

In Sheep's Clothing

By Anthony Lewis

WASHINGTON, Feb. 18—What was advertised as a sweeping reform of the intelligence community turns out, on examination, to be a blueprint for more secrecy, greater executive power and less Congressional oversight. That is the gist, the amazing gist, of the orders and proposed legislation unveiled today by President Ford.

The Ford package is so massive, and so full of obscurities, that thorough analysis would require a lawyer's brief. Mr. Ford's own legal, political and intelligence aides had difficulty giving clear answers to questions at a briefing. But some of the more remarkable provisions can be quickly sketched.

On secrecy, a proposed statute would introduce into American law, for the first time, criminal punishment of past or present Government employees for disclosing "information relating to intelligence sources and methods." Everything in that vague category would be swept under the ban, regardless of whether disclosure did any actual harm to U.S. security, or was intended to.

The effect of such a law could be to legitimize some of the legally dubious actions of the Nixon Administration. Consider, for example, the case of the Pentagon Papers. Today, no one would seriously argue that their publication harmed the national security. But in 1971 John Mitchell and Robert Mardian argued vehemently that it would damage security—and disclose intelligence methods.

After the Nixon lawyers failed to prevent publication of the Pentagon Papers, they brought reporters and others before grand juries and demanded their sources; one professor went to jail for contempt. Then Daniel Ellsberg was prosecuted under flimsy legal theories that were never tested because the case failed on other grounds.

The Ford secrecy act would provide a solid statutory basis for a future Nixon or Mitchell or Mardian to do all those things. The Ford draft does exclude those who receive leaks from criminal punishment or injunctions; it is said to be aimed at the leakers. But if anyone published information arguably related to "intelligence sources and methods," the reporter or editor could be taken before a grand jury and asked for his source. Grand juries have power to ask anyone about possible crimes—and here would be a whole new category of crime.

Or consider Watergate. Mr. Nixon tried to keep the investigation away from a key money transaction in Mexico, arguing that this might compromise C.I.A. sources. A law like Mr. Ford's proposal might have given him greater leverage with the bureaucracy

to declare that whole area out of bound.

Mr. Ford's secrecy bill is actually more restrictive than a draft submitted last April by William E. Colby, then Director of Central Intelligence. That is among the more astonishing facts of the day.

The Colby draft, for example, required that anyone prosecuted must have known that what he disclosed was legally restricted. This requirement of *scienter*, as the lawyers call it, is dropped from the Ford bill. The bill also raises more difficult obstacles than the Colby draft to private hearings by judges on the lawfulness of classifications.

On the executive power, the basic thrust of the Ford plan is to lay out in published rules who must approve what in the intelligence business. Getting those procedures out in the

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open is a step forward, as Mr. Ford's aides said because bureaucrats do tend to worry about what is on the books.

But Mr. Ford has neither imposed nor proposed any substantive limitations on the kinds of dirty tricks our intelligence agencies may play abroad—with the sole exception of prohibiting assassinations in peacetime. A future Nixon could order the C.I.A. to bring about a military coup in Chile, or pay vast sums to Italian rightists, or intervene in an African civil war.

In the past, it has been regarded as doubtful whether there was any legal authority for covert operations abroad. Under the Ford approach, that authority would be assumed—and would have almost no statutory restraints. According to the new C.I.A. chief, George Bush, the legal basis would be the President's "inherent powers"—an imperial doctrine that the Supreme Court condemned a generation ago.

As for Congress, it would have one oversight committee instead of six; and it would hear about covert operations only after the President approved them. In short, the hope of preventing executive abuses would be left largely to the executive. For example, there would be a new monitoring board of three private citizens. But the President's Foreign Intelligence Advisory Board has existed and has not prevented abuses.

The basic thrust of the Ford "reform" is made clear by one passage in the President's message to Congress. The right way to deal with "questionable activities," it suggests, is to report them to "appropriate authorities." That is what Gerald Ford and his men have learned from Vietnam and Watergate.

See also Lewis, 26 Feb 76; article by Colby, NYT 26 Feb 76; Seymour Hersh, NYT 10 Nov 75, p. 2