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78-5058
8-2-78
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(General)

Department of Justice
Washington, D.C. 20530

August 1, 1978

MEMORANDUM FOR ANTHONY A. LAPHAM
General Counsel
Central Intelligence Agency

Re: Intelligence Charter Legislation

Attached is our outline of the major policy issues remaining to be resolved in the Intelligence Charter legislation. A short statement of the arguments, as we understand them, is included with each issue. We continue to feel that the SCC principals should focus attention on these major issues as early as possible to avoid expending the Working Group's time on discussions or drafts that would not reflect the President's wishes.

A copy of the outline and this memorandum is being sent to the other Working Group Members.

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

Attachment

DOJ Review Completed

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MAJOR ISSUES REMAINING IN CHARTER LEGISLATION

This paper summarizes the major issues remaining to be resolved in the development of the Administration's position on intelligence charter legislation. The issues are organized by category using the groupings proposed by Deanne Siemer at the July 18 working group meeting.

I. GENERAL ISSUE

A. Drafting of a Separate Administration Bill

Should the Administration discard S. 2525 and draft its own Intelligence Charter?

Pro: The organization and basic orientation of S. 2525 is inconsistent with much of what is in E.O. 12036. The Administration should seek a very simple statute which essentially authorizes the Executive to issue orders and regulations modeled after E.O. 12036. Attempts to modify S. 2525 will be fruitless. Major differences between the Administration and the Senate could be highlighted if objections to specific provisions in S. 2525 are made rather than supporting a different bill.

Con: Any abandonment of S. 2525 by the Administration will be viewed as an indication that the Executive does not care about restrictions and only seeks legislative authorization for intelligence activities that presently lack a clear statutory basis. Much of what is in S. 2525 can be modified to be acceptable to the Administration. Goodwill with Congress and the critics of the intelligence community requires that we work with the bill as introduced and seek appropriate changes.

II. COLLECTION OF INFORMATION ISSUES

A. Role of the Attorney General in Approving Regulations

Should there be a statutory requirement for approval by the Attorney General of agency procedures and regulations? (§ 212)

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Pro: The development of a "rule of law" for intelligence activities requires some mechanism for obtaining consistency among the various agency regulations. These regulations will rarely be subject to judicial review. There is no existing body of law which establishes agreed-upon principles. Review and approval of agency regulations by a single official, especially one attuned to legal concepts and protection of individual rights, will foster sound regulations. The Administration is likely to want less detailed restrictions in statute than are proposed in S. 2525 and review of agency regulations by the Attorney General will provide some comfort and assurance to Congress and the public that the agencies will not develop regulations which are excessively permissive or insensitive to individual rights. The role of the Attorney General set out in E.O. 12036 was viewed by critics as an important safeguard. Failure to include the provision in a charter would signal a weakening of protections for Americans.

Con: In virtually no other area of administrative law does the Attorney General exercise a power of review and approval over the regulations of another agency. The concept of AG approval of intelligence procedures (other than especially intrusive techniques such as electronic surveillance) is a new one. E.O. 11905 did not require such approval. We have had very limited experience under E.O. 12036 with AG approval. The idea should not be fixed in statute at this time. There is no assurance that future Attorneys General will perform a beneficial function in approving regulations. Future Presidents may want to obtain consistency in intelligence procedures through some other mechanism. The Attorney General is concerned with many issues besides intelligence and is not an appropriate official to exercise review of intelligence agency procedures.

B. Statutory Categories of Information which can be Collected

Should a charter set out specifically defined categories of information (e.g., counterintelligence, foreign intelligence,

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contact, target, potential source), authorize collection of such information, set standards for such collection, and prohibit collection of any information not included in those categories even when such collection is by means not involving interests protected by the Fourth Amendment? (§§ 213-214, 218-225)

Pro: The roles of the various intelligence agencies must be strictly limited in statute to prevent future abuses or improper directives from executive officials to collect information on Americans. The proper functions of agencies can be identified and categories of relevant information defined to insure that all intelligence collection activities are proper. Specification of categories will provide a clear legal basis for collecting information. Statutory categories will insure that intelligence activities are not mere "fishing expeditions" but are specifically designed to obtain relevant information.

Con: The approach taken in S. 2525 is artificial and ill-conceived. It is virtually impossible to define in advance all categories of information that might be relevant to a particular foreign intelligence or counterintelligence need. It is even more difficult to define all the types of persons or activities which are potential sources of such information. Creation of such categories will inevitably lead to specific restrictions in statute on each category and the resultant possibility of precluding any collection of specific items of information is unacceptable. The problems of past abuse can be met by carefully limiting the missions of the various agencies, making sure that all intelligence activities are related to those missions, and requiring that all intelligence or counterintelligence information collection be focussed on the activities of foreign powers or persons reasonably believed to be their agents. Abuses in the past resulted from initiating inquiries directed at Americans in order to discover a foreign connection, or prove the absence of such a connection. This "proving the negative" approach inevitably will

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lead to investigations of dissidents, not foreign agents. That abuse can be prevented without trying to anticipate all conceivable categories of relevant information and constructing a "check list" approach to intelligence collection. Current concepts limit collection techniques, not the categories of information to be sought. Those concepts have proven a feasible way to regulate activities without preventing necessary investigations.

C. Criminal Standard for Collection of Information Concerning United States Persons

Should the charter limit collection of counterintelligence and/or intelligence information about the activities of Americans in the United States to persons who may be engaged in activities which "may involve a violation of the criminal laws of the United States even though such collection may not involve techniques which require regulation under the Fourth Amendment?" (§§ 213(1), 214(1))

Pro: Law-abiding Americans should not be spied upon by the Government. The goal of intelligence is to gather information about foreign governments and persons, as well as those Americans who engage in illegal intelligence activity. Again, past abuses should be prevented and one element of those abuses was investigating people who had not broken any law. If we want to prohibit certain activity, we should make it a crime. If we do not make it a crime, the government has no business prying into private affairs to obtain information about private individuals, even if that information is somehow relevant to foreign affairs. The criminal standard issue is of major concern to civil libertarians.

Con: Acceptance of a "criminal standard" for electronic surveillance--perhaps the most intrusive intelligence technique--is not a precedent for adopting the same restriction for techniques which do not implicate Fourth Amendment values. The purpose of intelligence-gathering is not law enforcement and the two concepts should be kept distinct. Intelligence and counterintelligence are

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intended to gather information about the activities of foreign powers and their agents without regard to the legality or illegality of those activities. Frequently information is needed to develop foreign policy which concerns the activities of Americans who are clearly not violating the law. The statute should not prohibit absolutely the collection of information about the activities of citizens who have not broken the law, but should regulate techniques.

D. Attorney General (or Service Secretary) Approval of Certain Techniques

Should there be a statutory requirement for Attorney General (or Service Secretary) approval of the use of non-extraordinary techniques? (§ 215)

Pro: The provision in S. 2525 does not require such approval of the use of each specific technique, rather it requires review of the investigation and specific authorization of the use of the group of techniques specified in the statute. As such the principle is no different than the concept of preliminary and full counterintelligence investigations embodied in current FBI Guidelines. The concept of the bill is that certain very intrusive techniques require court approval, others require high-level executive approval, while others can be approved at the investigative level.

Con: If the requirement for AG approval of procedures is retained there is no reason to require in the statute approval of specific techniques. Those approval requirements should remain flexible and subject to change to accommodate experience with the procedures. Moreover, there is no real need to involve the Attorney General in personally approving techniques used by CIA other than those techniques which already require AG approval under E.O. 12036.

E. Time Limits on Collection

Should there be statutory time limits on collection of information, regardless of the technique employed? (§§ 216, 218(a), 220(a), 221(a))

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Pro: Time limits are imposed only in certain situations where it is reasonable to limit collection. During that period information may be obtained which permits further investigation under another category (§§ 213, 214), or under a renewal of the investigative authority (§ 216). Statutory time limits will assure that no investigation runs beyond its usefulness and that high-level officials will review lengthy investigations. Such limits were imposed in the Title III (law-enforcement wiretapping) legislation and have proven workable.

Con: Statutory time limits are ill-conceived and unnecessary. Any such limit is arbitrary and investigations must be individually tailored to fit each case. Where appropriate such limitations can be established through procedures adopted by the agencies.

III. ELECTRONIC SURVEILLANCE ABROAD ISSUES

A. Authority that Will Approve Surveillance Abroad

Should the bill establish a judicial warrant procedure?

Pro: A judicial warrant procedure would be viewed as the most protective of U.S. persons' rights and such a procedure would remove any doubt about the constitutionality of conducting electronic surveillance against U.S. persons without a warrant. A warrant procedure need not require explicit recognition in documents furnished a court that a foreign service is involved and deniability for the foreign service could thereby be preserved. While some impact on the activities of a foreign service is inherent in a joint operation, it would not necessarily be so significant as to prevent them. The terms and conditions of a warrant would be reasonable and would not preclude involvement by a foreign service. If the conditions were unacceptable to a foreign service, the operation could be conducted unilaterally with only United States personnel, or the operation could be abandoned to preserve the liaison relationship. Nor would a warrant requirement increase in any meaningful sense the risk of disclosing sensitive information.

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There may well be less risk of disclosure with a warrant requirement because its presumptive legality is likely to reduce the demand for detailed information by Congress and others with oversight responsibility. Finally, and perhaps most importantly, because of current case law only a judicial warrant procedure can legally expand the basis for targeting U.S. persons beyond agents of or collaborators with a foreign power.

Con: For reasons of economy, security, and diplomacy, surveillance abroad usually involves cooperation with a foreign service. Foreign services are very reluctant to have information disclosed to a court that specifically or implicitly identifies the service. Even where the United States conducts surveillance on its own, it will often be based on information provided by a foreign service, and it may be difficult to obtain a warrant without revealing at least inferentially the identity or source of the information. Unauthorized disclosure or the fear of such could limit our ability to collect important foreign intelligence abroad, and CIA may forego otherwise appropriate surveillance, for fear of the impact of unauthorized disclosure. CIA believes that if information derived from or concerning a foreign intelligence service has to be disclosed to a court in support of an application for electronic surveillance abroad this would be equivalent to an absolute prohibition on the activity. This option recognizes the foreign service problem by not requiring a prior judicial warrant. It would essentially formalize current Attorney General procedures.

B. Substantive Standard to Govern Electronic Surveillance Abroad

Should the bill authorize surveillance of U.S. persons if they are not agents of or collaborators with a foreign power and without a criminal law nexus requirement?

Pro: Under existing case law, this approach cannot be adopted unless there is a judicial warrant requirement. This is good reason for a warrant requirement because

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it is necessary to be able to target certain U.S. persons even if they are not agents of or collaborators with a foreign power. For example, defectors to Bloc countries, certain American expatriates, and perhaps even certain American corporations engaged in sensitive trade matters might be able to be subjected to surveillance.

Con: There is no significant need to target U.S. persons abroad who are not agents or collaborators of a foreign power, at least no need sufficient to adopt a warrant procedure which would be necessary to target such persons. We have been able to conduct surveillance operations without the necessity of targeting non-agents and the opposition to targeting Americans who are not agents would be quite strong.

C. Scope of Minimization Procedures

Should the bill require minimization procedures for communications about U.S. persons even if they are not parties to the intercepted communications?

Pro: This is the current practice under Attorney General procedures and will be required for domestic intelligence surveillances under S. 1566 and H.R. 7308. A retreat from current practice will be very difficult to justify. While not required by existing case law, minimization of communications about U.S. persons, even if they are not parties to communications, is regarded as an important safeguard. Current minimization procedures are very strict even if U.S. persons are not parties. They could perhaps be relaxed while maintaining safeguards against misuse of political or personal information.

Con: Minimization procedures should not apply to communications between non-U.S. persons even if U.S. persons were mentioned. This would substantially reduce an administrative burden because there are many more instances of U.S. persons being mentioned than being parties. It would improve intelligence collection to a certain extent because there may be some loss in intelligence product flowing from the requirement to minimize communications about U.S. persons.

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D. Level of United States Involvement in a Foreign Service Operation to Trigger Applicability of Minimization Procedures

Should the bill require minimization procedures for the product received from a foreign service if it is reasonably believed to have come from electronic surveillance?

Pro: This approach is highly protective of the privacy of U.S. persons because it would assure that U.S. persons' communications intercepted by a foreign service would only be used by United States intelligence agencies for legitimate purposes and would help prevent "tacit" or implied requests by U.S. agencies for surveillances by foreign services. Under § 2-208 of Executive Order 12036, storage and dissemination of this information will have to be minimized to a certain extent in any event. Therefore, it would not appear to be a substantial burden or imposition for legislation to require at least some minimization for such information.

Con: The standard should be that any known participation in a foreign service surveillance that entails receipt of the surveillance product would trigger statutory protections. Receipt of product alone should not trigger minimization. This is the standard under current Attorney General procedures and is manageable as an administrative matter.

IV. SPECIFIC INTELLIGENCE-ACTIVITIES ISSUES

A. Prohibitions of Use of Certain Categories of Persons

Should there be a statutory prohibition on paid use of certain categories of individuals for intelligence purposes (e.g., clerics, journalists, exchange visitors)? (§ 132)

Pro: The categories subject to this prohibition are limited and especially sensitive. In each case the success of the general activity depends in part on removing the taint of past intelligence use of such persons. All journalists are suspect and subject to

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accusations they are spies unless there is a blanket prohibition on any such person being used as an intelligence agent. Since the prohibition does not apply to "voluntary exchanges of information" between the agency and the individuals, there is no real impairment of intelligence methods. It furthers the interests of the United States to foster and protect these activities.

Con: There is no need for an absolute prohibition. Present procedures are adequate to meet current needs. Perspectives on this problem may well change and flexibility is desirable. No statutory prohibition will prevent foreign governments from false accusations directed against newsmen or others whom that government seeks to discredit or punish. The statutory proposal is an unwise overreaction.

B. Prohibition of Certain Forms of Special Activities

Should there be a prohibition against the United States undertaking certain forms of covert action such as mass destruction, overthrow of democratic regimes, etc., subject to an explicit Presidential waiver for some of the prohibitions? (§ 135)

Pro: There are certain activities, such as mass destruction of property, which are abhorrent to the concept of the American form of government and should never be undertaken short of an actual war. Other activities, such as torture and biological warfare, are unacceptable even in wartime since they violate international agreements or basic principles of humanity. Our government should stand for a commitment to the highest principles of human rights and should flatly prohibit some, if not all, of these activities. We have already renounced use of some of these techniques by treaty or executive decision.

Con: It is not possible to reach agreement on what activities should be flatly prohibited, as has been seen in the debate since the introduction of S. 2525. Absolute prohibitions should be avoided. Extreme

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situations require extreme measures. The protections come from procedures for review, approval and oversight, not absolute prohibitions.

C. Participation in Illegal Activity

Should the legislation authorize some procedure for approval of otherwise illegal activity? (§ 243)

Pro: It is desirable to have an explicit statutory recognition of the practice of authorizing certain otherwise illegal activity in the course of undercover or intelligence operations in order to attain a "greater good." While the law itself recognizes a defense of "justifiability" in certain cases, it should be possible to develop a statute which recognizes the principle and clarifies the legality of the procedure.

Con: It is unnecessary to statutorily recognize the principle. Application of principles of "prosecutorial discretion" can avoid subjecting intelligence agents to personal liability. We get along now without an explicit statutory recognition of the principle. Reaching consensus on the circumstances in which otherwise illegal activity can be authorized will not be possible. Our law should not recognize an exception for illegal acts committed in the name of national security.

D. Physical Searches (§ 341)

1. Approval authority for domestic searches

Should a judicial warrant be required for physical searches in the United States?

Pro: Judicial approval of physical searches would obviate the constitutional problems inherent in Executive approval. Warrant procedures here may be particularly warranted due to some court decisions indicating physical searches are especially intrusive and might not be open to the same exception from the warrant requirement which exists with respect to electronic surveillance for foreign intelligence

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purposes. As a matter of policy, a judicial warrant would be regarded, both by Congress and the public, as assurance that civil rights are being afforded real protection. Judicial warrants do not appreciably increase the risk of disclosure. In fact, the requirement of a judicial warrant could prompt Congress to subject intelligence agencies to less reporting and oversight requirements, and thus reduce the possibility of disclosure. Finally, failure to require a warrant would require a substantial justification in light of adoption of a warrant for electronic surveillance. A warrant procedure would also permit searches beyond current authorizations.

Con: The Attorney General has advised the President that a judicial warrant is not constitutionally required under the exception recognized by the courts in the area of foreign intelligence. The validity of this position was confirmed in the Vietnamese spy trial, at least in the context of a non-trespassory search. Judicial warrants also pose risks of disclosure, delay and judicial error precluding a search.

2. Approval authority for searches abroad

Should a judicial warrant be required for physical searches outside the United States?

(The arguments on foreign searches are essentially identical to those raised regarding overseas electronic surveillance.)

3. Exception for diplomatic premises and items

Should searches of diplomatic premises and items be excluded from the legislation?

Pro: The Office of Legal Counsel has concluded that diplomatic premises and items are not protected by the Fourth Amendment; there is therefore no constitutional requirement of prior approval or even of "reasonableness" in such searches. Moreover, apart from constitutional considerations, searches of diplomatic areas

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pose no appreciable danger to the privacy interests of Americans. For these reasons, electronic surveillance of similar areas was excluded from H.R. 7308 by the House Intelligence Committee. The inclusion of diplomatic premises and items seems particularly unwise and inappropriate if the courts are to be given authority in this area. Where no constitutional rights are at stake, the courts have little legitimate role in supervising the conduct of such searches.

Con: The exclusion of diplomatic areas would eviscerate much of the purpose underlying such legislation. This omission would also allow intelligence agencies to exercise unreviewable discretion in this area, which may be unacceptable to the Congress. Some entity outside the intelligence agencies, perhaps the Attorney General, may thus have to be vested with authority in this area.

4. Standards for targeting, level of U.S. involvement, minimization

(Those issues are essentially the same as those presented by overseas electronic surveillance.)

V. PROCEDURAL LIMITATIONS ON SPECIFIC INTELLIGENCE ACTIVITIES

A. Extension of Hughes-Ryan Concept

Should the concept of Presidential approval and reporting to Congress on covert actions be extended to sensitive collection activities and/or counterintelligence activities? (§§ 131, 141)

Pro: E.O. 12036 already extends the principle of Presidential approval to these areas since in practice SCC approval is followed by Presidential review. Putting this practice in statute will preserve this reform. Notification to Congress, while not required now, is sometimes utilized and is a practice which

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will enhance public confidence in the propriety of these activities. It will also create a sharing of responsibility for approved activities and provide a further safeguard against abuse.

Con: Hughes-Ryan has not been a wholly satisfactory development. Sensitive collection and counterintelligence activities are Executive branch functions whose success often depends on extremely tight controls on dissemination of information about the activities. Despite improvements in maintaining secrecy, Congress has shown itself unable to keep reports under Hughes-Ryan secret. Congressional notification means political interference in some cases and this is undesirable.

B. Tighter Standards for Approval of Intelligence Activities

Should Hughes-Ryan be amended to permit approval of intelligence activities only when "essential" to the national defense or conduct of foreign relations and only when there is a report to Congress prior to initiation of the activity? (§§ 131(d), (g), 141(c)(6))

Pro: The present standard of "necessary" is too lax and permits unwise use of covert means when overt means will suffice. Timely reporting to Congress is insufficient to insure congressional oversight since once an activity is undertaken it may be too late for Congress to register any objections.

Con: "Essential" cannot be given a literal meaning without eliminating covert action as an option. There has been no abuse of the present standard and thus no need to change it. Time will not always permit prior reporting and Congress should not become a joint partner in approving these activities. Oversight rather than approval is the role of Congress and "timely" reporting maintains the proper balance.

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C. Limitation on Committees Receiving Hughes-Ryan Reports

Should existing reporting to "appropriate" congressional committees (6 or 7) be modified to require reporting only to the two intelligence committees? (§ 131(g))

Pro: The proliferation of reports under current procedures makes disclosure much more likely. The intelligence committees have tighter security standards which, while not leak-proof, minimize the possibility of disclosure. This change has long been sought by the Executive branch and was recommended by the Murphy Commission.

Con: Any change in Hughes-Ryan opens up a difficult subject. It is better to leave the situation as it is than to endorse any changes. The "price" of getting this change may be prior notification or an increase in the depth of involvement by the intelligence committees in intelligence matters.

D. COMSEC

Should COMSEC become a NSC (SCC) responsibility? (§ 142)

Pro: Certain aspects of COMSEC raise policy concerns at least as great as those presented by intelligence activities now considered by the SCC. These activities should be discussed in the context of the SCC where all interested parties can be heard. Such review will insure a better policy regarding COMSEC and assist in providing maximum security for official communications.

Con: COMSEC activities can come to the SCC now under § 1-306(b) of E.O. 12036 whenever the President desires to have such review. There is no need to write a statutory requirement for NSC-level review of this particular subject. Today's concerns with COMSEC may be far different in the future. There is no history of abuse of these practices and no need for reform.

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VI. CIVIL AND CRIMINAL REMEDIES, MISCELLANEOUS

A. Criminal Sanctions

Should criminal penalties attach to intelligence activities undertaken without a court order when those techniques require an order and such an order is authorized by this or other legislation, e.g., electronic surveillance, physical search? (§ 251)

Pro: Wiretapping for law enforcement or non-governmental purposes is criminal if undertaken without a Title III warrant. Improper execution of a search warrant is also a crime. Similar treatment should be accorded intelligence activities. Criminal sanctions will provide a needed deterrent against willful abuse.

Con: There is no need to add criminal penalties. The possibility of an inadvertent violation is too great in this developing area of the law and intelligence agents should not be exposed to criminal prosecution for such mistakes. The difficulties of prosecuting such violations, given the inherent conflict with national security interests and public disclosure, would result in the statute being rarely used; we should not adopt criminal statutes when we know they will rarely be used, even when violated.

B. Should there be criminal sanctions for "unconsented human experimentation?" (§ 252)

Pro: The proposed statute applies even-handedly across the board to all government employees, not just intelligence agents. Unconsented human experimentation is sufficiently abhorrent to warrant criminal sanctions.

Con: Past abuses do not warrant such a drastic reaction. The criminal sanction proposed is based on experimentation which "results" in injury even if unforeseeable. On occasion the validity of justifiable experimentation depends on the subject not knowing everything about the experiment. Any such statute should apply to all such

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experimentation, not just that undertaken by the government, and appropriately should be considered in the context of general criminal law revision, not this bill.

C. Civil Sanctions

Should there be a statutory cause of action for violations of the Act? (§§ 253, 254)

Pro: Assuming the restrictions in the Act are acceptable, there is no justification for violating a person's rights protected by the Act and a remedy should be provided. Furthermore, since the proposal is to have individual liability only for intentional acts undertaken without requisite approval or with the intent of depriving someone of the exercise of their rights, the proposed remedy is equitable.

Con: The courts are able to develop, on a case-by-case basis, better standards for civil liability than Congress could do by statute. We should not rush to create liabilities on individual intelligence agents who already have enough disincentives to function effectively. The existence of statutory causes of action is an open invitation to nuisance suits or suits instituted to disrupt legitimate intelligence activities.

D. Personal vs. Governmental Liability

Should civil liability for "intelligence torts" differ from civil liability principles adopted by the Administration in the pending amendments to the Tort Claims Act? (§§ 253, 254)

Pro: Intelligence torts differ from other torts. The proposed individual liability provisions in this bill are, or can be made, acceptable and this issue should not be taken out of a comprehensive charter to be handled with other issues arising out of law enforcement torts.

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Con: Intelligence torts are not different. There is no basis for separating this problem from the pending comprehensive approach to personal liability for government investigative agents. Under that approach the government would become liable for acts of its agents so that individuals would be compensated, while individual officials would be liable only in eggregious cases. The principle is sound and applies equally well in the intelligence area.

E. Should the statute preclude injunctions against intelligence activities? (§ 257)

Pro: There should be an express provision to avoid the possibility of litigation which disrupts proper investigative activities. Governmental liability in damages will be sufficient to redress any personal wrongs. The provision in S. 2525 is an open invitation for individuals who suspect they are being investigated to use the courts for discovery and judicial management of intelligence activities.

Con: Common law rules on the use of injunctions insure that the device will rarely be used to disrupt an ongoing investigation. If a court were to be convinced that the facts justified an injunction, then probably the investigation should be curtailed or stopped. It is doubtful Congress can prohibit a court from issuing an injunction because to do so would interfere with the courts' constitutional powers to adjudicate cases.

F. Congressional Review of Intelligence Procedures

Should all intelligence agency regulations implementing the Act be submitted to the congressional intelligence committees 60 days before their effective date? (§ 272)

Pro: This form of "report and wait" provision is far preferable to a legislative veto provision. This review provision is an acceptable trade for statutory restrictions. The intelligence committees' views are usually sought and getting their comments before the regulations are implemented will make for better, and more acceptable, regulations.

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Con: Now the regulations are put in essentially final form and sent to Congress for 14 day review. This informal arrangement should not be put in permanent law. Congress always has the chance to review and comment on agency regulations. On occasion 60 days delays will be unacceptable.

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