committee receptive to the legislation as drafted, and he has had favorable preliminary reactions from Congressmen Rodino and Hutchinson of the House Judiciary Committee. Senators Eastland, McClellan, and Hruska recommended to the Attorney General that he make a special point of enlisting strong support from Senator Kennedy, who, in turn, has now indicated he wants to sponsor the bill in the Senate. Senator Kennedy will be joined in sponsoring the bill by other key members of the Senate Judiciary Committee, and no opposition from any member of the Committee is expected.

The Attorney General is strongly of the opinion that you should support the legislation as drafted, and if you should feel any hesitancy, he would like to discuss the matter with you personally before you make a final decision.

You had earlier indicated to the Congress that you intend to meet with key members to develop acceptable legislation on this subject. Therefore, as soon as you have indicated your decisions which are sought in the Attorney General's memo to you, we will make arrangements to schedule the contemplated meeting.

Attachments

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00731

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : TAP,Talking Points
Creator's Name : Philip Buchen
Description : re legislation on electronic surveillance
Creation Date : 03/12/1976
Volume (pages) : 3
Date Withdrawn : 05/17/1988

*excised
6/2000*



THE WHITE HOUSE

WASHINGTON

TALKING POINTS

MEETING: March 12, 1976, at 10:30 a.m. in
White House Situation Room

SUBJECT: Legislation on Electronic Surveillance
for Foreign Intelligence Purposes

1. Requirement of warrant for surveillance of

(a) Pros:

(i) Avoids likelihood that in absence of
legislation, courts will eventually
decide a warrant is required in such
cases.

(ii) Eliminates question of validity of
evidence obtained

(iii) Protects cooperating communications
carriers and landlords and protects
against charges of criminal trespasses
when otherwise communications carriers
can decline cooperation and render
surveillance impossible. (One carrier
has already declined such cooperation.)

(iv) Avoids having legislation which is
designed solely to permit

.....when such activities are
relatively a minor portion of the
electronic surveillance program and
key members of the Senate Judiciary
Committee want the legislation to
include.....surveillance.

(v) The stated tests for obtaining a
warrant are not of a kind which will
materially inhibit surveillance of
these kinds of targets.

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With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (d)

MR 94-152, #62, NSC Letter 9/8/98

By WT, NARA, Date 6/2000

(b) Cons:

- (i) Unnecessarily requires resort to the judiciary for exercise of an inherent Executive power, especially in cases where only communications of
.....are involved.
 - (ii) Makes warrants mandatory even in the area of communications
.....that are not of significant concern to the Congress, when warrants in cases
.....might better be made optional in the discretion of the Executive.
 - (iii) Could result in troublesome delays or even a denial of authority in particular cases.
2. Requirement for information sought to be that "which because of its importance is deemed essential to the security or national defense of the Nation or to the conduct of the foreign affairs of the United States."

(a) Pros:

- (i) Test is not materially inhibiting because meeting the test depends on the judgment of knowledgeable Executive officials and relates to their reasonable expectations of what information may result from
.....the planned surveillance.....
- (ii) Committee report will indicate that "importance" is the controlling word.
- (iii) Any lesser test will not be acceptable to members of Congress whose support is needed to obtain passage of the legislation; and it might result in a successful court challenge of the legislation

(b) Cons:

- (i) "Essential" rather than "importance" appears to be the controlling word in the test, notwithstanding what the Committee report may say.
- (ii) While the legislation appears to contemplate no second-guessing by a Judge on whether the test has been met, it is still possible that a Judge on learning the identity of a particular target might question whether it could possibly have been met.

3. Failure to include

(a) Pros:

- (i) The included words
.....
.....
fit within the purposes of the legislation.
- (ii) Senate Judiciary Committee wants to avoid singling out for special mention
.....
.....
.....

(b) Cons:

- (i) Without a straightforward reference an ambiguity exists that is better overcome directly than by reliance on legislative history.

II.

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00732

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Edward Levi
Receiver's Name : President
Description : re electronic surveillance legisla
tion
Creation Date : 03/1976?
Volume (pages) : 7
Date Withdrawn : 05/17/1988

EXEMPTED 11/4/08

TAB A

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00733

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : COB,Congressional Bill(s)
Description : draft bill on electronic surveill
ance
Creation Date : 03/10/1976
Volume (pages) : 14
Date Withdrawn : 05/17/1988

TAB B

TAB C

[DRAFT]

Dear Senator:

You have asked for my comments on two provisions of the draft bill which establishes a procedure for seeking a warrant to authorize electronic surveillance for foreign intelligence purposes.

Under this bill, the Attorney General would be authorized to make an application to a judge to obtain a warrant authorizing the use of electronic surveillance. A judge would issue the warrant only if he found probable cause to believe that the target of the surveillance was a foreign power or an agent of a foreign power. The phrase "agent of a foreign power" is defined in the bill as (1) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or (2) a person who, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.

The phrase "clandestine intelligence activities, sabotage or terrorist activities" is meant to describe those types of activities by a foreign power or its agent that the Federal government must be capable of discovering, particularly when

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MR94-153 #63; DOJ letter 1/16/97

By WT NARA, Date 3/10/97.

they occur within the United States. While the most common activities that would come within the scope of this phrase would constitute violations of the Federal criminal law, there is a certain limited area that would not. For example, the clandestine collection of information by an agent of a foreign power concerning important industrial processes essential to the national security, e.g. computer technology, would not in most cases violate any Federal statute.

Additionally, foreign intelligence services in this country may engage in clandestine intelligence activities against installations and personnel of other nations situated here. This could include recruitment, clandestine gathering of information and covert actions. Virtually none of this activity is prohibited by Federal law, yet it can profoundly affect our security or the conduct of our foreign relations. Finally, certain terrorist activities undertaken by a foreign-based terrorist group within the United States may not constitute a Federal crime, e.g., arson committed in a state capitol building.

While most would agree that many of the activities falling within the scope of this phrase should be considered criminal, the fact is that presently all of them do not violate our Federal criminal laws. This may be attributable, in part, to the difficulty of drafting a precise criminal law that does not sweep too broadly as well as to the view that normally such acts, such as arson, are covered by state criminal laws. The factor requiring the Federal government's interest arises only where the act is committed by an agent of a foreign power.

In my view, the present bill is correct in placing its principal focus not solely upon the factor of Federal criminality or noncriminality, but upon the issue of whether the proposed target of the surveillance is engaging in clandestine intelligence activities, sabotage or terrorism as an agent of a foreign power ^{or} and pursuant to the foreign power's direction.

Under this bill, a warrant would issue in the cases we have been discussing only upon a finding by an independent magistrate that there is probable cause to believe that such agency and direction exists and that the target is engaging in clandestine intelligence activities, sabotage or terrorist activities or is conspiring with, assisting or aiding and abetting a person who is engaging in such activities.

The second provision on which you have requested my comment is section 2528 of the bill, which relates to the constitutional power of the President to order electronic surveillance under facts and circumstances not covered by this legislation.

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 of the sort covered by the bill. 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 only pursuant to judicial warrant with respect to all electronic surveillance against domestic communications of American citizens or permanent resident aliens.

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00735

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : George Bush
Receiver's Name : Edward Levi
Description : re proposed bill on electronic su
rveillance
Creation Date : 03/10/1976
Volume (pages) : 2
Date Withdrawn : 05/17/1988

Sanitized 7/11/00 KBH

~~SECRET~~

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL

MAR 10 1976

10 March 1976

MEMORANDUM FOR: The Honorable Edward H. Levi
Attorney General

The Honorable John O. Marsh, Jr.
Counselor to the President

FROM: George Bush
Director

SUBJECT: Proposed Bill on Electronic Surveillance

1. I have reviewed carefully the Attorney General's draft memorandum to the President dated 8 March 1976. I have also reviewed the proposed memorandum from the Secretary of State to the President commenting on this proposed legislation. My principal concern is that there be no unnecessary diminution of collection of important foreign intelligence through the type of capabilities which would be covered by the proposed legislation. With this in mind, I concur fully with the position of the Secretary of State which recommends two adjustments to the proposed bill.

2. Certain communications common carriers are no longer willing to undertake electronic surveillance based on present circumstances. This, of course, seriously affects the capabilities of the Intelligence Community to collect foreign intelligence. Consequently, I can understand that appropriate legislation may be necessary in order to obtain the assistance of the common carriers in the future.

3. The proposed addition to the Justice bill contained in Tab A of the memorandum from the Secretary of State would empower the Attorney General to approve the conduct of electronic surveillance for the purpose of acquiring foreign intelligence if the target is not a United States citizen or an alien lawfully admitted for permanent residence. While I agree with this position, it would appear that with respect to certain communications common carriers we will be unable to obtain their assistance without a court order.

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With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (4) (1) (6) (7)



MR 98-26 #5 CIA Mr. 4/1/00
By KUBH, NARA, Date 7/17/00

B

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00736

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Brent Scowcroft
Receiver's Name : President
Description : re legislation on electronic surveillance
Creation Date : 03/16/1976
Volume (pages) : 3
Date Withdrawn : 05/17/1988

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00737

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Robert Ingersoll
Receiver's Name : President
Description : re Attorney General Levi's propos
ed bill on electronic surveillance
Creation Date : 03/16/1976
Volume (pages) : 6
Date Withdrawn : 05/17/1988

*opened with portions exempted
KBH 5/13/97*



THE DEPUTY SECRETARY OF STATE
WASHINGTON

SECRET

March 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Robert S. Ingersoll *RSI*

SUBJECT: Attorney General Levi's Proposed
Bill on Electronic Surveillance

The Department of State accepts that it is appropriate to have an Administration sponsored bill which would place electronic surveillance for foreign intelligence purposes on a statutory basis and which would safeguard the constitutional rights of United States citizens under the Fourth Amendment. We concur in the draft bill contained in the Attorney General's memorandum to you of March 8 on all except two issues. Neither of these issues raises a substantial Fourth Amendment question.

I.

Our first point is fundamental. I believe that it would be a mistake to surrender the President's constitutional authority to conduct electronic surveillance for foreign intelligence purposes without a warrant if the target is neither a United States citizen nor a permanent resident alien entitled to Fourth Amendment protections. Such warrantless surveillance has been conducted for many years, and no court has ever held that the President does not have such authority. Administration sponsorship of a measure to subject this authority to the requirement of a warrant would be likely to invite further

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MR 94-158, #64 State Hr. 4/24/97

By *KBH* NARA, Date *5/13/97*

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-2-

legislative attempts to curtail the President's authority to conduct foreign relations.

We believe the thrust of any legislation in this field should be to protect the constitutional rights of United States citizens and permanent resident aliens, not foreign diplomats. Therefore, we favor the inclusion of a provision (Tab A) which would permit the President to authorize the Attorney General to institute without court warrant electronic surveillance for foreign intelligence purposes if the target is neither a United States citizen nor a permanent resident alien. In effect this would make the court warrant procedure mandatory in the case of a United States citizen or permanent resident alien, but optional at the discretion of the President in all other cases.

The addition of this provision would preserve the constitutional principle and meet the legitimate concern about protection of the rights of United States citizens. It would permit the President to authorize the Attorney General to seek a warrant in those cases in which the target was, for example, [REDACTED], but in which special circumstances also exist making a warrant advisable. In particular, we believe that in time of war a warrant is inappropriate if the target is not a United States citizen. We strongly believe it unwise for the President to concede any lack of constitutional power to authorize electronic surveillance for foreign intelligence purposes where no competing private constitutional rights are involved.

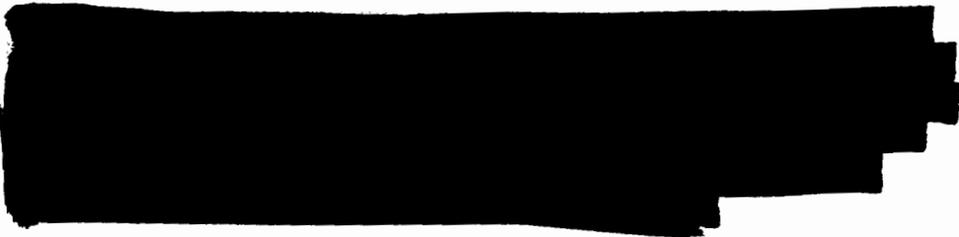
The judiciary has traditionally avoided this area. The Executive Branch alone is in a position to weigh the value of the intelligence which might be acquired against the risk that the surveillance would be discovered with the resultant adverse impact on foreign relations.

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XGDS-2

There are also practical considerations which weigh against the Attorney General's present draft of the bill. For example, the warrant process could produce delays and would involve extra persons thereby increasing the risk of disclosure of some of our most sensitive intelligence activities. In sum, we believe that it should be an executive, not a judicial, decision to direct electronic surveillance against 

The Department of Justice argues that a warrant will issue almost automatically where the target is a foreign diplomat or mission. If this is true, then it is not clear what purpose is served by the warrant. If it is to put to rest questions about the authority to monitor any communications of United States citizens incidentally overheard, enactment of our proposed amendment (Tab A) would appear to provide adequate authority. Procedures can be adopted to minimize acquisition and retention of such communications. Similarly, enactment of our proposal would confirm the President's constitutional authority and thus would give commercial carriers confidence in the legality of their cooperation with the intelligence community. It would be a law clearly stating that under some circumstances, no warrant is required to conduct electronic surveillance for foreign intelligence purposes.

Finally, it is apparant that the Attorney General recognizes that there are no substantial constitutional objections to the provision we seek. 



II.

In our second point of disagreement with the Attorney General we object to the language contained in section 2521(b)(3)(ii) which defines foreign intelligence information as including "information, ... which because of its importance is deemed essential to ... the conduct of the foreign affairs of the United States." Much of the electronic surveillance presently conducted for foreign intelligence purposes is designed to collect information which, although very important, nevertheless cannot fairly be "deemed essential" to the conduct of foreign affairs.

Primarily we object to the language of section 2521(b)(3)(ii) because it contemplates that officers of this and other departments -- but not of the Justice Department -- would make certifications of essentiality in reliance, as the Attorney General concedes, on language in the committee report which would say that "essential" means only "important." We believe it both unfair and bad policy for any administration to sponsor legislation which would place its officials in the position of either certifying contrary to the plain meaning of the statutory language or of foregoing the possibility of securing important foreign intelligence.

Moreover, this definition, as drafted, when read with the requirement of section 2524(a)(5) to describe the type of information sought, would invite judges to make substantive judgments that the information sought is not "essential" and

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-5-

therefore deny the request for a warrant on the ground that the certification on its face is false. This definition would place the Government in a dilemma. Either we dramatically curtail the electronic surveillance which we presently conduct or we must distort the plain meaning of the language of the bill when we certify, as required by section 2524(a)(5), that the information is essential to the conduct of foreign affairs. Therefore, the Department of State believes a lesser and more realistic standard such as "'Foreign Intelligence Information' means: ... (ii) information, with respect to foreign powers or territories, which is of substantial importance to ... the conduct of the foreign affairs of the United States," is needed.

I am authorized to say that the Department of Defense endorses the views expressed in this memorandum.

Attachment:

Tab A - Proposed Provision.

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XGDS-2

Add a new sentence at the end of section 2522:

Notwithstanding any other provision of this chapter, the President may, by written authorization, empower the Attorney General to approve the conduct of electronic surveillance for the purpose of acquiring foreign intelligence if the target of such surveillance is not a United States citizen or an alien lawfully admitted for permanent residence.

D

~~TOP SECRET~~

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

Conner
MEMORANDUM FOR ~~THE~~ PRESIDENT

SUBJECT: Legislation on Electronic Surveillance for
Foreign Intelligence Purposes

This memorandum is to present my positions on the key issues arising out of the March 12, 1976 meeting among Jack Marsh, Henry Kissinger, Ed Levi, Brent Scowcroft and George Bush. I fully understand and support your decision to ask for legislation.

My position, for reasons detailed below, is that it is premature to proceed with the particular form of legislation now under discussion without more careful deliberation on several of the key considerations involved.

1. Legislative Attitude

First, I believe that ^{the Justice Department may be} ~~the Attorney General is~~ over-estimating the ease with which a bill in the form presently proposed will proceed through the Congress without objectionable amendments.

2. Warrants for Diplomatic Establishments

Second, with regard to the first major substantive issue -- whether the legislation should require a judicial warrant for surveillance of foreign diplomatic installations and foreign diplomats, I believe that the bill should not call for warrants in these particular cases for two reasons.

a. First, from the legal point of view, the Justice Department has not made definitively clear that it believes full Fourth Amendment protection extends to such persons.

For example, as part of the interagency process in developing this very bill, the Justice Department conceded that notice of failure to obtain permanent judicial warrant authority, in cases where emergency warrant authority had first been exercised, need not be given to others than citizens and permanently admitted aliens.

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E.O. 12958 Sec. 3.6

MR 94-165, #65 OSD/DOJ letters

By KSH NARA, Date 7/3/00



~~TOP SECRET~~

For example, in a public speech on November 6, 1975, the Attorney General said:

"With these cases in mind, it is fair to say electronic surveillance conducted for foreign intelligence purposes, essential to the national security, is lawful under the Fourth Amendment, even in the absence of a warrant, at least where the subject of the surveillance is a foreign power or an agent or collaborator of a foreign power."

There would seem to be little reason to take away from the powers of the Presidency, either presently or in the future, authority to effect surveillance without court warrant against foreign diplomats.

b. Second, the ^{Justice Department} ~~Attorney General~~ stresses that some one-third of the present foreign diplomatic establishment communications accesses have been lost because of a refusal by the commercial communications companies to permit surveillance on new lines made available by them to those establishments until the companies receive satisfactory evidence of authority from the United States. However, based upon the recent Abzug hearings, and other information available to us, it seems to us those companies would be satisfied with a written authorization on your authority, e.g., from the Attorney General, as distinguished from a judicial warrant.

3. Certification of Necessity for Warrant

Third, with regard to the question whether the national security requirements for a surveillance should be based upon a test of "essential" or a test of "important" -- this is ~~such~~ too significant an issue to be left to the vagaries of legislative history. The Attorney General suggests, based upon his report of negotiations with the staffs of various members of Congress, that a test of "essential" is the most acceptable in the bill; legislative report comment would state that "essential" really means "important."

^{Justice} ~~The Attorney General~~ states that ^{they} ~~he~~ assumes the courts will not look behind the certification of necessity submitted by the executive in any foreign diplomatic surveillance, and that the courts will readily translate the statutory test of "essential" into the lesser standard of "important." Based upon the performance recently of various Federal district courts in construing questions of grants of power by Congress to the Executive, this may be a rather optimistic conclusion. As Henry Kissinger suggested at the March 12 meeting, it would not be unreasonable to anticipate the "creation" by the Soviet Bloc of test cases to obtain the more favorable (to them) constructions.



~~TOP SECRET~~

3.

4. Conclusion

I conclude that it is premature to proceed with the particular form of legislation now under discussion, that to do so could unnecessarily prejudice the inherent and Constitutional powers of the President, and would result in a law which would invite litigation which would have a high probability of drastically eroding our capability to collect "important" intelligence from foreign diplomatic installations and foreign diplomats.



~~TOP SECRET~~

1. Apply the warrant process to foreign installations and diplomats.

Disapprove.

2. Adopt the clause "information . . . which because of its importance is deemed essential."

Disapprove.

3. Adopt the clause "information which is important."

Approve.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 15, 1976

Time:

FOR ACTION:

cc (for information):

- ✓ Jack Marsh
- Brent Scowcroft

FROM THE STAFF SECRETARY

DUE: Date: Quick Turnaround Please Time:

SUBJECT:

Philip Buchen memo 3/15/76 re Legislation on Electronic Surveillance for Foreign Intelligence Purposes

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Marsh - concurs
Scowcroft - see comments x
Stall's comments (Ingersoll) see comments

TOP SECRET MATERIAL ATTACHED

3/15
Jim Connor gave Sec Rumsfeld
copy for comments.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
 For the President

MAR 15 1976

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 15, 1976

Time:

due: ASAP

FOR INFORMATION:

cc (for information):

Jack Marsh
Brent Scowcroft

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

FROM THE STAFF SECRETARY

DUE: Date: Quick Turnaround Please Time:

SUBJECT:

Philip Buchen memo 3/15/76 re Legislation on
Electronic Surveillance for Foreign Intelligence
Purposes

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

TOP SECRET MATERIAL ATTACHED

*Concern of Buchen
proposal -
Jim*

*called
3/16
10:26
1/2*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

TOP SECRET

THE WHITE HOUSE
WASHINGTON

SECRET ATTACHMENT

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

March 16, 1976

TO: JIM CONNOR

FROM: BRENT SCOWCROFT 

Our comments on the Phil Buchen
electronic surveillance memo, dated
March 15, 1976.

Attachment

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00739

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Brent Scowcroft
Receiver's Name : President
Description : re legislation on electronic surveillance
Creation Date : 03/16/1976
Volume (pages) : 3
Date Withdrawn : 05/17/1988

*excised
6/14/88*



THE WHITE HOUSE

WASHINGTON

~~SECRET~~/SENSITIVE (XGDS)

March 16, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT *BS*

SUBJECT: Legislation on Electronic Surveillance

My chief concerns with the draft legislation are the impact on
 (a) Presidential authority and (b) the effectiveness of intelligence
 collection against.....

As presently drafted, the legislation would require a judicial warrant
 for each instance

Extending the legislation to cover this category of surveillance would
 have the effect of

..... Once this
 position is taken it will be difficult to return to the status quo should
 the final legislation prove unsatisfactory. Even if, as the Attorney
 General argues, the legislation passes in its present form, the Court
 has the right to require additional information which an enterprising
 judge could utilize to enter at least partially into areas supposedly denied.

In addition, I am not persuaded that the legal position of the Executive
 Branch is that uncertain. Just last week a District Court judge, in an
 espionage case, ruled that the President has the authority to initiate
 whatever surveillance is required in national security cases. While
 the full impact of this case has not yet been determined, it at least
 indicates that our position is anything but hopeless.

~~SECRET~~/SENSITIVE (XGDS)

DECLASSIFIED - E.O. 12958 Sec. 3.8
 With PORTIONS EXEMPTED
 E.O. 12958 Sec. 1.5 (c), (d)

MR 94-152, #66; NSC Ltr 9/8/98

By *WT* NARA, Date 6/2000

Thus, it is conceivable that the Congress, if fully aware.....

 would be willing to exempt
 this activity from the legislation. The most powerful argument against
 such an exemption is that in the past this activity led.....

The Attorney General argues that this is a waning asset because the
 communications companies are increasingly reluctant to cooperate in
 supplying the information necessary for.....

..... A strong declaration of
 government support to the companies might change their attitude. At
 least it is one alternative worth exploring.

Finally, it must be recognized that once this legislation is passed, in
 whatever form, we will have to begin a protracted process of requesting
 warrants.....
 together with whatever justification the court may require. In many
 cases,.....

..... This might be difficult to explain to the court and, in any case,
 the proliferation of this kind of information ought to be avoided to the
 greatest extent possible.

On the issue of how to describe the justification to the court, we should
 be careful not to become trapped into language that claims more than
 we could ever reasonably justify. The draft legislation defines foreign
 intelligence as "information . . . which because of its importance is
 deemed essential to the security or national defense of the nation or to
 the conduct of foreign affairs of the United States." The problem is
 created by the implication that the "information" is "essential" to the
 conduct of foreign affairs rather than "important"; it would be very diffi-
 cult to claim.....

On the third issue of whether are covered, I agree with the Attorney General's interpretation.

* * * * *

In sum, I would favor legislation that covered all forms of electronic surveillance that could reasonably be expected to include....., but not including |..... which should continue to be intercepted under the inherent authority of the Presidency. I would also recommend language which carefully hedged the national security or foreign policy requirement for the surveillance.

~~TOP SECRET~~

THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Legislation on Electronic
Surveillance for Foreign
Intelligence Purposes

Attached is a memorandum (Tab II) to you from the Attorney General on the above subject. It deals with the three remaining issues which, along with my summary of pros and cons for each, are listed at Tab I.

In an effort to resolve these differences, Jack Marsh and I held a meeting on Friday, March 12 with Henry Kissinger, Don Rumsfeld, Ed Levi, Brent Scowcroft and George Bush. After a lengthy discussion, the others had a better understanding as to why Ed Levi, Jack Marsh and I favor the legislation as it is now drafted (which applies the warrants to foreign installations and diplomats and which reflects option #1 on the second issue and option #2 on the third issue). As a result, I detect no adamant opposition to the legislation as now drafted. Those who had previously questioned aspects of the proposed legislation declined to register any votes on the issues. Therefore, I recommend that you deal with the three issues on the Levi memorandum (Tab II) as follows:

1. By approving applications of warrants to foreign installations and diplomats (page 5 at Tab II);
2. By approving option #1 (page 6 of Tab II); and
3. By approving option #2 (page 7 of Tab II).

DECLASSIFIED

AUTHORITY Same as MR 94-154 #61
BY ILR NARA, DATE 8/31/12 7/22/98



The main concern was whether this legislative initiative would succeed or whether, as some feared, the legislation which is actually passed would depart in objectionable ways from the present draft. On this point, the Attorney General feels confident that the matter can be effectively handled through a meeting by you with members of the Senate and House Judiciary Committees and the top leadership of the two Houses.

Already, the Attorney General has found the key members of the Senate Judiciary Committee receptive to the legislation as drafted, and he has had favorable preliminary reactions from Congressmen Rodino and Hutchinson of the House Judiciary Committee. Senators Eastland, McClellan, and Hruska recommended to the Attorney General that he make a special point of enlisting strong support from Senator Kennedy, who, in turn, has now indicated he wants to sponsor the bill in the Senate. Senator Kennedy will be joined in sponsoring the bill by other key members of the Senate Judiciary Committee, and no opposition from any member of the Committee is expected.

The Attorney General is strongly of the opinion that you should support the legislation as drafted, and if you should feel any hesitancy, he would like to discuss the matter with you personally before you make a final decision.

You had earlier indicated to the Congress that you intend to meet with key members to develop acceptable legislation on this subject. Therefore, as soon as you have indicated your decisions which are sought in the Attorney General's memo to you, we will make arrangements to schedule the contemplated meeting.

Attachments



ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00741

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS, National security restriction
Type of Material : TAP, Talking Points
Creator's Name : Philip Buchen
Description : re legislation on electronic surveillance
Creation Date : 03/12/1976
Volume (pages) : 3
Date Withdrawn : 05/17/1988

*Declassified with portions exempted
Same as MR 94-152 #62 6/2000
HR 8/31/12*

THE WHITE HOUSE

WASHINGTON

TALKING POINTS

MEETING: March 12, 1976, at 10:30 a.m. in
White House Situation Room

SUBJECT: Legislation on Electronic Surveillance
for Foreign Intelligence Purposes

1. Requirement of warrant for surveillance of

(a) Pros:

(i) Avoids likelihood that in absence of
legislation, courts will eventually
decide a warrant is required in such
cases.

(ii) Eliminates question of validity of
evidence obtained

(iii) Protects cooperating communications
carriers and landlords and protects
against charges of criminal trespasses
when otherwise communications carriers
can decline cooperation and render
surveillance impossible. (One carrier
has already declined such cooperation.)

(iv) Avoids having legislation which is
designed solely to permit

.....when such activities are
relatively a minor portion of the
electronic surveillance program and
key members of the Senate Judiciary
Committee want the legislation to
include.....surveillance.

(v) The stated tests for obtaining a
warrant are not of a kind which will
materially inhibit surveillance of
these kinds of targets.



DECLASSIFIED w/ portions exempted

AUTHORITY Ames as MR 94-152 #62 6/2000

BY UR NARA, DATE 8/3/12

(b) Cons:

(i) Unnecessarily requires resort to the judiciary for exercise of an inherent Executive power, especially in cases where only communications of are involved.

(ii) Makes warrants mandatory even in the area of communications that are not of significant concern to the Congress, when warrants in cases might better be made optional in the discretion of the Executive.

(iii) Could result in troublesome delays or even a denial of authority in particular cases.

2. Requirement for information sought to be that "which because of its importance is deemed essential to the security or national defense of the Nation or to the conduct of the foreign affairs of the United States."

(a) Pros:

(i) Test is not materially inhibiting because meeting the test depends on the judgment of knowledgeable Executive officials and relates to their reasonable expectations of what information may result from the planned surveillance.

(ii) Committee report will indicate that "importance" is the controlling word.

(iii) Any lesser test will not be acceptable to members of Congress whose support is needed to obtain passage of the legislation; and it might result in a successful court challenge of the legislation



(b) Cons:

- (i) "Essential" rather than "importance" appears to be the controlling word in the test, notwithstanding what the Committee report may say.
- (ii) While the legislation appears to contemplate no second-guessing by a Judge on whether the test has been met, it is still possible that a Judge on learning the identity of a particular target might question whether it could possibly have been met.

3. Failure to include

(a) Pros:

- (i) The included words

 fit within the purposes of the legislation.
- (ii) Senate Judiciary Committee wants to avoid singling out for special mention

(b) Cons:

- (i) Without a straightforward reference an ambiguity exists that is better overcome directly than by reliance on legislative history.



II.

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00742

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Edward Levi
Receiver's Name : President
Description : re electronic surveillance legisla
tion
Creation Date : 03/1976?
Volume (pages) : 7
Date Withdrawn : 05/17/1988

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00743

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : COB,Congressional Bill(s)
Description : draft bill re electronic surveill
ance
Creation Date : 03/10/1976
Volume (pages) : 14
Date Withdrawn : 05/17/1988

TAB B



Dear Senator:

You have asked for my comments on two provisions of the draft bill which establishes a procedure for seeking a warrant to authorize electronic surveillance for foreign intelligence purposes.

Under this bill, the Attorney General would be authorized to make an application to a judge to obtain a warrant authorizing the use of electronic surveillance. A judge would issue the warrant only if he found probable cause to believe that the target of the surveillance was a foreign power or an agent of a foreign power. The phrase "agent of a foreign power" is defined in the bill as (1) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or (2) a person who, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.

The phrase "clandestine intelligence activities, sabotage or terrorist activities" is meant to describe those types of activities by a foreign power or its agent that the Federal government must be capable of discovering, particularly when

DECLASSIFIED

AUTHORITY None as MR94-153 #63
 BY HR NARA, DATE 8/31/12 3/10/97



they occur within the United States. While the most common activities that would come within the scope of this phrase would constitute violations of the Federal criminal law, there is a certain limited area that would not. For example, the clandestine collection of information by an agent of a foreign power concerning important industrial processes essential to the national security, e.g. computer technology, would not in most cases violate any Federal statute.

Additionally, foreign intelligence services in this country may engage in clandestine intelligence activities against installations and personnel of other nations situated here. This could include recruitment, clandestine gathering of information and covert actions. Virtually none of this activity is prohibited by Federal law, yet it can profoundly affect our security or the conduct of our foreign relations. Finally, certain terrorist activities undertaken by a foreign-based terrorist group within the United States may not constitute a Federal crime, e.g., arson committed in a state capitol building.

While most would agree that many of the activities falling within the scope of this phrase should be considered criminal, the fact is that presently all of them do not violate our Federal criminal laws. This may be attributable, in part, to the difficulty of drafting a precise criminal law that does not sweep too broadly as well as to the view that normally such acts, such as arson, are covered by state criminal laws. The factor requiring the Federal government's interest arises only where the act is committed by an agent of a foreign power.



In my view, the present bill is correct in placing its principal focus not solely upon the factor of Federal criminality or noncriminality, but upon the issue of whether the proposed target of the surveillance is engaging in clandestine intelligence activities, sabotage or terrorism as an agent of a foreign power and ^{or} pursuant to the foreign power's direction.

Under this bill, a warrant would issue in the cases we have been discussing only upon a finding by an independent magistrate that there is probable cause to believe that such agency and direction exists and that the target is engaging in clandestine intelligence activities, sabotage or terrorist activities or is conspiring with, assisting or aiding and abetting a person who is engaging in such activities.

The second provision on which you have requested my comment is section 2528 of the bill, which relates to the constitutional power of the President to order electronic surveillance under facts and circumstances not covered by this legislation.

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 of the sort covered by the bill. 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 only pursuant to judicial warrant with respect to all electronic surveillance against domestic communications of American citizens or permanent resident aliens.



TAB C

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00745

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS, National security restriction
Type of Material : MEM, Memo(s)
Creator's Name : George Bush
Receiver's Name : Edward Levi
Description : re proposed bill on electronic su
rveillance
Creation Date : 03/10/1976
Volume (pages) : 2
Date Withdrawn : 05/17/1988

*Declassified with portions
exempted*

~~SECRET~~
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL

MAR 10 1976

10 March 1976

MEMORANDUM FOR: The Honorable Edward H. Levi
Attorney General

The Honorable John O. Marsh, Jr.
Counselor to the President

FROM: George Bush
Director

SUBJECT: Proposed Bill on Electronic Surveillance

1. I have reviewed carefully the Attorney General's draft memorandum to the President dated 8 March 1976. I have also reviewed the proposed memorandum from the Secretary of State to the President commenting on this proposed legislation. My principal concern is that there be no unnecessary diminution of collection of important foreign intelligence through the type of capabilities which would be covered by the proposed legislation. With this in mind, I concur fully with the position of the Secretary of State which recommends two adjustments to the proposed bill.

2. Certain communications common carriers are no longer willing to undertake electronic surveillance based on present circumstances. This, of course, seriously affects the capabilities of the Intelligence Community to collect foreign intelligence. Consequently, I can understand that appropriate legislation may be necessary in order to obtain the assistance of the common carriers in the future.

3. The proposed addition to the Justice bill contained in Tab A of the memorandum from the Secretary of State would empower the Attorney General to approve the conduct of electronic surveillance for the purpose of acquiring foreign intelligence if the target is not a United States citizen or an alien lawfully admitted for permanent residence. While I agree with this position, it would appear that with respect to certain communications common carriers we will be unable to obtain their assistance without a court order.

CLASSIFIED BY <u>Signer</u>
EXEMPT FROM GENERAL DECLASSIFICATION
SCHEDULE OF E.O. 11652, EXEMPT CATEGORY: <u>1</u>
§ 58(1), (2), (3) or (4) (circle one or more)
AUTOMATICALLY DECLASSIFIED ON
Impossible to Determine
(unless impossible, insert date or event)

~~SECRET~~

DECLASSIFIED w/ portions exempted

AUTHORITY Same as MR 98-26 # 5
BY LR NARA, DATE 9/4/12 7117100



~~SECRET~~

4. The second point raised by the memorandum of the Secretary of State concerns the modification of the definition of foreign intelligence information to change the standard from "deemed essential to . . . the conduct of the foreign affairs of the United States." I agree with the Department of State suggestion that the standard should be "information . . . which is of substantial importance to the conduct of the foreign affairs of the United States."

5.

[REDACTED]

[REDACTED]

[REDACTED]

6.

[REDACTED]

7. My views, as stated above, are in the interest of the fullest possible collection of foreign intelligence to meet the needs of the White House and other policymakers in the Government, rather than the legislative feasibility of the goals we have addressed.

George Bush
George Bush

~~SECRET~~

Entire package returned to Phil Buchen
for redo --- 3/15/76



Administrative

~~TOP SECRET~~

THE WHITE HOUSE
WASHINGTON

March 12, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Legislation on Electronic Surveillance for Foreign Intelligence Purposes

Attached is a memorandum (Tab 2) to you from the Attorney General on the above subject. It deals with the three remaining issues which, along with my summary of pros and cons for each, are listed at Tab 1.

In an effort to resolve these differences, Jack Marsh and I held a meeting on Friday, March 12 with Henry Kissinger, Don Rumsfeld, Ed Levi, Brent Scowcroft and George Bush. After a lengthy discussion, the others had a better understanding as to why Ed Levi, Jack Marsh and I favor the legislation as it is now drafted (which applies the warrants to foreign installations and diplomats and which reflects option #1 on the second issue and option #2 on the third issue). As a result, I detect no adamant opposition to the legislation as now drafted and I recommend that you deal with the three issues on the Levi memorandum as follows:

1. By approving application of warrants to foreign installations and diplomats;
2. By approving option #1; and
3. By approving option #2.



DECLASSIFIED
 E.O. 13526 (as amended) SEC 3.3
 NSC Memo, 3/30/06, State Dept. Guidelines
 By HR NARA, Date 9/4/12

old memo

The main concern was whether this legislative initiative would succeed or whether, as many feared, the legislation as actually passed would depart in objectionable ways from the present draft. On this point, the Attorney General feels confident that the matter can be effectively handled through a meeting by you with members of the Senate and House Judiciary Committees and the top leadership of the two Houses. The Attorney General points out that Senator Kennedy wants to be the sponsor of the bill in the Senate and that he will be joined by all other members of the Senate Judiciary Committee.

You have already indicated to the Congress that you intend to meet with key members to develop acceptable legislation on this subject. Therefore, as soon as you have indicated your decisions which are sought in the Attorney General's memo to you, we will make arrangements to schedule the contemplated meeting.

Attachments

~~TOP SECRET~~

