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31 JUL 1978

Prob leg.

MEMORANDUM FOR THE RECORD

SUBJECT: Intelligence Charter Legislation Hearing on 18 July 1978

1. On 18 July 1978, the undersigned attended an SSCI charter legislation hearing at which testimony was heard from Laurence H. Silberman, Senior Fellow with the American Enterprise Institute and of Counsel, Dewey, Ballantine, Bushby, Palmer and Wood; and Jerry Berman, Legislative Counsel, ACLU. Also appearing was John H. F. Shattuck, Director, ACLU.

2. Mr. Silberman made the following points:

--He objected to what he called the underlying premise of Title II, S. 2525, that Congress should legislate in excrutiating detail to either authorize or prohibit every conceivable activity in the area of intelligence or counterintelligence which touches U.S. persons and, should further, provide detailed guidance as to the priority and duration of intelligence and counterintelligence techniques.

--While the Attorney General must play a direct role in the supervision of the operation of intelligence and counterintelligence vis-a-vis U.S. persons and also supervise all phases of FBI activity, such supervision should focus on policy and should not extend to approval of every single target of surveillance, every technique and the enforcement of arbitrary time limits.

--Mr. Silberman also argued that the threshold test for initiating any counterintelligence activity is tied too closely to violation of U.S. criminal law--mere collection of information (as opposed to disruptive tactics) or passive surveillance should not be subject to such limitations.

--Title II, according to Mr. Silberman, contains a "casual and wholesale delegation to the judiciary to enforce and interpret much of Titles I and II [which will result in a] blizzard of litigation..."

--Overall, Mr. Silberman pointed out, Title II is much too expansive an encroachment into Executive authority to protect the country's national security, on the part of both the Congress and the Judiciary.

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--In Title I, Mr. Silberman objected to the unwise and inappropriate legislative limits placed on the classes of Americans who, for compensation, may aid the Intelligence Community--the implication being, in Mr. Silberman's opinion, that certain groups in our society have superior moral status which should insulate them from even voluntarily agreeing to aid American intelligence.

--Mr. Silberman went on to say he disagrees with the legislative provision in Title I against "special activities."

3. Mr. Berman, on the other hand, commented as follows:

--Legislation of the type of S. 2525 is absolutely vital in the view of the ACLU.

--While ACLU strongly supports the SSCI's work, the ACLU has much to criticize in the bill as is.

--Buoyed by their successes in working on S. 1566, the electronic surveillance legislation, Mr. Berman said it is his opinion that similar progress from a civil liberties viewpoint can be made on S. 2525.

--However, Mr. Berman made it clear that the ACLU is "prepared to put every resource at [its] disposal to work actively to defeat any legislation which, in the name of reforming [the] intelligence agencies and restricting their activities, unnecessarily enhances their powers at the expense of constitutional values and democratic principles."

--In a word, Mr. Berman stated that the ACLU believes that S.2525 would authorize too much, restrict too little, and fails to prohibit many of the activities that led to abuse in the past.

Mr. Berman submitted as an annex to his testimony a detailed section by section analysis of the bill. It, along with the full transcript of the 18 July hearing (and all the other hearings to date) is available in the Legislation Staff's office, 7D35 HQ.

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Assistant Legislative Counsel

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