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grasp that, for a Palestinian, the right of self-determination superseded every other claim, or to credit the assertion that Palestinians not only felt threatened by Israel but had experienced the lash of that threat, again and again.

"Israel's security deprives us of our own," said Dr. Nafez Nazzal of Birzeit University in Ramallah, who freely acknowledged his admiration for the PLO. "The notion that Israel is insecure is a myth. You complain about the PLO covenant which vows Israel's destruction. True, the PLO has the covenant, but you have the land. Make us an offer, and you'll see what the PLO does."

"It is not a myth that Israel is destructible," answered Prof. Yehoshua Arieli of the Hebrew University. "Israel has maintained itself in three wars by the total mobilization of its resources. If it had not won these wars, it would have disappeared from the map. What is at issue for us Israelis here today is not the principle of self-determination but its practical application. If self-determination undermines the essential rights of others, if it endangers another state, it must be carefully examined. Israel does assert its right of survival against the Palestinians' rights of self-determination."

And so, hour after hour, the two sides explored with increasing subtlety each other's fears, the justice of each other's grievances, and the prospect of reconciling the conflicts between one's right to security and the other's to self-determination.

"We have never before been able to look each other in the eye," said the celebrated Israeli novelist, Amos Oz. "For us, the Arab is nothing but an extension of the Cossack, raping and looting. For you, the Israeli is nothing but an extension of the white colonialists. The question is not only how we can change our views but how to act on them."

It is said—not least importantly by Sadat—that the opportunity to seize the peace will be brief, and that, once gone, it may not return in this generation. Given the political pressures in the world, Sadat may be right but, if he is, it will be a misfortune. I believe a new orientation toward peace is evolving in Israel after decades in which all change was interpreted as compromise and all compromise as weakness. I suspect this evolution is taking place in the Arab world as well. The negotiators for Israel and Egypt have a responsibility to show progress, but the Middle East has waited thirty years for peace. Their efforts should not be judged as bitter failure if they cannot realize peace in a moment.

ARTICLES

BIG BROTHER FROM GEORGIA?

The Capacity To Spy On Us All

DAVID BURNHAM

President Carter has won acclaim for his criticism of the abuses of human rights in other nations, but here in America he has moved to increase the federal government's control over individual citizens. These latter actions, working together, would substantially increase the power of such agencies as the FBI, the CIA and the National Security Agency, and would pose new threats to the constitutional guarantees of freedom of speech and association.

The range of initiatives in support of more intrusive government is astonishing. The Carter administration has prosecuted two men in a case which, if upheld by the Supreme Court, could result in an American version of Britain's Official Secrets Act. The administration has sought to give the FBI a computerized information system that a range of officials in the Ford administration had contended might lead to a national police force. It has recommended legislation that would immunize federal officials from such civil suits as the one Morton Halperin has brought against Henry Kissinger for wiretapping his home telephone without a warrant.

There is no evidence that the administration's scattered actions are part of some master plan, reminiscent of Richard Nixon's program to punish his enemies and use the threat of government regulation to extract large contributions from big business. They seem, rather, to be the product of inexperienced and inept officials swimming along on a tide of technology, in some instances with guidance from career civil servants who seek to increase their power.

While the responsible officials in the Justice Department and White House offer reasoned defenses for each of the actions taken during the last twenty months to tighten the grip of the federal government, their collective impact raises grave questions about both the competence and the foresight of the Carter administration. Is it possible that Big Brother could be a sincere peanut farmer from Georgia?

The individual issues, and the responses of the Carter team, are complex, but here, in summary fashion, are instances in which the decisions appear to favor a strengthening of big government or a failure to deal with a recognized abuse by big government.

Humphrey-Truong. On July 6, Ronald Humphrey and David Truong each was sentenced to fifteen years in prison on their conviction as spies for Vietnam. To make the government's case, FBI agents opened sealed envelopes and used hidden surveillance cameras, methods that had been per-

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sonally approved by Mr. Carter. The investigation was supervised by Atty. Gen. Griffin Bell and the highest officials in the CIA and State Department.

Three major civil liberties issues are raised by the administration's handling of this case, and each of them is expected to be covered in the appeals by Mr. Humphrey, a former official in the United States Information Agency, and Mr. Truong, a Vietnamese graduate student.

First, if the conviction of the two men is upheld, it will be the first time that the federal government has won approval from the Supreme Court for the use of evidence gained from warrantless electronic surveillances in the criminal prosecution of a national security case. A senior State Department official told Nicholas M. Horrock of *The New York Times* that the Carter administration had brought the Humphrey-Truong case as "a test of Presidential power and nothing else."

A second effect of the case, again assuming that it survives appeal, will be to lower the legal hurdles the government must surmount before it can prosecute for espionage, one of the most serious of federal crimes. Espionage is defined as giving an enemy national defense secrets with the intent to damage the United States. While most previous espionage cases have centered on documents containing the most serious kinds of information, such as plans for the atomic bomb, the material in the Humphrey-Truong case comprised a few dozen diplomatic cables, most of them classified "confidential." So unimportant were they that the first assessments by the State Department and CIA concluded that they contained "little of a sensitive nature."

A third potential effect of the case is that it could establish by judicial fiat an Official Secrets Act in the United States. In addition to espionage, Mr. Truong and Mr. Humphrey were convicted of stealing United States property under a statute usually applied to a clerk caught swiping a typewriter. In this and a handful of other cases, including that of Daniel Ellsberg, however, the government contended that information worth more than $100 had been stolen. Defense lawyers argued that information cannot be equated with tangible property and that by presuming to do so the government is engaging in thought control.

One other aspect of the conviction of the two men under this larceny law is that the statute makes it a crime both to steal and receive stolen property. Thus, the Humphrey-Truong case could establish a precedent for prosecuting both government officials who leak embarrassing information and reporters who receive it.

Early in September the Carter administration's Justice Department sent out a policy statement which in a backhanded way supported the concern about possible abuses of the theft of property law. The memorandums said it would be "inappropriate" for United States Attorneys to use the law to prosecute either "whistle blowers" or newsmen who received an unclassified government document "primarily for the purpose of disseminating it to the public." But such policy statements can be unmade as easily as they can be made, once the application of the law has been upheld by the courts.

FBI Computer. For the last five years, the FBI has sought approval of a plan to purchase additional computer capacity that would establish the bureau as the central switching point for inquiries and responses between the states regarding the criminal histories of wanted persons. This so-called "message-switching" ability would be an expansion of the FBI's existing National Crime Information Center and Computerized Criminal History System.

In 1974 John Eger, acting director of the White House Office of Telecommunications Policy under President Ford, wrote a letter to then-Atty. Gen. Edward H. Levi warning that the FBI plan could lead to the creation of a national police force. The Office of Management and Budget, the Domestic Council's Committee on Privacy and several Democratic members of Congress also opposed the plan. Mr. Levi then announced that he was halting what had become a controversial program, pending passage of federal legislation on the kinds of information that could be stored in FBI computers. Congress has not yet resolved this matter.

The Carter administration, however, did not feel bound by the decision of the Republican Attorney General. In June 1977 the Justice Department authorized the FBI to develop its expanded computer. This created a small storm of controversy among a band of liberal Democrats, led by Rep. John E. Moss (Calif.). Attorney General Bell thereupon backed down. In March and April 1978 he and FBI Director William Webster testified that no further action would be taken on the matter without the knowledge and approval of Congress. At about the same time, the Congressional Office of Technology Assessment concluded in a preliminary study that the FBI's expansion plans posed far-reaching questions about individual privacy and the power of the federal government. The office then embarked on a full-scale analysis of these issues.

Despite the promises of Mr. Bell and Mr. Webster, the strong reservations of the Office of Technology Assessment, and the outright opposition by some members of Congress, the FBI last July informed two Senate staff members that it had won official approval to install message-switching capacity to link the bureau's field offices, a capacity the staffers contend could later be easily transferred to the National Crime Information Center. This latest FBI initiative now appears to have been halted by an amendment to the Justice Department's appropriation bill, but the uneasy impression remains that the Carter administration's consistent position has been to favor an expansion of FBI power.

Frank Snepp. On the same day that Mr. Humphrey and Mr. Truong were sentenced to prison for espionage and theft of government information, a federal judge ruled that a former officer of the CIA had violated his contract with the government by

publishing a book about the agency which had not been authorized by the CIA, but which also contained no classified information. The judge ordered the former officer, Frank W. Snepp III, to turn over to the government the "ill-gotten gains" realized from the sale of his book.

Because many agencies, including the State Department, the Energy Department, the Defense Department, the Treasury Department and the Nuclear Regulatory Commission, require employees to sign agreements restricting the disclosures they will make when leaving government, the administration's successful civil suit against Mr. Snepp represents a significant increase in the power of the government to suppress dissent. "No American should be deprived of his freedom of speech simply because he criticized the government," Mr. Snepp has said.

ED KOREN

Pen Register. On February 19, 1976 the FBI approved a warrant to place a device, the "Pen Register," on two telephones used by a gambler known as T. Hamilton at 220 East 14th Street in New York City. The Pen Register records the numbers that are dialed on the telephone. Under the procedures still in force, legal restrictions on police use of the device are far less stringent than those required to install a tap to record secretly a telephone conversation.

Concerned about the use and abuse of Pen Registers by law-enforcement agencies, AT&T decided to challenge the legality of the FBI request for the installation on 14th Street. The company lost the case in the Federal District Court, but the U.S. Court of Appeals approved the right of the New York Telephone Company to refuse to assist the FBI in placing the Pen Register.

When the case was argued before the Supreme Court, however, the administration submitted a brief opposing this new restriction on electronic surveillance. The Supreme Court several months ago ruled in favor of the Carter administration and the FBI.

Electronic Surveillance. In 1976, the Senate Intelligence Committee disclosed that the National Security Administration had developed files on 75,000 Americans by secretly recording a large proportion of the cablegrams and other electronic messages crossing the borders of the United States. That highly secret branch of the Defense Department later informed Congress that it had destroyed the intelligence files, but NSA still uses its massive system of computerized listening devices to operate what has been called an "electronic vacuum sweeper."

In response to disclosures in 1975 and 1976 of widespread abuses by all of the intelligence agencies, first Ford's administration and then Carter's proposed complex legislation which is now called the Foreign Intelligence Surveillance Act of 1978. The bill is intended to set the rules under which the intelligence agencies may conduct some kinds of electronic surveillance. For the first time, for example, judicial warrants would be required in national defense cases aimed at specific persons.

But the Carter administration has made far broader claims for the legislation. "For the first time in our society the clandestine intelligence activities of our government will be subject to regulation and will receive the positive authority for all to inspect," Mr. Bell testified at one hearing.

Perhaps because of ignorance, or perhaps for other reasons, Bell's statement is incorrect. The legislation, while dealing with electronic surveillance aimed at specific persons, will have absolutely no effect on the NSA's continued acquisition of the massive number of electronic messages entering and leaving the United States and the subsequent use of high-speed computers to select those messages the agency believes require special attention. Whatever the explanation, the failure of the administration's leading expert and spokesman on surveillance law to acknowledge this loophole or to offer a remedy for it is a serious blemish on the Carter record.

Federal Tort Claims Act. One year ago, the Justice Department drafted legislation to amend the Federal Tort Claims Act. One effect of the proposal was to immunize from civil suits federal officials who have violated a citizen's constitutional rights—or, as Attorney General Bell chose to describe it, "to protect federal employees from suits for money damages arising out of the performance of their duties."

In an unusual joint response, representatives from nine groups including the American Civil Liberties

Union, the National Legal Aid and Defender Association, Common Cause, Public Citizen and the Project on National Security Studies and Civil Liberties wrote a letter denouncing the plan.

"It is astonishing to us that an administration which came to office promising to end an era of government lawlessness and official misconduct should now propose to insulate federal officials for their conduct—even where those officials willfully violate the constitutional rights of citizens," the protest said.

The administration has now offered to modify its proposal, but the essential purpose of the legislation has not been abandoned. "Sincere government employees now are inhibited in the performance of duties essential to the nation by the threat of vindictive lawsuits which, although seldom successful, always cost much time, money and peace of mind to defend," the administration argued in a recent defense of its plan.

An astounding feature of the bill is that if enacted, its effect would be retroactive. Henry Kissinger and the FBI agents who placed illegal microphones and telephone taps in the homes and offices of countless radicals would therefore be immune to the civil suits now pending against them.

The continuing power of the bureaucrats in pursuit of their organizational goals is astonishing. Again and again, the FBI's computer experts have simply ignored the negative decisions made by the theoretically responsive political appointees of two administrations.

Another example of this institutional persistence can be seen in the behavior of John L. Martin, deputy chief of the Internal Security Section of the Justice Department. Mr. Martin, a silent, never-smiling presence at the long Humphrey-Truong trial, was the department's coordinator of the prosecution. What is fascinating about his role in the single most important espionage case brought by the Carter administration is that just a few years ago he apparently played a similar part when Nixon and Kissinger tried unsuccessfully to prosecute Daniel Ellsberg in the *Pentagon Papers* case.

All governments, even those led by apparently well-intentioned people, require constant scrutiny. Woodrow Wilson, the Princeton professor who dreamed of world peace, was in the White House when the government launched a ferocious attack on political dissenters at the beginning of World War I. Franklin D. Roosevelt and Earl Warren collaborated in the totally unprecedented roundup and imprisonment of tens of thousands of Japanese-Americans at the beginning of World War II.

During the Kennedy and Johnson administrations, the FBI made hundreds of hours of illegal secret recordings of the private conversations of Dr. Martin Luther King. Richard Nixon made secret tapes of all his official conversations. Henry Kissinger had his secretary keep unannounced stenographic records of all telephone calls. Nixon's lieutenants did not hesitate to launch illegal break-ins of the Washington office of the Democratic National Committee and the Los Angeles office of a psychiatrist.

But at a time when advanced surveillance techniques, high-speed computers and other electronic devices make possible ever more intrusive invasions of individual privacy, the critical examination of every new government program must become even more rigorous. For while each individual step may be defended as only an insignificant addition to the machinery already in place, the combined force of these actions could at any time precipitate drastic changes in both the ability and the willingness of the American people to make independent choices about their future. □

GIVEAWAY OR BREAKTHROUGH

A Debate On TV Licensing

Giveaway to the networks or a new life for broadcasting? That argument, raised by the controversial Van Deerlin bill now before Congress, is debated below by Nicholas Johnson and Karl E. Meyer. The form employed is the usual one: each participant makes an opening statement, and these are followed by brief rebuttals. Nicholas Johnson, who chairs the National Citizens' Communications Lobby in Washington, served as an FCC Commissioner from 1966 to 1973. Karl Meyer is television critic for the Saturday Review.

The Communications Act of 1978 (H.R. 13015), named for Lionel Van Deerlin, chairman of the Subcommittee on Communications, where the legislation was written, provides for a number of adjustments in the relationship between public authority and the broadcasting monopolies. However, the source of contention is in two provisions: (a) *licenses to transmit will be granted in perpetuity; and* (b) *commercial networks will be "taxed" to provide a fund for the use of Public Broadcasting and to support minority stations and extend facilities into rural areas. Who stands to gain, who to lose, in this* quid *for* quo*? Is H.R. 13015 in the public interest? That is the subject of hearings on the bill that began on September 12 and the subject of our debate.*

NICHOLAS JOHNSON

A "giveaway"? I think that a modest characterization. The broadcasting industry's profits average about 100 percent a year on depreciated capital investment. Its net profit, as a proportion of gross, is four times that of the oil industry. These profits are made possible by the government-created and -protected monopoly that comes with an FCC license. Any attempt at "marketplace competition" on a broadcaster's channel is flirtation with the federal penitentiary. The only inhibition on the broadcaster's "license to print money" is the FCC's renewal process every three years—and the public rights attendant to this monopoly.