

MEMORANDUM

TO : Members of the Senate Select Committee
FROM : Fritz Schwarz
DATE : September 19, 1975
SUBJECT: The Executive Session on Friday, September 19

The executive session will focus on the proposed public hearings next week about monitoring by the National Security Agency (NSA) of international lines of communications. This monitoring has included some questionable practices in the past regarding U.S. citizens, and NSA's technology and size provide it with the capability, unless better controlled, to engage in such practices in the future.

General Lew Allen, the Director of NSA, will brief the Committee for about 30 minutes on the functions and operations of NSA. We will then address the issue of what can appropriately be presented in public hearings.

This executive session has been preceded by staff negotiations with NSA on what can be made public. Attached at Tab A is a Table which provides a summary of the matters still at issue, along with the arguments on both sides.

Attached at Tab B is a sample of some of the names from NSA's biographic files and watch list and some examples of the product disseminated to other agencies.

You are also receiving a briefing book with more extensive background materials. The Table of Contents should be self-explanatory.

cc: William Miller
Curtis Smothers

NSA HEARINGS ON MONITORING OF INTERNATIONAL LINES OF COMMUNICATION (ILC)

Issue

Select Committee Proposal

NSA Informal Response

I. Procedural

A. Public Hearings

There should be public hearings that discuss NSA in very general terms and what NSA has done improperly regarding U.S. citizens (domestic targets), not about how NSA does it, nor about foreign targets.

There should be none. Sen. Church could issue a highly limited statement about NSA practices regarding U.S. citizens, after negotiating declassification of some material with the Secretary of Defense.

B. NSA Witnesses

Some NSA officials should be witnesses. Officials with as much sensitive information as NSA officials appear before Congressional committees -- e.g., Secretary Schlesinger, Director Colby, Admiral Rickover.

No NSA witnesses. NSA officials prefer anonymity since: (1) they are not as well compartmented as at CIA; (2) they know many technical details.

II. Substantive

A. Practices

Disclose

Do not disclose at all:

1. 75,000 files on U.S. citizens; others on U.S. organizations.

1. The one-time existence of the files.
2. Files existed on, e.g., Senators Church and Caldwater, Art Buchwald, Gregory Peck, et al. (See Tab B)
3. Substantive information was in them.
4. They were used by NSA and other agencies.
5. Other agencies, such as the CIA, had almost unlimited access to them.
6. They were destroyed in 1974.

1. Disclosure of the existence of the files, and especially of specific names; will lead to litigation under the Freedom of Information Act and the Privacy Act.

Both sides have agreed that certain parts of the files (the non-substantive information) were used in helping break codes, and we do not propose disclosure of that aspect of the files.

Biographic identification

<u>Issue</u>	<u>Select Committee Proposal</u>	<u>NSA Informal Response</u>
2. Delivery to NSA of all international paid telegrams by telegraph companies.	<p>Disclose:</p> <ol style="list-style-type: none"> 1. Volume (155,000 telegrams/month to NSA analysts). 2. Use from 1965 on was for all NSA uses, including the "watch list" activity of 1967-73 (see II.A.4, below), "economic" intelligence. 	<p>Do <u>not</u> disclose at all:</p> <p>When the program was set up in 1945 the U.S. Government (including President Truman) promised to protect the companies from public disclosure.*</p>

* The fallacy of this position is:

1. The operation and purpose of the program changed in the mid-1960s. Instead of the companies selecting out messages containing cipher traffic or addressed to or from a foreign embassy, the companies began supplying NSA with magnetic tapes containing all their international paid messages. And, NSA began to use this material not only for diplomatic intelligence, but also for all its intelligence collection activities -- including the watch list and "economic" intelligence. As a result, the agreement in 1945 was no longer applicable.

2. Alternatively, if the 1945 agreements were still applicable, then they very likely were illegal under Section 605 of the Federal Communications Act (47 U.S.C. § 605), which made it unlawful for personnel of communications common carriers to divulge the existence or content of communications traveling via these carriers; and the Fourth Amendment of the Constitution, as interpreted in 1967, because this was an unreasonable "search and seizure" of messages as to which there was a justifiable expectation of privacy.

As for the Presidential approval in 1945, the Defense Department has admitted that President Ford did not know of the program and there is no evidence yet that any President since President Truman knew of it.

The Department of Justice has opened a criminal investigation of this, but has taken no action yet. The Committee staff resolved Department of Justice concerns at a meeting on September 18, 1975. And, if the investigation continues and leads to indictments, the program will be made public anyway.

Issue

Select Committee Proposal

NSA Informal Response

2. U.S.-South American Telephone Intercepts

a. Some intercepts for mainly economic purposes from late 1973 until 9 July 1975.

Disclose:

Do not disclose:

1. Fact of intercept, without naming the specific links (e.g., [redacted])

EO 3.3b(3)
PL 86-36/50 USC 3605

2. This was easy to do even for a ham radio operator since the calls were carried by radio waves.

3. When a frequency was intercepted, every telephone call had to be listened to and at least partly recorded.

4. The value was marginal. (NSA admitted this by terminating the intercept.)

NSA does not want to reveal that it was collecting economic intelligence. Parties would review their past calls to see what U.S. intercepted.*

5. The intercept was terminated.

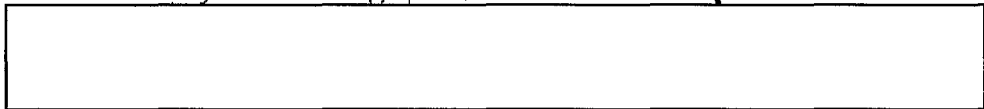
Knowledge of termination would lead people to use these telephone links rather than telegrams.**

b. Some intercepts from late 1970 to June 1973 mainly to gain information about the drug watch list.

Both sides agree to disclose:

EO 3.3b(1)

- 1. Fact of this intercept.
- 2. Mainly for drug purposes.



Disclose also:

Do not disclose further:

1. Every telephone call had to be listened to and at least partly recorded.

Reasons unknown.

* Response: The specific links would not have to be identified.

** Response: No one could be sure that NSA would not resume this.

IssueSelect Committee ProposalNSA Informal Response

3. Non-Voice Intercepts:
Watch List Activity (in-
cluding MINARET).

Both sides agree to disclose:

1. Fact of.
2. Existence of U.S. names. Over 1,200 total.
3. Informal procedures initially.
4. Communications between 2 U.S. citizens might have been analyzed and disseminated.
5. It was terminated.

Disclose also:

1. Some of the names possibly put on the watch list, such as the Women's Liberation Movement, to demonstrate that such individuals/entities were put on the list without justification.
2. Some of the product disseminated to other agencies to demonstrate the wide reach of the process.

Do not disclose this because:

1. There would be litigation under the Freedom of Information Act and the Privacy Act.
2. See 1. above. Also, this would be an invasion of individuals' privacy.

B. Structure

1. Budget of over \$1 billion (or 2 times CIA's) and manpower of 40-60,000.

Disclose since:

1. General range, not specific. Also, this does not give a trend, but only one point in time.

Do not disclose since:

1. Might somehow tell other countries of NSA's capabilities.

COLLECTION OF MESSAGES AND BIOGRAPHIC
INFORMATION CONCERNING U.S. CITIZENS AND GROUPS

Biographic Files

NSA collected and maintained substantive information on prominent individuals, totaling about 75,000 U.S. citizens. The card file information was destroyed in 1973, but the list of names is still stored in a computer. (The computer also stores past reports to other agencies containing the substance of messages mentioning such people.)

Some of the names contained in the files were:

Art Buchwald	Tom Wicker
Arthur Burns	Leonard Woodcock
Gregory Peck	Joanne Woodward
Otis Pike	Whitney Young
Thomas Watson	

The following members of the Senate Select Committee were also in the files:

Howard H. Baker, Jr.	Charles McC. Mathias
Frank Church	Walter F. Mondale
Barry Goldwater	Richard S. Schweiker

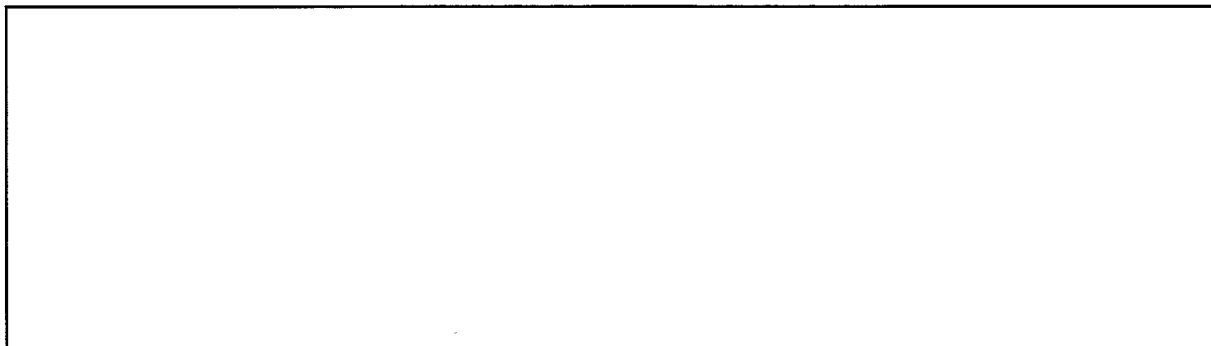
Watch List

Starting in the early 1960s, increasing in scope in 1967, and continuing until 1973, NSA maintained a list of U.S. citizens and groups (totaling nearly 1,200). International messages to or from these individuals or groups were collected and analyzed by NSA. Some of the individuals/entities on the watch list were:

Muhammed Ali	Women's Liberation Movement
Roy Innis	Women Strike for Peace
Donald Sutherland	Quaker Action Group

Product of Communications Intercepts

Examples of the product disseminated under Project MINARET to other agencies within the Executive Branch include:





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