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UNITED STATES GOVERNMENT

Memorandum

TO : ADPL DATE: 13 September 1977

FROM : D5
R. G. Melzer, 3247s

SUBJECT: Comments on Intelligence Activities and Individual Rights Act of 1977

1. Reference your memo, subject as above, dated 9 September 1977.

2. I have the general impression that the draft is so oriented toward protection of rights and domestic intelligence that it may unintentionally constrain legitimate foreign intelligence operations. I trust the overall review will place this in proper context, especially in light of the proposed Civil Damages section.

3. The following comments are provided:

a. I have trouble with the word "substantially", as used repeatedly throughout the paper (Sec 03, (b)(1)(C); (b)(7)(B); (b)(7)(D); (b)(7)(E); (b)(21)(C) ((pages 2-5)). When we talk of a group "substantially composed of United States persons," what do we mean? Is 10% substantial? 51%? 90%? Would leadership be more significant than mere numbers? It would appear that this must be more clearly defined.

b. Sec 03(b)(3)(D) ((page 3)): This paragraph includes electronic surveillance as a "covert investigative technique", where "at least one party to the communication has given prior consent to the interception of the communication." Is this the same as consensual monitoring? What do we call electronic surveillance where neither party has given prior consent? Is SIGINT included as part of electronic surveillance, and thus a "covert investigative technique?

c. Sec 05(a)(3) ((page 9)): The phrase "clandestine collection" is not included in the definitions in Section 03. Does it include SIGINT? Subparagraph (A) goes on to specify that prior written findings are required by the director of an entity. How does this apply to SIGINT?

"sensitive" and "extremely sensitive clandestine collection" are defined in title I.

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"Except as otherwise provided in this act"

d. Sec 08(a) ((page 21)): This paragraph specifies that the Department of Defense may not engage in any intelligence activities....directed at a person who is not a member of the Armed Forces or a civilian employee of DoD. How does this impact on the SCA's performing their normal SIGINT activities?

e. Sec 09(g)(3)(B) ((page 27)): This paragraph specifically authorizes the FBI to "communicate the desirability of lawful and nonviolent behavior to persons who may commit such an act". By omission, are all other agencies prohibited from communicating the desirability of lawful behavior? Is it intended that FBI admonish the persons after the fact?

4. Please request that, in the future, ADLA indicate whose draft we are reviewing.

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