



Office of the Attorney General  
Washington, D. C. 20530

OLC 77-0824

February 24, 1977

TO: The Attorney General  
FROM: Frederick Baron

STATUS REPORT: FOREIGN INTELLIGENCE SURVEILLANCE BILL

I. Summary:

Good progress is being made toward the goal of designing a draft bill which establishes tight warrant procedures for foreign intelligence electronic surveillance and is acceptable to both the intelligence agencies and the Congress. Members of the Attorney General's staff have met with representatives of interested members of Congress and representatives of various agencies and departments in the intelligence community to discuss draft language. It would be premature at this point to make any definitive prediction as to the particular provisions that will result from these discussions.

When the initial stage of these discussions has been completed, the Attorney General will circulate a new draft bill to the intelligence community for comments. The previous request for comments on S. 3197 has been rescinded to avoid wasted energy.

II. Meeting With Congress:

Last week representatives of the Attorney General met with representatives of members of Congress who will be taking a leading role in drafting and considering this legislation, including representatives of Senators Kennedy, Bayh, and Abourezk of the Senate Judiciary Committee, counsel from the Senate Intelligence Committee, and counsel to Congressmen Rodino and Kastenmeier of the House Judiciary Committee. At this meeting an exchange of views took place as to how to perfect the bill which came out of the Senate Intelligence Committee last year (S. 3197) to take into account the concerns of various members of Congress, including:

DOJ Review Completed

- whether the bill ~~can~~ be written without a reservation of inherent presidential power to conduct warrantless surveillance;
- whether the bill ~~can~~ be revised to move even closer to a strict criminal standard (i.e., allow surveillance only where there is probable cause to believe criminal activity is afoot, including espionage as defined under existing statutes);
- whether it is possible to strengthen the authority of a federal judge to look behind the certification of the national security value of the information sought by the Assistant to the President for National Security Affairs, so that the judge could make an independent determination as to whether the facts support the certification.

The Attorney General's representatives did not make any commitments to any positions on these points. They simply offered to study these and other questions about the previous bill and to continue such discussions with the Congress to work toward a consensus bill.

### III. Intelligence Community Meeting:

At the meeting with counsel to various agencies and departments in the Intelligence Community (Defense, NSA, State, CIA, NSC, and the Intelligence Community Staff), the NSA counsel proposed an amendment to last year's bill. This amendment would state that it is "not unlawful" for NSA to conduct communications intelligence provided that there is no intentional targeting of a communication of American citizens or permanent resident aliens. This would cover communications where at least one party is outside the U.S. or where a communication channel within the U.S. is exclusively used by a foreign power (e.g., a dedicated telephone leased line).

It was agreed at the meeting that the Attorney General's representatives would discuss this proposal with Congressional representatives. These discussions have been initiated and will require more time to complete. The initial concerns which were raised in these discussions were (1) that any intentional targeting of the communications of Americans by NSA should be subjected to warrant procedures; and (2) that

strict minimization procedures shall be applied to all NSA communications intercepts to govern retention and use of any information acquired about American citizens or permanent resident aliens.

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