

THE WHITE HOUSE

WASHINGTON

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MEETING WITH PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD (PFIAB)


CHAIRMAN LEO CHERNE

Wednesday, June 9, 1976

12:00 noon (20 minutes)

Oval Office

DOJ, NSS, NSA
Reviews
Completed

From: Brent Scowcroft 

I. PURPOSE

To discuss with the Chairman of your Foreign Intelligence Advisory Board (PFIAB), Leo Cherne, his reservations concerning (1) pending legislation regarding Electronic Surveillance, and (2) recent guidelines provided by the Attorney General to NSA pertaining to such surveillance.

II. BACKGROUND, PARTICIPANTS AND PRESS ARRANGEMENTS

A. Background: Chairman Cherne wishes to express the Board's concern regarding recent guidelines issued by the Attorney General to NSA -- guidelines which he feels overly restrict legitimate foreign intelligence collection and dissemination activities. In addition, Cherne considers the Administration's draft Electronic Surveillance Act -- currently under consideration by the Senate Judiciary Committee -- a potential impediment to effective intelligence collection as well.

Specifically, the PFIAB Chairman is concerned that the Attorney General's guidelines to NSA may seriously impair our ability to identify and prevent terrorist activities. It is his interpretation that constraints on dissemination of individual names to the Secret Service and law enforcement agencies would seriously inhibit effective anti-terrorist operations.

Regarding the draft legislation, Cherne is worried about the possible usurpation by the Judiciary of your Constitutional authority regarding control over national security wire taps.

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He is troubled also by undue restrictions on dissemination of the intercept product and by the seeming prohibition of electronic surveillance as a legitimate tool of our counter-intelligence efforts in the United States.

A copy of the Attorney General's guidelines are at Tab A. The draft Electronics Surveillance Act is at Tab B.

As you will recall, the Attorney General has met with you on several occasions over the past six months on these subjects and your decisions have been to support some form of restrictive legislation regarding domestic surveillance activities. In issuing Executive Order 11905, you have also proscribed certain of these activities. Both the NSA guidelines and the Administration's draft bill are more specific than the more general guidance contained in your Executive Order. In effect, both the legislation and the guidelines call for a concerted effort on the part of all agencies involved in electronic collection efforts to insure that collected material which contains any information about persons or entities protected under the Constitution and its amendments is used only for its foreign intelligence value and, if possible, is not collected in the first place unless there is a readily apparent and legitimate reason for doing so.

The Senate Judiciary Committee hopes to report out the Electronic Surveillance Act this week. The NSA guidelines issued by the Attorney General on May 7 went into effect on June 1. It is therefore with some urgency that the PFIAB seeks to discuss their reservations with you and to make clear the losses that may accrue in our intelligence effort.

- B. Participants: Leo Cherne, Stephen Ailes, William Baker Edward Bennett Williams, Wheaton Byers, Phil Buchen and Brent Scowcroft.
- C. Press Arrangements: The meeting will not be announced. No press coverage.

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III. TALKING POINTS

1. I am glad to see that the Board is taking an active interest in this matter. As you know, this subject has been debated thoroughly over the past months and we are now in the first stages of implementing new guidelines that must meet much more careful congressional scrutiny.
2. I understand you and the Board have some specific concerns regarding both the proposed legislation on electronic surveillance and the Attorney General's guidelines for NSA which he recently issued. Before we get into the specifics, however, I want to point out that I am also interested in any general observations you may have regarding this whole subject area. I am well aware that practical problems can develop in implementing necessary safeguards.
(For Use As Appropriate)
3. Do you think we have sufficient flexibility under the proposed legislation to meet emergency requirements? I am thinking now of something like the sudden outbreak of hostilities in the Middle East, or perhaps the development of a significant terrorist threat to our nuclear power facilities.
4. What is your view on the constraints on the Executive Branch regarding the protection of information on U. S. persons gathered incidentally which may or may not have some intelligence value, but which is perishable and would be of little use unless quickly disseminated?
5. I would appreciate your making an effort toward specific corrective language, both to the bill as well as for the guidelines.
6. I can assure you that I share your desire to provide our intelligence analysts and our policy makers with the best and most up-to-date intelligence upon which to base sound, informed judgments. We cannot afford in these times to be caught with our guard down. I hope you will continue to consult with me on this important matter.

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Office of the Attorney General

Washington, D. C. 20530

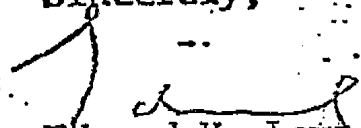
May 7, 1976

Lt. Gen. Lew Allen, Jr.
Director
National Security Agency
Fort George G. Meade, Maryland 20755

Dear General Allen:

I am enclosing procedures that I have approved, pursuant to E.O. 11905, concerning certain foreign intelligence and communications security operations conducted by NSA. These procedures have been developed as a result of discussions between a Department of Justice committee, chaired by the Solicitor General, and NSA. The procedures are to be effective no later than June 1, 1976.

Sincerely,


Edward H. Levi
Attorney General

LIS-HK-C1742 May 3, 1976

Procedures Approved by the Attorney General
Under E. O. 11905

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Sec. 1. For the purpose of these procedures:

(a) "United States person" means any citizen of the United States, any alien lawfully admitted for permanent residence in the United States, or any other alien in the United States; any group of such citizens or aliens; or any corporation, corporate subsidiary, or other legal entity having its principal place of business in the United States: Provided, however, that it shall not include (i) any alien (other than an alien lawfully admitted for permanent residence) who as a matter of official record is an officer, employee, or accredited representative of a foreign power; (ii) any group of such aliens; or (iii) any corporation, corporate subsidiary, or other legal entity which as a matter of official record is owned or controlled, directly or indirectly, by a foreign power.

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(b) "Agent of a foreign power" means

(i) a person who, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, or knowingly aids and abets such a person in engaging in such activities;

(ii) an alien (other than an alien lawfully admitted for permanent residence) or any group of such aliens, who is an officer, employee, or accredited representative of a foreign power; or

(iii) a corporation, corporate subsidiary or other legal entity that is owned or controlled, directly or indirectly, by a foreign power.

(c) "Communicant" means the sender or any intended recipient of a communication subject to these procedures.

(d) "Foreign communication" means a communication which has at least one communicant located outside the United States.

(e) "Foreign intelligence" means

(i) information relating to the ability of the United States to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents;

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(ii) information, with respect to foreign powers or non-United States persons, which because of its importance is deemed essential to the security of the United States or to the conduct of its foreign affairs; or

(iii) information relating to the ability of the United States to protect itself against the activities of foreign intelligence services.

(f) "Foreign organization" means any organization which does not fall within the definition of a United States person, foreign power, or agent of a foreign power.

(g) "Foreign power" means any foreign government, foreign political party, faction, military force, foreign terrorist group, or any organization composed, in major part, of any of the above entities.

(h) "Interception" means the acquisition by NSA through electronic means of a communication to which it is not an intended party and the processing of the contents of that communication into an intelligible form intended for human inspection.

(i) "Protected Communication" means any communication which has as a communicant a United States person or a United States branch, office, or representative of a foreign organization.

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Sec. 2. NSA shall intentionally intercept only foreign communications.

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Moreover, an intercepted foreign communication which is revealed to have a United States person as a communicant or which refers to a United States person may be used and/or retained within NSA in its original form or as transcribed only in the following limited circumstances: *also any one of these*

- (a) the identity of the United States person is deleted pursuant to Section 6(b);
- (b) the communication is enciphered or reasonably believed to contain secret meaning;
- (c) the retention of the communication is necessary for the maintenance of technical data bases;
- (d) the communication evidences a threat to the physical safety of any person;
- (e) the communication is evidence that the United States person may be an agent of a foreign power;

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(f) the communication is evidence that the United States person may be a target of intelligence activities of a foreign power;

(g) the communication is evidence that the United States person is engaged in the unauthorized disclosure of properly classified national security information;

(h) the United States person has consented to the retention or use of communications in which he is a communicant or which refer to him;

(i) the selection of communications involving the United States person has been approved pursuant to either Section 3 or Section 4; or

(j) the identity of the United States person in the context of the message is significant foreign intelligence. Where this exception is applied, special care must be taken by the Deputy Director, Operations, to ensure that domestic political or personal information is not retained or disseminated under the mistaken belief that it is significant foreign intelligence.

Sec. 6. (a) When the identity of a United States person is revealed in an intercepted foreign communication, no report or translation disclosing the identity of the United States person in that communication shall be disseminated outside NSA unless one

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of the criteria of Section 5(d) - (j) is met: provided, that
where Section 5(g) is applicable, the identity of the United
States person shall not be disclosed outside NSA until the
entity that has classified the information has certified that the
information is in fact properly classified national security infor-
mation.

(b) In all other cases, a report or translation concerning
a communication under subsection (a) may be disseminated outside
NSA only if a generic term is substituted which does not identify
the United States person in the context of the message. Where
use of a generic term alone is insufficient, portions of the re-
port or translation shall be deleted or summarized so as to con-
ceal the identity of the United States person.

(c) Before a report or translation disclosing the identity
of a United States person, other than one who has consented to
the use and retention of his communications, is disseminated out-
side NSA, the list of proposed recipients for that report or trans-
lation shall be reviewed to determine whether each recipient has
a requirement in the performance of its official duties for the
identity of the United States person. Where such does not exist,
the report or translation shall be prepared pursuant to subsection
(b) so that the identity of the United States person is not dis-
closed.

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Sec. 7. The Director, NSA, shall report to the Attorney General by March 15 of each year concerning the extent to which during the preceding calendar year the identity of United States persons has been disclosed in reports or translations disseminated outside NSA. The report shall include a statistical summary of the number of instances in which the identity of United States persons was so disclosed and the exceptions invoked under Section 5.

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Sec. 9. Any request by NSA for another entity to intercept foreign communications governed by these procedures shall be subject to the requirements of these procedures. Foreign communications received from other entities shall be processed by NSA in accordance with these procedures.

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Sec. 12. No report or translation containing information from a Protected Communication shall be disseminated outside NSA unless the information is foreign intelligence, evidences a threat to the physical safety of any person, relates to the unauthorized disclosure of properly classified national security information, involves a communication approved for selection pursuant to Section 3 or Section 4, or involves a communicant who has consented to the retention or use of his communications.

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Sec. 14. The Director of NSA, or his representative, may at any time seek an interpretation or clarification of these procedures from the Attorney General. The Director may request the Attorney General to modify these guidelines when in the Director's judgment a modification is necessary or desirable.

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APPROVED BY THE ATTORNEY GENERAL UNDER
No Objection to Declassification in Part 2012/09/06 : LOC-HAK-509-5-18-2)RT
E.O. 11905 CONCERNING SIGNALS INTELLIGENCE
TO U.S. AND ALLIED MILITARY EXERCISE COMMAND AUTHORITIES

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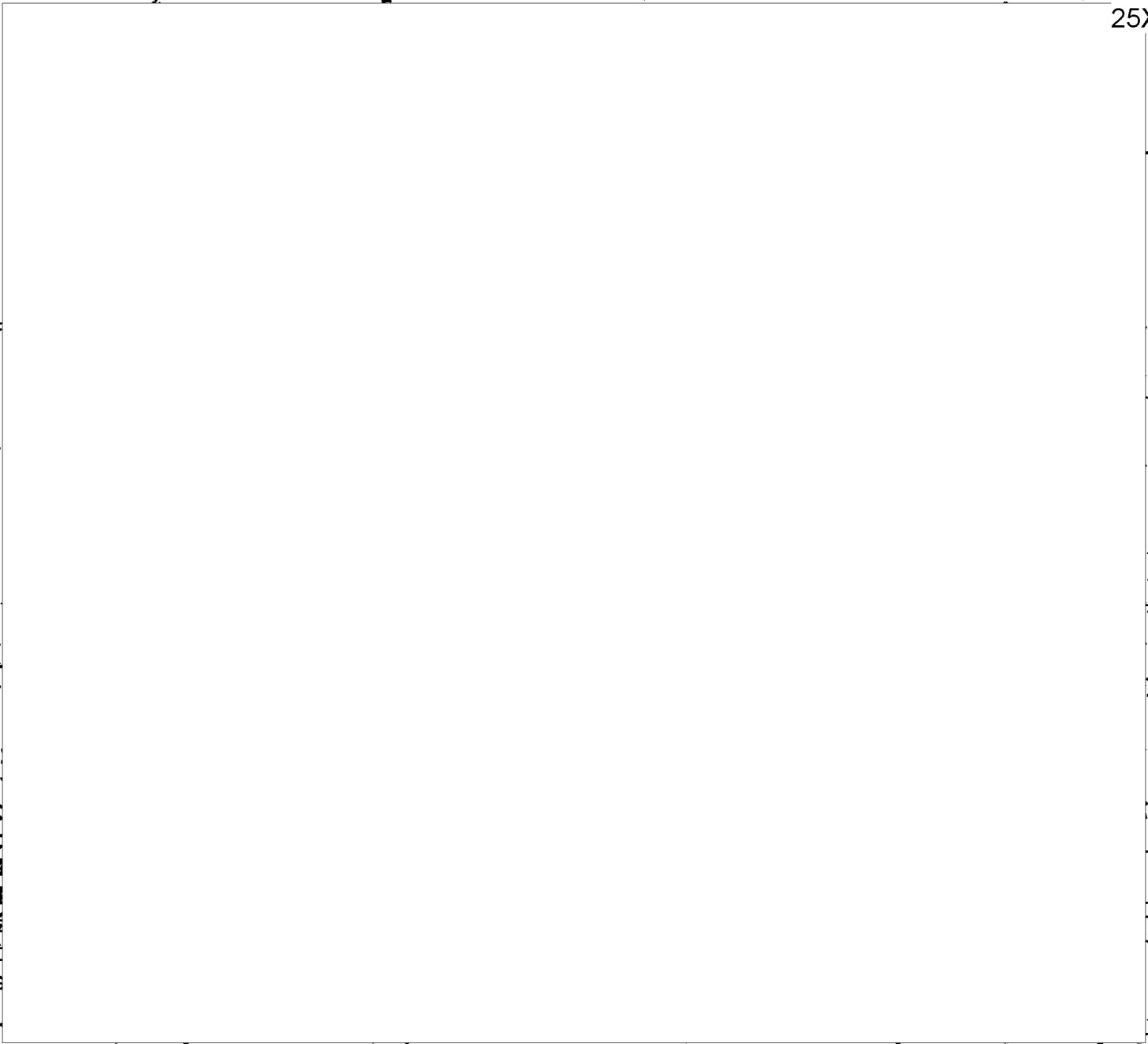
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