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Situation Report

Volume I, Number 1 1978

The assault on the intelligence community continues. A rash of new legislation is now before Congress, all designed one way or another to stunt the prime intelligence and security institutions — the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the National Security Agency (NSA), and the Defense Intelligence Agency (DIA) — and curb their abilities to perform their valuable traditional functions.

Contemplating the heedless outpouring of bills, your committee is depressed that the Congress should remain so indifferent to the weakening of the American world position that it is willing to let itself continue to be projected in the adversary role towards the national intelligence function in which it was first cast three years ago by Senators Frank Church of Idaho and his ardent lieutenant, the then Senator from Minnesota, Fritz Mondale.

Our purpose in this bulletin is to bring to your attention the dangers implicit in the legislation swamping the Congress. Unless responsible citizens move to head off what is afoot, our country could well find itself, before this Congressional year is over, with no real defense against the worldwide campaign of subversion and espionage that the Soviet bloc wages against us and our allies in *detente* and out.

Taken as a whole, the bills are a mish-mash and a farrago of wrongheaded formulations by ideologues who serve the Left and idealists who are blind to their mischief. In its respectable versions, the legislation seeks to prevent a recurrence of the occasional trespasses on civil rights and the individual's rights of privacy that have happened in the past. In their discreditable worse, the formulations are a blatant catering to the mischevious designs of radical pressure groups, whose energetic lobbyists have wormed their way into positions of influence in the Executive branch and on Capitol Hill.

Here is what you should know:

THE SENATE BILL

Much of the pertinent legislation before the upper house is lumped together in a omnibus bill prepared by the Senate Select Committee on Intelligence, under the chairmanship of Senator Bayh, a liberal Democrat from Indiana. Its title is the "National Intelligence Reorganization and Reform Act of 1978" — shortened for brevity to the "National Intelligence Act of 1978" — and the declared purpose is to set in concrete certain rules and procedures laid down by President Carter's Executive Order of 24 January, 1978 regarding the collection of intelligence and the practice of counterintelligence. That order, the product of numerous painful drafts, seeks to bulwark the right of privacy. None of us quarrels with that purpose. But the collection of intelligence and most particularly the pursuit of counterintelligence cannot be done without some sort of surveillance, and the President's attempt to save something of the function and at the same time appease Messrs. Church and Mondale, has produced a hybrid document which utterly fails to acknowledge the magnitude and intensity of the Soviet bloc's clandestine activities within our borders. The Senate bill, far from correcting those flaws, actually magnifies them.

For this dismaying outcome, we are indebted in no mean measure to Senator Kennedy, sponsor of the bill. An earlier bill of his devising S-1566, supplies much of its unwelcome framework, most seriously in the particulars that would hem in the Executive departments and agencies in their resort to electronic surveillance. But the mischief in prospect extends beyond the ill-begotten contribution of the Senator from Massachusetts. While in preparation, the committee's bill swelled into a mastadonic document of 231 fussy, garrulous pages, becoming a catch-all of the fears, phobias and foibles of the liberal-left concerning situations where the Constitutional authority of the President to move prudently but swiftly in defense of the national interests may be invoked.

The clear and present duty of our membership is to do all we can to make sure the weaknesses of the National Intelligence Act of 1978 are brought out forthrightly in the debate and a more sensible measure is forged on the floor.

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Take our word for it: should the bill be suffered to go through as it stands, the FBI's chances of apprehending any spy worth his salt will thereafter be dim indeed.

Here are some of the obstructions which would have to be surmounted before the FBI would be authorized to introduce a legal wire tap for the purpose of determining whether the suspicious activities of a foreign power or its agent or agents, could be detrimental to the national security:

1. -A sworn request for the tap has to be submitted to the Attorney General by the FBI, together with the facts justifying such an action.
2. -The Attorney General, on the instruction of the President, weighs the evidence and then determines whether there is a probable cause to believe that:
   + The target is a *foreign power* or its agent.
   + The premises where the tap is wanted are actually being used by a foreign power.
3. -The Assistant to the President for National Security Affairs must then certify that the information sought:
   + Cannot be obtained without a tap and is truly important as intelligence.
   + The information being sought is precisely of the character defined in the bill.
4. -If the intended target is a foreign power, the Certificate must stipulate:
   + The type of surveillance desired, and
   + Whether trespass is necessary.
   + That it can be maintained for no more than one year.
5. -If the target is not a foreign power but a United States citizen or a resident foreign alien, the Certificate must additionally stipulate:
   + How long the tap is wanted, *and*
   + The tap will terminate in 90 days, unless the FBI comes forward again to plead for additional time and explains why continuing surveillance is desirable.

If all of these conditions have been met and if the Attorney General and the President still agree on the desirability of a tap, the former will then and only then ask one of seven designated Federal judges to issue the order that will finally enable the FBI to proceed. By this time, the bird may well have flown.

THE HOUSE BILLS

HR-6051 is a bill of which the proclaimed purpose is "To Prevent Abuses of Power by the Intelligence Agencies." It was drafted by former Representative Badillo (D-NY.) before he quit Capitol Hill to become Deputy Mayor of New York City. His parting shot at the CIA and the FBI would severely narrow their jurisdictions, further choke the dissemination of information by intelligence agencies, promote wider public access to their operations, and punish intelligence officers who deceive Congress.

Mr. Badillo seems to want to transform national intelligence operations into a public spectacle, with the *New York Times*, the *Washington Post*, even possibly Howard Cossell reporting on the action from the press box.

Representative Edwards (D.-Cal.) has introduced a bill (HR-10400), which he describes as one intended "to define the investigative authority of the FBI, to create civil remedies for violations of rights under color of the Federal Law, and for other purposes." This bill would allow the FBI to proceed with an investigation only if it has in hand something stronger than mere suspicion that an act of espionage has been committed or is in process. This provision, if adopted, would have the disabling effect of injecting awkward legal and bureaucratic obstacles into the counterintelligence process, a process which by its nature depends for success on protection afforded by the time-honored "need to know" principle and on the unimpeded direction of a covert operation by a professional central authority. In a word, Mr. Edwards' contribution would put the FBI out of the intelligence business where internal security and criminal cases are concerned.

Representative Dellums (D.-Cal.) has submitted a bill (HR-4173) "to reorganize the intelligence community of the executive branch of the Government, create an intelligence Research and Analysis Agency, and other purposes." This one occupies a special niche in that Chamber of Horrors being constructed in the House by the enemies of the Intelligence community. The kindest thing that can be said about this masterpiece is that it is pure Dellumism, which is to say that it is shrilly against whatever is now in place.

Running through all the proposed legislation is a basic flaw. Before the FBI or the CIA would be authorized to move at all against a target, by our tentative estimate as many as 4500 authorities and bureaucrats, including many in

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Congress, would become cognizant of the intended operation, either because as principals they have to be consulted in advance of any investigation or because as cogs in the bureacracy — aides, staffers, secretaries, file-clerks, and messengers — they would be drawn at some point into either the approval or oversight process. Thus, in consequence, the intended instruments of reform are fraught with the risk of uncontrollable leaks. There is no surer way to belabor, befuddle, befog and bedevil the intelligence function, a function without which no nation can be safe, than the one which the "liberal" left coalition in the government is following.

THE REAL WORLD

To appreciate the folly hatched by Senator Church and Vice President Mondale in pursuit of their political ambitions we need but reflect upon a few statistics.

It is estimated that in the six years since the dawn of *detente*, the number of KGB and GRU agents operating in our country alone has increased by more than 50%.

It is also estimated that in any given day some 25,000 Russians or Soviet-bloc citizens will be moving about the country. They include diplomats, "trade" representatives, visiting "scientists," "students," "tourists," "businessmen," and "seamen.".

Forty American ports are open to Soviet shipping and Russians who come in as tourists are free to travel wherever they wish.

In addition, there may be scores, perhaps hundreds, of Soviet agents who have entered the country illegally either as transients or as permanent residents.

Our enemies circulate among us in many plausible guises. For example, the Soviet Union and its bloc partners have set up a large number of alleged commercial enterprises -- banks, insurance and shipping brokerages, and travel agencies — in the United States and Europe. These activities earn dollars to help pay for the superior technology which the bloc purchases from us. They serve two other sinister purposes as well — cover for their spies, and a helpful and laundered cash flow for subversion and propaganda.

The menace inherent in the expanding influx of people from the communist bloc is heightened by the ease with which the visitors are able to commingle and blend in with their American communist brethren. President Carter would have us believe that Americans can safely abandon their "inordinate fear of communism." Senator Church and Vice President Mondale, when they were presiding over their star-chamber proceedings into the affairs of the FBI, CIA, NSA, and DIA, ridiculed the idea that surveillance of American radicals served a useful purpose and they maintained that in any case it was unjustified under their interpretation of the Constitution.

It is a fact, all the same, that the Communist Party and its associated front organizations have all but been unswerving in their adherence to the International Communist Party line. In this respect the character of the CPUSA [Communist Party USA] remains what it was in the days of Alger Hiss, the Rosenbergs and Harry Dexter White,two generations ago. The party exists to serve as an overt instrumentality of Moscow-managed communism. Our laws permit it to recruit members and to propagandize its cause. Its main and secret reason for existence is to work in harness with the Soviet-bloc, and other so-called "Socialist" states, in isolating the United States and bringing about the overthrow of our constitutional government.

THE DEADLY COMPETITION

A judicious admixture of competition and cooperation, we have been given to understand, will regulate the Carter strategy for *detente*. It is already clear that the competition is rapidly becoming far deadlier than the President and his men anticipated — not only in the matter of subversion and espionage, but also in the world struggle for allies and friends.

This is a side of the American predicament that Messrs. Church and Mondale and, in a general way, President Carter himself lost sight of when they put the intelligence services in the dock. Their motives were then and, regrettably, remain wholly negative. The emphasis in the proposed legislation reveals the bias they share; it is to cabin, crib and confine the intelligence function. They failed to perceive the dangerous situation now in the making: They should be responding to the need to reinforce and stimulate the positive values of the intelligence process which the founding legislation, the National Security Act of 1947, so powerfully postulated.

It is instructive at this juncture to remember the circumstances which inspired that legislation. The Congress was then concerned with preventing another Pearl Harbor. On completing its exhaustive inquiry into the reasons for that catastrophic failure of

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intelligence, it called for the creation of the Central Intelligence Agency and the reorganization of the traditional departmental intelligence services within a new kind of intelligence community, all to be under the direction of a National Security Council acting for the President. The language of the Act makes it clear that the intent of Congress was to affirm the unique authority of the President in the exercise of the intelligence function in all of its aspects. It is he who, after all, bears the Constitutional responsibility for the defense of the nation against its enemies at home and abroad.

That arrangement was consistent with the principle of the separation of powers. It worked well under five Presidents until the scandal of Watergate and the uproar from the Liberal-left over the Vietnam war undermined the Presidency and let loose in the Congress and the media a deafening cry for scape-goats. An inexperienced President Ford and a rattled intelligence leadership gave way and the intelligence services were sacrificed. In the panic that seized the Executive Branch, the principle of the separation of powers was allowed to be breached by Congress. From that moment on the fortunes of the intelligence community were at the mercy of the more ruthlessly ambitious personalities in Congress and in the national press and television, and they exploited that breach to the outer most limits of sensationalism. All of us who treasure the nation's good name and the reputations of the honorable men who serve it will recall with shame that the White House stood aside while the files and records of the intelligence community were ransacked, its sources and methods were exposed, and its people were humiliated and defamed.

The result of the default has produced the deplorable situation we witness today — an intelligence community shaken in morale and purpose, still uncertain about what is expected of it and unsure of what will be left of its functions after the Congress has finished debating the bills before it.

The task to which our membership should address itself is to persuade the President and the Congress that those powers and sanctions which are indispensable to the efficient management of the intelligence community should be returned to the President. This can be done without depriving the Congress of its proper responsibility of oversight. An intelligence agency burdened with over 535 masters will be a creature of their most ignoble fears and phobias.

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