

Intelligence Charter: Time

By George Lardner Jr.

Washington Post Staff Writer

The National Security Council appears gripped with indecision over how much spying ought to be permitted, by law, on law-abiding American citizens.

The dilemma is holding up submission of a proposed legislative charter for the nation's intelligence agencies despite the passing of one deadline after another. The delay could prove fatal, but as one knowledgeable official puts it, the Carter administration is simply having "one hell of a time getting its act together."

Vice President Mondale is leading the charge for "reform." The Pentagon is putting up the stiffest resistance. The CIA has been much more subdued, to the chagrin of its colleagues in the U.S. intelligence community. And White House national security adviser Zbigniew Brzezinski seems to be biting his tongue, saying very little.

The NSC's Special Coordinating Committee, of which Brzezinski is chairman, has taken up the problem twice in recent weeks, both times without deciding any of the basic issues that need to be resolved.

The Senate Intelligence Committee is anxiously awaiting the answers. In the view of congressional strategists there, a charter spelling out the limits of power for the intelligence agencies must be enacted by June, at least in the Senate, or the opportunity will be lost in a growing tide of conservatism.

"There's a feeling held by the [Senate] committee that the only way we can get a law in a new and more conservative Congress is if the administration and the committee are united on key points," says one putative government policymaker. "If the administration and the committee are split, there won't be a bill."

An administration-certified charter was initially supposed to be sent to Capitol Hill for introduction in January, then early in February. But at present the NSC doesn't even have a working draft because, insiders say, the most fundamental policy ques-

tions concerning the rights of American citizens, and corporations, have yet to be settled.

The NSC panel, for instance, has not made up its mind about whether to permit spying on Americans who have done no wrong but may have information the government wants.

The answer may be prefaced with a "yes, but," or a "no, but." Either way, such spying in the interests of national security—known as the collection of "positive intelligence"—is likely to be advocated under certain conditions. The chief safeguard would be a system requiring judicial warrants for various "intrusive techniques," if Attorney General Griffin B. Bell has his way.

Another key question is what limits—presumably short of a secret-warrant requirement—to place on "undisclosed participation" by federal agents in domestic groups. Before its recommendations are submitted to President Carter, the NSC committee must also wrestle with the standard to be required of covert actions abroad—whether they should be simply "important" to the national security or "essential" or somewhere in between.

The high-level hemming and hawing began at a Special Coordinating Committee meeting Nov. 27, more than two years after vice presidential candidate Mondale, in a major campaign speech at the University of Missouri, pledged "a specific legislative charter" for the intelligence community, including "precise limitations" on the intelligence-gathering powers of the CIA, the FBI and other agencies.

The meeting didn't get very far. A special inter-agency Working Group that has been meeting two to three times a week since last August on the crucial "rights of Americans" section submitted a series of proposals that were not at all to Mondale's liking.

In what amounted to a predominantly conservative draft covering some 40 issues, the recommended positions, usually tilted toward the intelligence agencies' point of view, were highlighted in double-spaced typing, and the alternatives, usually the "lib-

eral options," appended below in single space.

Reading from a critical memo prepared by one of his aides, Mondale pronounced the work totally unacceptable and made plain that he did not want to move ahead with a point-by-point discussion.

According to one of those present the vice president was particularly bothered by the proposed definition of "agent of a foreign power," the catch phrase to be used in targeting law-abiding Americans for intelligence purposes. Mondale reportedly felt it was so sweeping that "we could target American businesses sort of without limitation if they do business with foreign powers or state-owned businesses."

Accounts differ widely on the reaction of other NSC members and their delegates at this Nov. 27 meeting.

"The others thought we should go ahead, at least consider it," said an advocate of the Working Group's draft. "But the vice president's opposition was so great that we decided to come up with something else."

An official more in tune with Mondale's thinking flatly disputed such reports. "The attorney general felt exactly the same as Mondale did," this official said. "It was also the position of [Deputy Secretary of State] Warren Christopher. And it was very clear that [CIA Director] Stan Turner agreed with Mondale in some respects. There was strong support for the vice President's position."

In any case, the Working Group, composed of high-ranking bureaucrats from the CIA, Defense Department, NSC, State Department and other affected agencies, was effectively demoted. A new, higher-ranking group, headed by David Aaron, a longtime Mondale aide who is now deputy assistant to the president for national security affairs (No. 2, under Brzezinski), was named to come up with "more options" for the basic problems.

Other principals at the Nov. 27 meeting included Brzezinski and Secretary of Defense Harold Brown.

Brzezinski reportedly favors a freer

May Run Out as Spies Argue

hand for the intelligence agencies and would like to stay close to President Carter's 1978 executive order, which has been denounced by civil libertarians as far too permissive. (The executive order, for example, permits investigations of Americans for intelligence purposes, using "the least intrusive means possible," on the attorney general's say-so.)

Brzezinski seems to be steering clear of the debate, however. "There's a tendency on Brzezinski's part not to fight too hard against something the vice president really wants," says an intelligence community source.

That leaves the Defense Department, whose general counsel, Deanne C. Siemer, supervised most of the drafting of the Working Group's product and who has been an outspoken advocate for the intelligence agencies.

"That's where the opposition [to reform] is coming from," observes an official familiar with abuses of the past. "They act like the last 20 years never happened."

Associates of Siemer insist that she is simply "a very articulate arguer for the responsibilities of the intelligence

community to collect intelligence" and they complain that the CIA, which has more at stake than the Pentagon, is "less outspoken."

"The CIA's approach," says a Defense Department official, "is to look at legislative language and say 'it's fuzzy, so let [Congress] enact it, and we'll interpret it later.' We're trying to say, 'no, dammit, write the rules so everyone understands them.' The problem of the past has been sliding around the rules."

All sides agree that the debate had become far too muddled. What the Working Group did, many say, was to come up with an overly complicated "counterdraft" of the Senate Intelligence Committee's overly complicated, year-old charter bill. But coming up with uncluttered answers isn't easy for an intelligence community accustomed to all sorts of exceptions and caveats. The answers, moreover depend on the questions.

According to one official, the key question is simply: "Is it proper to collect information about Americans who are potential sources of

information?" But another puts it this way: "Are Americans legitimate targets of intelligence when they have done nothing wrong? Do we violate their privacy, tap their phones, open their mail?"

The NSC's Special Coordinating Committee met again Jan. 24 ostensibly to come up with "a clear set of policy signals" that would produce a bill. But apparently no such signals were given despite a new, simplified outline presented by Aaron's group. Instead, Frederick Baron, a special assistant to Attorney General Bell and formerly a staff lawyer for the Senate Intelligence Committee, was assigned to compose a new draft bill.

Before doing that, Baron has told associates, he plans to organize the issues once again, "in a crystal clear" fashion, and get some decisions out of the NSC.

No new deadline was set, but those still optimistic about getting some sort of "reform" legislation this year are beginning to concede that it maybe "a little less ambitious" than expected.