Spooks vs. Zilch

By Tom Wicker

The shadowy powers of the so-called "intelligence community" are attempting to run their first big bluff on President-elect Carter. If he's a government manager half as tough as he's billed himself, he'll crack down on them instead.

"Senior intelligence officials" let it be known to The New York Times that their efforts to protect the national security through counterintelligence wiretapping were being thwarted by Attorney General Edward Levi's refusal to authorize the taps. This scare story is clearly aimed at persuading the Carter Administration to relax the stiff standards by which Mr. Levi properly judges such wiretap requests.

Actually, the account of their problems that these senior spooks gave to Nicholas M. Horrock of The Times doesn't even bear out their own contentions. No actual examples of damage were cited, for one thing; only the hypothetical case of Joe Zilch.

"We believe," said the spooks, "that Ivan Ivanov, a Soviet intelligence officer, has compromised Joe Zilch, an American or resident alien with entree to national security data, and that person [Zilch] is meeting with the Russian and supplying him information." When the F.B.I. sought to wiretap Zilch, Mr. Levi refused.

Of course he did. In that hypothetical case, counterintelligence has *already* done its job, since it is known

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that Zilch is committing a crime—supplying national security information to a Russian intelligence officer. If a further wiretap is needed to help catch Zilch, authority to tap him could be sought from a Federal judge under existing legislation.

But, the spooks objected, they couldn't do that because the law would require them to identify their sources of information. That simply isn't so; Federal judges can and do issue warrants for wiretaps on a showing of "probable cause" that a crime is about to be committed, requiring only that the applicant for the warrant certify its informants as reliable.

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Not only is the whole spooky charge against Mr. Levi cast in these dubious hypothetical terms; the General Accounting Office also reported to Congress last February that it had been refused permission by the F.B.I. to examine and evaluate the results of F.B.I. intelligence investigations—presumably including wiretaps. The fact is that no one really knows whether or not these taps are an effective means of intelligence and counterintelligence.

For all too many years, moreover, they were routinely permitted by Attorneys General who scarcely took the time to read the justification advanced by the C.I.A. and the F.B.I. Just last month, in a speech in Los Angeles, Mr. Levi told how an F.B.I. agent appeared in his office on his first day as Attorney General, and handed him a request for an intelligence wiretap. The agent was surprised when Mr. Levi did not approve it immediately but instead retained the application for study. He has since established strict criteria that must be met before he will authorize an intelligence tap—which is what the big spooks are complaining about and hoping Mr. Carter will change.

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He has no reason whatever for doing so. Why should intelligence officers be routinely permitted to wiretap American citizens without a strong showing to a responsible official of real danger to national security? Where is the evidence—save for the likes of Joe Zilch—that such a dangerously lax procedure is really necessary for the spooks to do their job?

Mr. Carter and his new Attorney General ought, in fact, to pick up where Mr. Levi will leave off, with a bill to require that intelligence taps be authorized only by Federal judges after a showing of evidence that such taps are needed. All other forms of wiretapping must be so authorized.

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Mr. Levi's bill did not reach the floor of the Senate last year, and it was argued in this space and elsewhere that it was deficient in many respects. It provided a start in the right direction, however, and a basis for effective legislation. Its leading Democratic sponsor was Edward M. Kennedy. Walter Mondale, who advocated such legislation while criticizing Mr. Levi's bill specifically, will now be Vice President. The Carter Administration is therefore in good position to bring intelligence tapping under firm control in the Federal courts.

Such legislation might well be part of a whole package of civil liberties legislation for which Congress appears ready at last—strict charters for the F.B.I. and the C.I.A., for instance, and bills dealing with classification abuses, privacy, access to the courts, and the like. That prospect probably evoked the attack on Mr. Levi's wiretapping criteria; when they're in trouble, the spooks always bring out the scare stories.