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23 June 1978

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MEMORANDUM FOR THE RECORD

SUBJECT: House Committe on Judiciary, Subcommittee on Courts, Civil Liberties and the Administration of Justice Hearing on Electronic Surveillance Legislation (H.R. 7308)

1. On 22 June 1978 the Subcommitte on Courts, Civil Liberties and the Administration of Justice met to hear testimony on the pending Electronic Surveillance legislation. The open hearing lasted from 9:30 a.m. till 12:30 p.m. and a transcript was taken.

2. Present from the Committee were:

Robert W. Kastenmeier (D., Wis.), Chairman
Robert F. Drinan (D., Mass.)
Allen E. Ertel (D., Pa.)
Thomas F. Railsback (R., Ill.)
Romano L. Mazzoli (D., Ky.)

Testifying before the Committee were:

Judge Griffin B. Bell, Attorney General
Robert McClory (R., Ill.)
William E. Colby, Former Director of Central Intelligence

3. The purpose of the hearing was for the Subcommittee, having been recently given concurrent jurisdiction over the bill, to hear the general views of the three aforementioned individuals as they relate to the proposed legislation.

4. Attorney General - Warrant Requirements. Attorney General Bell continued to press strongly for inclusion of across-the-board warrant requirements, although he was willing to live with the McClory amendment.* As expected Mr. Drinan was fundamentally opposed to the bill and so stated alleging that the bill was contrary to the fourth amendment of the Constitution in a number of respects, particularly in regards to the McClory

*Amendment number 9, proposed by Representative McClory and accepted in the House Permanent Select Committee on Intelligence version of the bill, struck the requirement for warrants in cases where surveillance would be directed against foreign targets such as diplomats, embassies and other buildings occupied by legations wherein the unintentional surveillance of Americans would, by the nature of the target, be minimal.

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nonwarrant provisions. Judge Bell stated that he had no Constitutional problems with the bill and made a strong point that, when compared with existing law, the bill offered added safeguards for the American people. As to the Attorney General's insistance on the across-the-board warrant requirements (including those areas now exempted by the McClory amendment), Mr. McClory pointed out that the bill, in and of itself, provided adequate protection to both the Attorney General and agents of the FBI from law suits by Americans who might become inadvertant targets of electronic surveillance. Mr. McClory hastened to add that this presumed that the guidelines set out in the legislation were adhered to by the Justice Department.

5. Former Director of Central Intelligence Colby and Mr McClory - Special Courts Limitations. Mr. McClory then testified on the bill stating generally that he saw no pressing need for the bill, as existing law covered the subject matter of the bill, but if a bill were to be passed it ought not unnecssarily limit the justifiable and necessary functions of the intelligence agencies. He added that since the issuance of Executive Orders 11905 and 12036 there had been little or any abuse of the rights of U.S. citizens. He felt, therefore, that setting up of Special Courts for the issuance of warrants was a needless over-reaction to the situation in which only one example of abuse could be found in the last three years. He also strenuously objected to the court system being intimately involved in the area of foreign intelligence, a matter appropriately placed within the Executive Branch.

Mr. Colby's comments expectedly paralleled those of Mr. McClory, although he did generally support the bill with the following caveats:

> --too many classes of foreign nationals in the U.S. were excluded from the warrantless targetting provisions of the bill such as foreign businessmen, foreign students, foreign tourists and the like. His implied suggestion here would be an expansion to include in the definition of "Agent of foreign power," members of these and similar classes of foreign persons.
>
> --Special Courts, as required by the bill are redundant as the regular U.S. District Courts can serve the same purposes. Mr. Colby did not feel this would be any more cumbersome than would be Special Courts re security problems and procedures.

*H.R. 7308 section 101(b) page 31, reported from House Permanent Select Committee on Intelligence 8 June 1978.

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--involvment of the Judiciary in details of foreign intelligence to the degree prescribed by the bill was neither necessary nor wise.

Mr. Colby then answered questions of the members present regarding the above mentioned points. The members lined up much as expected:

--Mr. McClory wanted to further limit the warrant requirements.

--Mr. Mazzoli supported the House Permanent Select Commitee on Intelligence version of the bill and opposed mark up by Judiciary.

--Mr. Kastenmeier played the neutral role as Chairman.

--Mr. Drinan opposed to both existing law and the bill and demanding mark up by the Judiciary.

--Mr. Ertel appeared less interested than the rest but seemed generally supportive of the bill.

--Mr. Railsback, by in large, supportive of Mr. McClory but still seemed less decided than might haven been expected.

6. The Committee scheduled further hearings of the bill for 28 and 29 June. On 28 June Senator Edward M. Kennedy (D., Mass.), Representative Romano L. Mazzoli (D., Ky.) and Representative Morgan F. Murphy (D., Ill.) will be testifying. On 29 June former Solicitor General Bork and a panel from the ACLU will testify. It is evident that there is growing pressure on the Subcommittee to mark up the bill both from those who would like to see the bill change and from those who would like to see the bill killed in this session.

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