



Situation Report

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The Security and Intelligence Fund convened a conference on July 27 of national intelligence and counterintelligence authorities for the purpose of canvassing their opinions and drawing upon their counsel. The problems confronting the intelligence community were examined in all their aspects. Expert views were forthcoming for strengthening the national intelligence forces activities and for rallying public and political opinion in their support. The principal conclusions are set forth in this Situation Report.

We agreed that our main target is the omnibus bill now under Congressional consideration — the some 230 page “National Intelligence Reorganization and Reform Act of 1978.” Here our aim is to gain a new charter which will restore for the intelligence community the necessary degree of professional flexibility in its operations and inject a sense of realism in the controlling legislation. The list of attendees at this conference and further information will be provided by separate letter.

THE SITUATION:

There has been no letup, no pause in the campaign, now in its fourth year, to harass, intimidate and deform the national intelligence services. It is important that we take the measure of the people engaged in the mischief. They form a familiar company of wreckers: the arch-liberal politicians who have emerged as prime movers within the Carter Administration (most conspicuously Vice-President Mondale and Senators Frank Church of Idaho, Edward Kennedy of Massachusetts, Adlai Stevenson of Illinois and Birch Bayh of Indiana); the political

activists on the leftist fringes of government (among them the notorious Morton Halperin of the “Pentagon Papers”); the new breed of muckrakers who call themselves “investigative reporters” (among them Seymour Hersh of the *New York Times* is perhaps the most ruthless example); and, of course, that tireless, issue-seeking advocate of liberal causes, the American Civil Liberties Union.

The Department of Justice, also swept up into the pack, is out-baying Bayh in the lust for quarry. In a move tarred by politics, Attorney General Bell brought about the indictment, in April, of three former high-ranking FBI officials — Mr. L. Patrick Gray, formerly the acting Director, and two of his senior executives, Mr. Mark Felt and Mr. Edward Miller. He was driven to that action by a tardy realization that the American people would not stand for his earlier tactic of making scapegoats of FBI agent John Kearney and other middle-rank “Indians” in the Federal service. So Mr. Bell elected to drop the indictments of Kearney and others of like nature who were in tentative preparation and, reversing himself, went after the scalps of the four-feather “Chiefs.” And for good measure he fired out of hand on July 6 an officer of 27 years loyal service, Mr. J. Wallace LaPrade, an Assistant Director and Kearney’s former chief.

Kearney’s and LaPrade’s careers have been broken and Gray, Felt and Miller are now to be put in the dock, all for having defended the nation, as their oaths required them to do, from the bomb-planting Weathermen terrorists during the turmoil let loose in the late 1960’s with the object of shattering the state.

The prosecution and punishment of these officers constitutes only the iceberg tip of the continuing assault on the intelligence

community. Even more destructive in the long run, in terms of their potential for incalculable damage, are the constraints being fastened on the Central Intelligence Agency and the Federal Bureau of Investigation in regard to their future capabilities for collecting information in support of the conduct of foreign policy, protecting the nation against hostile actions and otherwise defending the general interest. For example, an Executive Order signed by President Carter on January 25 and amplified by a Fact Sheet issued by the White House three weeks later has greatly curtailed, among other things, the professional necessity to resort to electronic surveillance of foreign powers, or their agents where there is suspicion of espionage, or need for intelligence. Worse still, a mass of bills now floating between the two Houses of Congress will, if consolidated and enacted, further restrict the authority of these institutions to use this essential investigative instrumentality and, indeed, all but strike it from their hands.

What is behind all this? The pretext given by the promoters of these "reforms" is that the charters of the intelligence agencies need to be purified, in order to prevent a recurrence of alleged past abuses, and to protect the privacy of American citizens, as well as the rights of a multitude of aliens in permanent and legal residence in our country. But the practical consequences of these actions, pursued on the additional pretext of improving the intelligence services, is further to intimidate what remains of their leadership, deaden the esprit de corps which is the vital force needed to sustain a high

order of professionalism, and to make the institutions themselves more pliable for the whims and vagaries of the politics of the day.

All the while, the penetration of American society by KGB agents and their bloc confederates has been deepening in scope and reach. Indeed, so bold has the influx from abroad become that FBI officials were compelled only a few weeks ago to warn both the Senate and House Intelligence Committees of the expanding threat and to ask for sufficient funds to pay for an additional 125 counterintelligence officers merely to maintain a prudent watch on them. By any reasonable standards, the figure was unrealistically modest. Even so, the two committees, rejected the request.

Senator Patrick Moynihan, D-NY, a member of the Senate Select Intelligence Committee, is one of the handful of concerned politicians in the liberal ranks who has the courage to say what long has needed saying. Shocked by the irresponsible mindset of his colleagues, he was moved in an eloquent warning, to shatter the pretext they were fostering:

"The fact is that under the pretense of reorganizing CIA, we are making it impossible for it to carry forward the policies associated with it in the first three decades, and for which it was created, which is to say, a forward anti-Soviet position in this world.... The effort to change that policy of being aggressively anti-Soviet in the world has taken the form of declaring the CIA to be a danger to the American people.... It is now the case that on balance we indict more intelligence officers

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Chairman James Angleton

President Ambassador Elbridge Durbrow

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than we do spies.... The Fourth Amendment rights of an American not to have his telephone listened to, do not extend to the KGB. The KGB is given the courtesy of the port, as it were, to do anything it wants. As a liberal, I tell you that the day will come when it will be looked back and asked, 'For what purposes did the men of this political generation make it impossible to resist Soviet espionage in this country, and why did they do it?' And, God, we will have a lot to explain."

A HEMORRHAGING OF SECRETS

The main assault began in December, 1974, with the publication in the *New York Times* of a series of articles by Seymour Hersh purporting to expose the alleged misdeeds of the CIA against American citizens. In the aftermath, the shabbiest of the misdeeds associated with the expose was Mr. Hersh's own refusal to acknowledge that the few blunders, the occasional ineptitudes, which he uncovered had been terminated and were peripheral to the Agency's principal line of responsibility and that the Agency by and large, had done its work well and there was not urgent need for drastic reform. This was a truth which Senator Church and Representative Otis Pike, chairmen respectively of the two committees which the Senate and House set up in parallel to look into the revelations, also brutally ignored. The few whiffs of genuine scandal that Hersh uncovered brought on the hurricane of disclosure generated largely by the leaks from the "mountains" of documents which the then Director of the CIA, Mr. William E. Colby, on his own authority turned over to the Church and Pike Committees.

It was an ill wind, whipped up in part by the mood of remorse and repentance that seized the nation in the aftermath of the failure in South East Asia and Nixon's disgrace. A foreign diplomat, appalled by what has been described as a "hemorrhaging" of state secrets, exclaimed in disbelief, "You Americans don't have a country. You have a church." - meaning of course, a politician named Church, obsessed with an ambition to be President. Colby's self-serving action in throwing open the CIA's most

secret files to the Congress, and his daily briefings of the media, in addition to dismaying friendly foreign intelligence services with which the Agency had worked in fruitful collaboration since its founding, breached the constitutional doctrine of the separation of powers. That act dealt a blow to the President's previously unique power to act separately in the gathering of foreign intelligence and the breach may never be repaired.

Another casualty of this folly was an earlier Director of the CIA, Mr. Richard Helms. He has been made to suffer because he had the courage and abiding sense of duty to live up to his statutory responsibility to protect his agency's sources and methods - the elementary rule in such an institution.

Today, four years later, the bitter harvest reaped by the manufacturers of the whirlwind is before the Congress in the shape of a corpus of legislation so drastic in its language, so summary in its authority, that it will, if adopted in anything like the proposed form, leave the CIA and the FBI all but impotent, so far as coping successfully with subversion, espionage, and terrorism is concerned.

Most of us are agreed that some changes are in order. As a nation, our experience in the techniques of defending our society from enemies abroad and within on anything like the scale the Cold War called for, covers only three decades. No one can properly quarrel with the idea of having the metes and bounds of such operations carefully drawn on the basis of what that experience has taught us. But here the sensible end should be to make the intelligence services more effective, more responsive to the President's needs in the role of Chief Executive in the conduct of foreign policy and the national defense - and *not*, as the restrictive legislation under consideration would do, throw the services into a goldfish bowl where their countervailing actions may be known and frustrated by our enemies.

THE HIGH PRICE OF OPENNESS

Our first *Situation Report* warned that the pending legislation is so elaborate and complex, so obsessed with achieving the "openness"

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which has been in the secret of Carter politics, as to thwart the primary requirements of a mature and effective intelligence community. These rest on the elementary ability to move rapidly and discreetly in the gathering of information for the purpose of supporting the nation's foreign objectives and supplying timely warning of foreign enterprises calculated to do us harm. Among the impedimenta which the proposed legislation would raise against that essential capability, we cited the small army of officials and aides who would be injected into the oversight process. No less than 4,500 individuals by our estimates could become privy to a contemplated surveillance of a suspected foreign power or agent days, perhaps weeks, before it could be put into operation.

That first judgment stands. The continuing erosion of the secrecy and reticence which necessarily hedge the intelligence function has already made a number of friendly services chary of working too closely with ours. Trust in this realm is a precious and hard-bought thing. At home, the drying up of previously dependable sources of information about hostile individuals is so far advanced that the Director of the Secret Service, Mr. H. Stuart Knight recently warned a Senate Judiciary subcommittee for the second time in the span of a year that he is concerned about his ability to protect the President and other persons from attempted assassination.

How low the government's esteem for secrecy has sunk was unwittingly revealed in a recent report of the House Permanent Select Committee on Intelligence favoring the adoption of the House Bill (HR-7308) dealing with electronic surveillance.

That report sets forth the history of the pending legislation and goes on to praise the incredibly elaborate procedures which are thereby prescribed. These include a requirement for a judicial warrant for any and every wiretap on a foreign power or foreign agent, the laying of evidence before a certain number of special judges in justification of the authorization, and the eventual disclosures of the pertinent reasons for the surveillance to the intelligence committees in both Houses.

In approving this Rube Goldberg apparatus, the majority members noted with satisfaction that in the course of its hearings "no intelligence community personnel in either open or closed session, [stated or implied] that a warrant requirement would pose serious threats to the two most important elements in effective intelligence gathering (1) speed and (2) security." And the majority went on to conclude:

"One unassailable point emerges from the Committee's consideration of HR-7308: every intelligence community witness that has testified before this committee supports passage of the committee's reported bill."

But these statements were half-truths. The silence of the witnesses, the apparent absence of a general opposition to the bill from the professional services, was in fact a melancholy reflection of the caution and fear which the continuing campaign of harassment and intimidation has laid upon them. The minority members were more observant as they discerned what lay behind the mask. Their dissent arrived at a contrary conclusion: "As time went on some Administration officials broke ranks. Some highly knowledgeable operating intelligence personnel conceded that warrant requirements by mandatory prior disclosures to judges of the most sensitive intelligence information, would pose serious threats to the two most important elements in effective intelligence gathering: (1) speed and (2) security!"

Another section in the committee report explains why more officials did not speak out against the bill. One of the features stressed by its promoters in their sales pitch to the intelligence community was that its very restrictions would operate to "protect intelligence agents in the conduct of their legitimate activities." In other words, whatever the outcome of an operation, whether it succeeds or fails, the shackles inhibiting agent's accustomed freedom of maneuver against our enemies would also save them from the risk of a belated punitive action of the kind now being aimed at FBI officials who moved against the Weathermen nine years ago.

There is a warning in all this that the House committee has plainly missed. The intelligence services, and their counterintelligence divisions in particular, have undergone a Pearl Harbor. Caution, timidity, even fear have dulled and stultified them. To read the language of HR-7308 and the collateral bills is to conclude that the principal objective of the Congress is to make sure that the FBI and the CIA do not hurt anyone, that they be rendered incapable of countervailing action, and that the intelligence officer who abides by the laws now in the making will be rendered safe in his person but utterly ineffectual in the discharge of his duty.

In a word, the enemies of these two institutions are moving in for the kill.

OUT OF THE BLUE

Two adroit parliamentary moves foreshadow the enemy strategy.

In one move the Senate version of an electronic surveillance bill (S-1566) was whisked through the chamber in a flash. As with the counterpart in the House, the Senate Select Committee held hearings in the spring; and, as in that other chamber, the intelligence community held its tongue. All the same, a number of influential Senators had serious misgivings about the bill, and were preparing to challenge it. Unfortunately for them and the rest of us, they fell asleep on the watch. In a surprise move, some three weeks ahead of schedule, Senator Birch Bayh, Chairman of the Select Intelligence Committee, took advantage of a lull in the Senate calendar and the letdown of vigilance two days after the dramatic final vote on the Panama Canal Treaty. He suddenly called for a vote on the S-1566. It passed 95-1.

That bill now awaits conference with whatever bill eventually emerges from the House. HR-7308, the most restrictive, and thus far, the worst of the bills in the legislative hopper, has already been approved by the overwhelmingly liberal House Select Intelligence Committee. During the hearings, however, a number of fundamental questions were raised and amendments proposed by skeptics, some successfully, others lost by close votes. Representative Robert McClory (R-Ill.)

raised hard and constructive points. He drove home an amendment exempting highly technical and secret surveillance activities from a prior requirement for a judicial warrant. He succeeded only by persuading his liberal brethren that the relatively vast company of bureaucrats and clerks whom the measure would otherwise make privy to the surveillance would open up a critical operation to an unacceptably high risk of exposure.

THE CONSTITUTIONAL ISSUE

McClory, backed by several other committee members, also raised serious questions concerning the constitutional separation of powers. Article II of the Constitution provides that the President, in his role of Commander-in-Chief shall "preserve, protect, and defend the Constitution." He has therefore the prime responsibility for the conduct of foreign affairs, for maintaining the national security and, by reason of the nature of the modern world, the power to authorize the use of the intelligence mechanisms to forewarn and to protect the nation from possible hostile actions by foreign governments or their agents. Under that broad sanction, every President since Franklin Roosevelt has exercised the right to order the surveillance of American citizens under suspicion, as well as foreign nationals, without a court order. The Senate and House bills both seek to undermine this vested power by lodging the final authority for such surveillance in a small group of judges drawn from the benches of Federal circuit courts. McClory and his allies in the House are fighting to strike this provision down. They hold that it is grossly contrary to the principle of the separation of powers to attempt to inject the judiciary into the realm of secret intelligence and foreign affairs, where it has been absent until now and where it is barren of experience.

McClory's position finds strong support among constitutional experts. Robert H. Bork, a Yale professor of law and a former Solicitor General, derides the claim that providing a judicial warrant for electronic surveillance would guarantee that U.S. intelligence will hereafter be brought under "the rule of law." In

a powerful critique published in the *Wall Street Journal* on March 9, he wrote:

"...The bill pretends to create a real set of courts that will bring 'law' to an area of discretion. In reality, it would set apart a group of judges who must operate largely in the dark and create rules known only to themselves. Whatever that may be called, it debases an important idea to term it the rule of law; it is more like the uniformed, unknown and uncontrolled exercise of discretion."

On its constitutional aspects alone, the bill deserved to be given the most careful consideration of the House Judiciary Committee. It was in fact originally sent to that body and the members, after a desultory start, were about to grasp that constitutional nettle when by a slick parliamentary trick the document was snatched out from under their cognizance, and sent up before its constitutionality could be challenged to the House for a vote on the floor.

Representative Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee, brought off the coup similar to Bayh's move in the Senate by the simple device of calling on the majority members to vote to table the bill. They did, 4 to 3. The move left the main committee facing an empty stall - its horse had been stolen. The House Select Intelligence Committee is now free to introduce a bill on the floor at a time of its choosing. Mr. Kastenmeier was nothing if not cynical about his motives. Almost no one, he acknowledged in an interview with the *Washington Post*, liked the measure as it stood; it would have been stifled by amendments from both sides - from the liberals, who think the constraints are not severe enough and from the conservatives who find it far too restrictive - and so he ruled that in any case it was better than nothing.

THE TWO FACES OF JUSTICE

One reason for the confusion prevailing in the Congress, let alone in the minds of Americans, is the ambivalence in the attitude of the Carter Administration. President Carter himself, while pushing with his left hand for the passage of legislation restricting electronic

surveillance, last summer quietly brought off with his right a warrantless electronic and physical surveillance in the Humphrey-Truong case involving espionage in the service of Hanoi. Both men have been found guilty. Furthermore, Attorney General Griffin Bell himself defended in court the President's constitutional power in the Humphrey-Truong case to order warrantless wiretaps. Moreover, Mr. Bell in yet another situation has been held in contempt of court for refusing to obey the judge's order to reveal the names of 18 FBI informers. These were sensible decisions by the Administration in these situations.

The confusion compounds. As if oblivious of the powerful considerations that had compelled him to act without judicial sanction in the Humphrey-Truong case - only a few months before, President Carter in January issued Executive Order 12036 laying down new rules and guidelines for the entire U.S. intelligence community. Unaccountably that order calls for judicial warrants in almost all domestic intelligence or counterintelligence operations against foreign powers or their agents, as do the two major surveillance bills before Congress.

There still remains time for a last-ditch fight in the House to rework HR-7308 into a law that will not tie the President's hands too painfully. Our objectives should be two. First, the responsibility and accountability of the President in matters of national security must be sustained. Second, the measure must be made as broad and flexible as possible, because its present provisions, unfortunately are to be incorporated in the huge omnibus draft bill (some 230 odd pages) entitled the "National Intelligence Reorganization and Reform Act of 1978" (S-2525) now before the Senate Select Intelligence Committee.

Hearings are taking place on S-2525 but because of its vast bulk and the complexities of the subject, not to mention the reluctance of politicians to commit themselves to so prickly an issue in an election year, the bill will probably not come under serious consideration until late this year.

Eventually S-2525 must be met head-on. It must be thoroughly recast. In our last *Situation*

Report, we reported on the sequence of steps which must be taken by the President, Attorney General and many others before a judicial warrant can be issued for every use of electronic surveillance. But that was only part of the burden which the bill, if enacted, would impose on intelligence operations. It also requires that:

- More than sixty different kinds of reports be sent to Congress on intelligence matters, thereby enlarging enormously the risk of exposure.
- The director of the CIA must advise both Select Intelligence committees before he can enter into any agreement with friendly foreign intelligence services.
- The General Accounting Office shall have power to conduct financial audits and review all national intelligence activities requested by either Select Committee.
- Other committees of the Congress will have the right to request financial and program management audits or review by the Comptroller General of any national intelligence activities over which the committees have legislative jurisdiction.
- The Comptroller General also will be allowed to conduct audits or review of national intelligence activities even without being asked by Congress.
- The President will be required to establish "standards, procedures, and criteria" for identifying which categories of covert foreign intelligence activities require his personal approval.
- Both Select Committees will have to be notified in advance of all requests for Presidential approval of clandestine and "special activities," including counterintelligence projects.
- Such standards, procedures, and criteria as may be set by the President and any proposed changes in these standards will have to be submitted to both Select Committees 60 days before they can become effective.

These unrealistic and stifling provisions are quite enough to bring our intelligence operations to a virtual halt. They are a blatant

usurpation of Presidential power granted by the constitution.

We and other concerned groups are gearing up to do all we can to restore reasonableness and reality to the legislation.

As we reported in our first *Situation Report*, by conservative estimates the number of Soviet agents operating in our country has increased by fifty percent since the start of detente, six years ago.

An unnamed official was quoted in the *New York Times* of June 15, as saying that "Soviet espionage activity here had 'got out of hand' in the sense that Soviet intelligence officers were undertaking injudicious operations that were virtually 'provocation.'" The FBI in its counterintelligence role is certainly more circumspect nowadays. It is also increasingly timid. The KGB activities verge on effrontery. This is the price the nation is paying for the ambitions of Senator Church and his lieutenant, Mondale.

The increasing boldness of KGB operations inside the U.S., the "bugging" of the American Embassy in Moscow, as well as the growing threat of terrorism as exemplified by the Red Brigade murder of Aldo Moro, point up a danger that is all too plain. In West Germany and Italy, troubled Parliaments have passed new laws or enforced existing ones to the end of giving their law enforcement and counterintelligence officials more effective means for countering and apprehending elements bent on undermining the state. The hour may be too late for them, but let our Congress take heed.

Never has it been so important for an American President and the intelligence community supporting him to know what is going on at home and abroad to know what sinister enterprises are being prepared against us, and to know what schemes are afoot to penetrate our society, pilfer our secrets, and unhinge our institutions through clandestine political action.

These are the threats, the risks, and the dangers which the bills of Congress fail to address.



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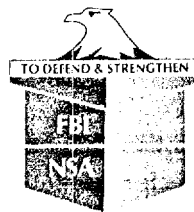
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