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With respect to the Attorney General's guidelines, it is so restrictive that we couldn't even know that the Soviets had picked up a conversation between you and Secretary Kissinger. [He shows the President an intercept on Law of the Sea and what are the guidelines.]

[There is discussion that NSA is caving to Justice and that there is no real consumer representation to fight the Attorney General's restrictions.]

President: Ed, you said there were no negative court cases.

Williams: Yes, there is dictum, but I would be delighted to argue the right of the President to gather foreign intelligence through electronic surveillance. If I lost, I would go back behind a plow.

Buchen: It isn't only that. The Congress was going to pass a law. We were trying to control the process.

President: I met with the Attorney General and a Congressional group. A lot of them wanted to go much further. Judging from that, I think there are real dangers that it will be toughened up. I doubt we will get anything this year, but if we do and if it is tough, I won't buy it.

Cherne: There is one other aspect. We don't know when the Soviet intercept issue might blow. We need a damage assessment to see if what we are getting and what the Soviets are getting here are equal. We really need a net assessment made.

President: We will take this up. Please keep on watching this sort of thing for us and we will be in touch with you on this issue.

DOJ, NSS,
Review
Completed

NSA Review Completed

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Pres

THE WHITE HOUSE

WASHINGTON

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MEMORANDUM OF CONVERSATION

PARTICIPANTS:

President Ford
Leo Cherne, Chairman of PFIAB
Edward Bennett Williams, Member of PFIAB
Stephen Ailes, Member of PFIAB
Dr. William Baker, Member of PFIAB
Wheaton Byers, Executive Secretary of PFIAB
Philip Buchen, Counsel to the President
Brent Scowcroft, Assistant to the President
for National Security Affairs

DATE AND TIME:

Wednesday, June 9, 1976
12:00 - 12:45 p.m.

PLACE:

The Oval Office

Cherne: The Board has been concerned with the Soviet microwave intercept problem for two years. We stimulated the NSC to convene the David panel. We understand a NSDM will be forthcoming shortly. But there are still some concerns that the Board felt unanimously that I should seek an immediate meeting with you to convey these anxieties.

First, we feel the Administration is vulnerable to a charge of being indifferent to charges of laxity against Soviet activity. So far, none of the news stories has caught fire, but they might at some point.

Secondly, we are concerned at the impact of the Attorney General's guidelines on NSA. They are much more restrictive than your Executive Order -- on economic intelligence, for example, there is no provision for it. There is also a significant hardening as to who is covered -- it goes now to any alien on U. S. soil.

President: What is the significance of that?

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Cherne: [He gave an example of the Black September case of the three trucks in New York City and Golda Meir.] This case would have to be dropped from the computer unless there was a specific case against him. Under the guidelines, this case couldn't have been cracked. We are concerned not only at the Attorney General but that NSA hasn't put forth a sufficiently persuasive case. The NSA attitude is they can live with it. We have discussed this with the DOD people and Bork -- who said some aspects were still subject to negotiation -- but I see no pressure to renegotiate. We came to you because the intelligence community needs to be energized to ensure that the intelligence needs are met. It is especially crippling with respect to terrorism. Also there is no intersection in the government where the rights of the individual and the needs of intelligence meet. We understand how people around you are very concerned about embarrassment to you.

Thirdly, the legislation on electronic surveillance. We understand it is a cooperative enterprise, but we think it has problems. We are afraid that it tends to engrave in stone issues which go beyond your Executive Order.

President: We will certainly check out both what the Congress is doing and the guidelines to NSA.

Cherne: Certainly the legislation will be more restrictive than your Executive Order and could be much more restrictive. If the latter is true, we respectfully suggest you consider the possibility of a veto.

President: As the legislation goes through the Congress, I hope you will study it and give me the benefit of your views.

Cherne: Ed Williams has spent his career protecting the rights of the individual.

President: Ed, what do you think?

Williams: I think the Attorney General is overreacting to the abuses of the past. Every Attorney General has asserted the right of the President to gather intelligence and no court has gainsaid it. I believe in this right as inherent constitutionally and I think this legislation intrudes the judiciary into the gathering of foreign intelligence.

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