

# Perfection and Progress

By Anthony Lewis

WASHINGTON—Last spring an unusual combination of liberals and conservatives in Congress joined the Attorney General, Edward H. Levi, in a new approach to an intractable old problem. They introduced a jointly-drafted bill to control wiretapping and electronic eavesdropping for foreign intelligence purposes.

The bill was amended and approved last summer by the Senate. But there was opposition from some liberal members and from such outside groups as the American Civil Liberties Union, and the bill never reached the floor before Congress adjourned. I think the liberal opposition was mistaken. A curious episode at hand indicates why.

Last week a story in The New York Times quoted unnamed "senior intelligence officials" as criticizing Attorney General Levi for his refusal to approve electronics surveillance. They said there had been six proposals in the last year to wiretap Americans or resident aliens believed to be in touch with foreign agents—and Mr. Levi had approved none.

For anyone aware of past abuses, that story was a high compliment to Edward Levi. It made clear that he had actually put effective controls on eavesdropping for "national security" purposes—a practice that went on for decades without meaningful standards or scrutiny.

What Mr. Levi has done, with President Ford's full support, is first of all to guarantee that the Attorney General himself will pass on any request for surveillance to obtain foreign intelligence. He will do so not by hastily signing a piece of paper—as often used to happen—but only after learning the reasons for the request in detail and having them studied by an advisory group.

Under Mr. Levi's standards, surveillance may be directed at an individual only when there is "probably cause to believe he is a conscious agent or collaborator of a foreign power." That rule would have prevented the tapping of journalists and White House officials designated by Henry Kissinger because of a news leak.

But suppose we have, someday, an Attorney General less meticulous and determined in these matters than Edward Levi. Or suppose we have a President less committed to his Attorney General than Gerald Ford has been, or more susceptible to pressures from intelligence officials.

Those are hardly far-fetched suppositions. In the intelligence business, claims of urgency are inevitable. Resisting the pressures—sticking to the rules—will almost certainly require something more permanent and awe-

some than one Attorney General's policy. The something more is legislation.

Mr. Levi remarked the other day: "Over the long run, I don't think Attorneys General can adhere to such a policy without the support of a legislative framework." Indeed, the public complaint by "senior intelligence officials" looks like an attempt to soften up the Carter Administration—on the assumption that there will be no legislative framework.

The bill put forward by Mr. Levi and others—notably Senator Edward Kennedy—aims first at accountability within the executive branch. Any request for surveillance would have to come from the President's Assistant for National Security Affairs or from a Presidential appointee in the national security area who is subject to Senate confirmation. He would have to certify that he seeks "essential" foreign intelligence information that "cannot feasibly be obtained by other investigative techniques."

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If the Attorney General approves, a surveillance order would then be sought from one of seven designated Federal judges—a procedure paralleling that used to get wiretap orders in domestic criminal matters. The judge could approve only if he found probable cause to believe that a citizen or resident alien who was the target was knowingly engaged in—or conspiring for—terrorism, sabotage or clandestine intelligence activity on behalf of a foreign power.

Liberal criticism of the original draft brought about highly useful amendments tightening definitions and procedures. For example, surveillance would be limited to suspected criminal activity except for a narrow category of persons acting for foreign intelligence networks.

A respected professor of constitutional law, Paul Mishkin of the University of California, Berkeley, has called the bill "a truly major step toward effective guarantees against improper government intrusion" and toward "constitutional governance." It undoubtedly would be an enormous improvement on existing law, but some continue to oppose it as less than perfect.

In this instance as in others, perfectionism seems to me an enemy of progress. In the 1960's some liberals opposed moderate bills to regulate domestic wiretapping, and then something much worse passed in the heat of passion over crime in the streets. The danger now is that we may lose the chance for wise legislation on this most difficult problem of liberty and security.