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THE WHITE HOUSE

PRESS CONFERENCE
OF
EDWARD H. LEVI,
ATTORNEY GENERAL OF THE UNITED STATES

THE BRIEFING ROOM

12:05 P.M. EST

MR. NESSEN: Here is the Attorney General to brief you on the proposals worked out for the legislation that the Attorney General and Members of Congress have been working on concerning electronic surveillance.

ATTORNEY GENERAL LEVI: As I am sure you know, the President met with the bipartisan leadership just now to discuss the proposed electronic surveillance bill in the foreign intelligence area which the President will be sending to the Congress.

Q When, Mr. Attorney General?

ATTORNEY GENERAL LEVI: My belief is it will be sent to the Congress some time today. My further belief is the bill will have a broad sponsorship among the members of the leadership and the Judiciary Committees and that it will be introduced in the Senate by Senator Kennedy and that it will be introduced in the House by Chairman Rodino of the Judiciary Committee and that there will be broad co-sponsorship.

The bill operates in the area of electronic surveillance where the target is a foreign power or the agent of a foreign power. The definition of an agent of a foreign power is an officer or employee of a foreign power but not where the target is a permanent resident, alien or citizen of the United States.

The second definition is where a person, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities for that foreign power or sabotage for that foreign power or terrorist activities pursuant to the direction of that foreign power and in that second category of clandestine intelligence activities, sabotage or terrorist activities for a foreign power, that can include American citizen or permanent resident alien.

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The foreign power is defined so that it would include foreign governments, factions, parties, military forces and so on.

The purpose of the operation to secure foreign intelligence information requires a definition of foreign intelligence information. There are three categories. Foreign intelligence information relates 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 agent or it will relate to information with respect to foreign powers which, because of its importance, is deemed essential to the security or national defense of the Nation or the conduct of the foreign affairs of the United States.

Or, third, where it relates to the ability of the United States to protect the national security against the foreign intelligence activities. This is counter-intelligence.

The electronic surveillance itself is defined carefully to include the acquisition by an electronic, mechanical or other device of the contents of a wire communication to or from a person in the United States where the acquisition of the information is in the United States while the communication is being transmitted by wire. Or, secondly, where there is a radio transmission where both the point of origin and all intended recipients are located within the United States. Or, third, the installation of electronic or other device in the United States to acquire information not transmitted by wire or radio in circumstances where a person has reasonable expectation of privacy.

In all these cases the requirement will be that there be a general authorization by the President in writing to the Attorney General. The Attorney General then would have to authorize any specific application. The application would have to be to a court and the court would issue, if it approves, a warrant for the surveillance.

The bill provides for the designation by the Chief Justice of the United States of seven District Court Judges who will hear these applications. It provides also for an Appelate Court of three Judges to be selected by the Chief Justice either from the District Courts or the United States Courts of Appeals and there would be an appeal possible then to the Supreme Court.

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The Judge, in issuing a warrant, would have to find that there was probable cause that the target of the surveillance is a foreign power or the agent of a foreign power as the bill has defined it.

The application also would have to carry the certificate of the responsible Executive official appointed by the Senate, confirmed by the Congress, that this person is being targeted, or this institution, for foreign intelligence information of the importance or the necessity defined in the legislation.

The court would also, having found there was probable cause that it was the agent of a foreign power or a foreign power, satisfy itself that appropriate minimization procedures were being followed.

There is in the bill an emergency provision in that situation where there is not time to get a warrant from one of the District Judges, the seven District Judge. In that case where a surveillance has to be conducted within a 24-hour period, the Attorney General may authorize it, but he will have to communicate immediately with one of the District Judges and within a further 24-hour period must have secured the approval or the disapproval of the Judge to the issuance of a warrant.

If there is a disapproval, then notice may have to be given to the target of the surveillance if that target is an American citizen or a permanent resident alien, although the court may waive that requirement.

All of the warrants would be issued giving permission for not longer than a 90-day period -- I am not talking about the emergency provision but generally -- and would be renewable.

Q How long additional -- 90-day period?

ATTORNEY GENERAL LEVI: For an additional 90-day period.

The bill requires that there be a statistical report to the Administrative Office of the United States Courts and to the Congress on the electronic surveillances under the legislation and the bill also includes a proviso preserving the Presidential power for matters of electronic surveillance which go beyond the coverage and scope of this legislation.

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That is the bill. I think it is accurate to say that the initiative of the President has been met with spirit of great cooperation and collaboration by the Members of Congress, and I do want to say I think the legislation would be extremely important, both to give assurance to American citizens of the care and standards to be observed and it is also important because the kind of information which the electronic surveillance is directed to obtain is extremely important for the United States.

Q In general, do you know of any other country in the civilized world where notice is given to a potential saboteur or terrorist that he is being surveyed by an internal security organization of that country?

ATTORNEY GENERAL LEVI: I don't, but I don't see that here either.

Q You said in cases of appeal where the Judge turns you down, you then must notify the target.

ATTORNEY GENERAL LEVI: No. No. Only under the emergency provision where one proceeds without having applied for a warrant within that 24-hour period.

Q What does this do, then, Mr. Attorney General -- if you have given that notice and I understand it is only under the emergency warrant list provision -- if you have then been turned down for a warrant and you give notice to the person who was surveyed for 24 hours and he is an American citizen or a native, is the purpose of giving him notice to avoid him suing you under the Safe Streets Act? Is that rule out of suit then or what?

ATTORNEY GENERAL LEVI: I really can't comment on that because I really don't know what the effect would be and I must say I cannot believe that if the administration of the bill is -- as I am sure it will be -- that in fact any notice would be given because you are assuming that the target really is a foreign agent engaged in terrorist activities or clandestine intelligence activities and so on and in that case the warrant will be given. It would only be the case where the judge disagrees with that --

Q I am not assuming that at all. I am assuming as a matter of fact that if you, through a mistake or an excess or something like that, you put a tap on just an ordinary citizen and you go to the judge and the judge turns it down, you notify the ordinary citizen and he sues you. Is the fact he was notified supposed to protect you against a suit?

ATTORNEY GENERAL LEVI: I would not think so at all. In fact, I would think it might help cause one.

Q If I could follow up on that--the question of bringing any of this material into court. One of the earlier drafts of this -- and I don't have the final copy here -- but one of the earlier drafts prohibited the use of any information gained under the intelligence section in any judicial proceeding. That was a direct quote from it. Is that retained in the final proposal and indeed would that not prohibit the kind of suits that, say, Morton Halperin brought against the Government?

ATTORNEY GENERAL LEVI: This really has nothing to do with the Halperin thing which would not be possible under this bill and that provision is not retained.

Q Mr. Attorney General, could I ask a question? In non-emergency situations where you are just seeking an authority of the court to tap somebody, isn't that in and of itself public? Wouldn't that be a warning to the potential target?

ATTORNEY GENERAL LEVI: No, it would be an ex parte proceeding.

Q How about an appeal in that case?

ATTORNEY GENERAL LEVI: If it is turned down, there is an appeal possible.

Q Isn't the target notified then?

ATTORNEY GENERAL LEVI: No.

Q Also, I think you mentioned, if I am not mistaken, in the definitions of foreign intelligence, that information in connection with national defense or conduct of foreign affairs of the United States would be part of this. Now, a recent Walsh article in Foreign Affairs, could that be construed as information relative to the foreign affairs of the United States and come under this provision?

ATTORNEY GENERAL LEVI: I am really not familiar with the article that you are talking about.

Q It quoted virtually verbatim from a confidential memoranda in the State Department about the Middle East situation.

ATTORNEY GENERAL LEVI: No. As I say, in the first place you have to find that there is probable cause that it is a foreign power or the agent of a foreign power. That is the only target there can be and the information which you are seeking is information which, because of its importance, is deemed essential to the security or national defense of the Nation or the conduct of foreign affairs. This is information which we are trying to get as to foreign powers.

Q Did I understand you to say there is a provision where Presidential warrants could be issued without a court order in certain circumstances?

ATTORNEY GENERAL LEVI: I said there was an extraordinarily limited emergency provision where if there is some enormous necessity and you can't within 24 hours get the papers to the judge, then you have to,under this bill, a) you have to notify the judge during that period, within the 24-hour period, and then within another 24-hour period you would have to present it to him for his approval or disapproval.

Q That is not what I am asking about. You mentioned in your formal presentation that there was a provision that could have a Presidential warrant without a court order. That is what I thought you said.

ATTORNEY GENERAL LEVI: No.

Q What were you referring to there? You said there was a provision that went beyond the scope.

ATTORNEY GENERAL LEVI: I said there was a reservation of President power at the end of the bill. There is one, as you undoubtedly know, under Title 3 now. This is somewhat different. It reserves such President power as there is for electronic surveillance without a warrant, to the extent that it is not covered by this legislation.

Q Mr. Attorney General, does any other country require a court order or court approval of electronic surveillance in espionage investigations?

ATTORNEY GENERAL LEVI: I can't be sure of the answer, but I think generally not.

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Q Mr. Attorney General, does the reservation of power mean that if the President disagrees with a negative finding --

ATTORNEY GENERAL LEVI: No.

Q After an appellate process the President may proceed?

ATTORNEY GENERAL LEVI: Certainly not.

Q What does it mean then, please?

ATTORNEY GENERAL LEVI: It means it is beyond the scope of this bill which, as I have stated, refers to electronic surveillance within the United States as to foreign intelligence -- foreign intelligence I have already defined -- and the operations within the United States are to get those wire communications which either originate here or come back here, where the interception is of a wire communication or radio communications which are totally within the United States and directed towards recipients in the United States. That is in the main the coverage of this bill.

Now if you have an operation which is outside the United States and which is a kind of sweeping operation not targeted against particular individuals or something of that sort, this bill does not speak to that point at all.

Q Mr. Levi, do I understand that he is merely preserving the authority he now exercises to continue surveillance outside the United States but he is submitting himself to the provisions of this bill for all surveillance within the United States?

ATTORNEY GENERAL LEVI: That would be one way to put it. The other way to put it is to say the President has asked the Congress for its collaboration and support of the Presidential power in the domestic area and to provide the method whereby it can be used so that citizens will be safeguarded and the foreign intelligence can be obtained.

Q On that point, just right there. Recently a U.S. District Judge in the District of Columbia, in a case involving the Berlin Democratic Club, indicated he was willing to issue an injunction to enjoin the Government from wireless wiretapping of American citizens abroad. Has the Department considered whether it will appeal that or whether it will wait for a final ruling and then appeal or are you willing to change your policies now within the Justice Department?

ATTORNEY GENERAL LEVI: The general policy of the Department of Justice with respect to the surveillance of an American citizen by an American governmental agency, wherever that occurs, requires the approval of the Attorney General. I don't want to go into that particular case which involves very special circumstances. The Department will have to make up its mind in terms of that particular case in terms of an appeal.

Q One quick follow-up on that.

ATTORNEY GENERAL LEVI: But, I must say that I have not read other than what the newspapers have reported as to the opinion of the judge, but the opinion of the judge, as it was reported -- and I know reports are not always accurate -- suggests that the judge thought if it were a foreign power or its agent, then a warrant would not be required. So, this still, of course, requires a warrant.

Q The question I really was trying to address is since this bill only addresses surveillance within the United States or involving persons within the United States, is the department reconsidering its policy regarding foreign interception, or is that going to remain untouched and, generally speaking, are you just going to have that as it is?

ATTORNEY GENERAL LEVI: That is a different area. Under the Executive Order issued by the President, the Department of Justice cannot be indifferent to such activities and has grave responsibility, so we are not just leaving it untouched. But, this bill, which is a legislative approach to foreign intelligence gathering in the United States, does not reach that area.

Q Mr. Attorney General, you spoke of an extraordinary limit on the 24-hour provision in this bill, in the emergency part of it. One time here we had groups of people threatening to shut down the Government because of traffic jams in the District of Columbia.

The Attorney General at that time considered the situation an emergency and took a great many measures, of which you are aware. What is to prevent in these emergency situation limitations that you talked about, what is to prevent in those situations wiretapping on the scale that went on at the time of the emergency that I spoke of?

ATTORNEY GENERAL LEVI: If I may say so, that is not a terribly good illustration other than the notion that emergencies may be misunderstood or misinterpreted or arise, I don't know which, because that does not relate to the area covered by this bill.

That is what we are talking about here, a foreign power, or we are talking about agents of a foreign power acting pursuant to the direction of that power in specific types of activities, so that a domestic kind of uproar, which you are now talking about, is simply not covered by this.

Q May I follow up on that? The suspicion was, at that time -- and there was a good deal of investigative activity directed to it -- that in fact there were people organizing it.

ATTORNEY GENERAL LEVI: Suspicion is not enough. You would have to show probable cause, and it is quite true that if you thought that this was an invasion or terrorist activities pursuant to the direction of a foreign power and you could show there was probable cause, then it is possible that there might be an emergency surveillance for a 24-hour period.

But, one would have to then get the approval or the disapproval of the judge, and if you get the disapproval, it then would be off and the targets would have to be notified.

Q Mr. Attorney General, would the evidence collected in this way be acceptable as evidence in court against these people, the agents, or whoever they are?

ATTORNEY GENERAL LEVI: I don't know what you mean by "in this way."

Q Where there has been a warrant.

ATTORNEY GENERAL LEVI: Where there has been a warrant, it would be accepted.

Q Mr. Attorney General, in your opinion, would the provisions of this act inhibit in a meaningful way counterespionage activities by the U.S. Government?

ATTORNEY GENERAL LEVI: I don't think so.

Q Mr. Attorney General, does this rule out mail, or is it just electronics?

ATTORNEY GENERAL LEVI: It does not relate to -- I don't know whether you are talking about mail operations, but this does not apply.

Q May I ask, how does this affect the Miranda decision?

ATTORNEY GENERAL LEVI: I don't think it has any effect at all.

Q Mr. Attorney General, do you see any inherent weaknesses in asking a Federal judge to rule on a fait accompli after a 24-hour period in which a tap or a surveillance has been in effect?

ATTORNEY GENERAL LEVI: As I said, if you assume that there may be an emergency, then you have to have an emergency provision, but the judge is not only being asked to rule on it afterwards, but he also had to be informed that it was being done; that is, he has to be informed at the same time that it is being done, right then.

The only basis for the emergency provision is it might be impossible to get the papers to the judge within that limited period of time, but he would be informed of it. I can't imagine that the emergency provision, by the way, would be much used.

Q Sir, would you compare for us this new proposal with what is now on the books? Is it stricter, or more lenient?

ATTORNEY GENERAL LEVI: If one has to assume that getting a judicial warrant is a protection, then this is that added protection, and I think it conforms to the rather strict standards which we have been following. I can only speak of the period since I have been Attorney General, but it adds to those procedures the additional procedure of having a judicial warrant.

Q I think this goes back to a question that was asked earlier, but I am not sure I entirely understood the question, so I want to ask it my way. Does this bill make any change whatever in the Safe Streets Act? I am speaking of those provisions relating to suing for warrantless wiretapping. Does it make any change at all in the protection or provisions of the Safe Streets Act?

ATTORNEY GENERAL LEVI: I assume that it in fact does not, particularly if one assumes the Presidential power for the kind of warrantless surveillance with respect to foreign powers or their agents, which we now have.

What you have to do is take the reservation of Presidential power in Title 3. Then you have to take the interpretation, which has been given by the courts and by the Executive, following the dictum in the Keith case by Justice Powell and the opinions of the Third and Fifth Circuit that where you are dealing with foreign powers or their agents you do not need a warrant.

That is the present position of the Federal Government. We have from time to time announced the number of wiretaps and microphones in place. I have twice announced that, not only the number, but have stated that no American citizen was then a target of any such surveillance.

Those taps and microphone installations, or whatever, go through a most careful procedure and come to the Attorney General for his authorization, which he is authorized to give because of a Presidential authorization to him and which narrowly defines the areas where it may be given.

This is not really different than the proposal of the bill, but it does not have a provision for judicial warrant. I think anybody knowledgeable about it would know that we have been extremely careful and conservative and careful in the administration of this power.

My own conviction, which I arrived at over some time, is that the public would feel there was added assurance if there was a judicial warrant. It seems to me that it is important that there be that assurance and that added protection, and the President has taken the position that he wishes to give leadership to this kind of endeavor.

He said he would try to see if he could get the Congressional leaders to agree with him and, at the moment, I think it looks promising.

Q Mr. Levi, are you saying this would have little impact on current surveillance practices?

ATTORNEY GENERAL LEVI: I think it will have little impact on current surveillance practices, but I must warn you that, knowing how some of you react, the word "current" to you means the last 30 years or picking and choosing what you like from the last 30 years. That, of course, would be an unfortunate way of interpreting what I have said.

Q Mr. Attorney General, before you leave, I want to ask you a question on another subject. Were you or anyone else at the Justice Department contacted by the White House about how to handle the Nixon report on China?

ATTORNEY GENERAL LEVI: No. Well, I was not. As to whether anybody else in the Department of Justice might have been contacted, I would have to rely on those infiltrators and informers which each one of you have in the Department of Justice.

Q We have infiltrators and informers?

ATTORNEY GENERAL LEVI: No.

Q Mr. Attorney General, in the event that one of the seven judges refuses to find probable cause and disapproves, must reasons be stated in writing?

ATTORNEY GENERAL LEVI: Must he state his reasons in writing?

Q Yes.

ATTORNEY GENERAL LEVI: I really don't know the answer to that. He would have to state something so we could appeal.

Q A related question, Mr. Attorney General. These seven judges, would they sit en banc?

ATTORNEY GENERAL LEVI: No.

Q This is not a case of seven judges around the United States, is it? This is seven judges must hear --

ATTORNEY GENERAL LEVI: No, any one of the seven judges individually.

Q Two questions, Mr. Attorney General. Before this legislation on the record, how many times have you found a Federal judge turning down a request for surveillance on the grounds we discussed?

ATTORNEY GENERAL LEVI: This is really a new direction. I am not sure I am absolutely accurate on this, but I think I know of no case in which a judge has turned down a request for a Title 3.

Q In this legislation, is there anything that would provide new guidelines as to how the material taken out of the wiretap could be used? Is there a limitation on the distribution?

ATTORNEY GENERAL LEVI: One of the things that the judge has to be assured of is there are minimization procedures.

Q Who picks the judges?

ATTORNEY GENERAL LEVI: The Chief Justice picks the judges.

Q Are they in the seven districts around the country?

ATTORNEY GENERAL LEVI: I am sure there will be some geographical distribution.

Q What are the penalties in this bill for those law enforcement officers, intelligence officers, or private detectives or private citizens or anyone who engages in warrantless wiretapping; that is to say, illegal wiretapping?

ATTORNEY GENERAL LEVI: It is not as easy a question as it appears, but it would really set you back -- if you have not followed these procedures, and these are the procedures which the President authorizes, which the bill itself provides for, then one really could not say one had proceeded under Presidential authorization, and that would remove any defense, assuming the proviso in Title 3, and you would have the penalties of Title 3.

THE PRESS: Thank you.

END (AT 12:40 P.M. EST)