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(S) NATIONAL RECONNAISSANCE OFFICE
WASHINGTON, D.C.

OFFICE OF THE DIRECTOR

MEMORANDUM FOR DOD GENERAL COUNSEL

SUBJECT: Proposed Executive Order Establishing Restrictions
on Foreign Intelligence Activities

We have two reservations about the draft Presidential memorandum. The first is with Section VII, Assignment of Personnel. There is presently no law which either enables or prohibits such assignments. The memorandum appears to require that there be such a law; in the interim we would find ourselves in a situation which could be in conflict with the intent of the Presidential executive order.

The second comment is that while the memorandum obviously refers to civil surveillance of personnel only, it could infringe upon our ability to conduct experiments using SIGINT collection satellites which may be required to be conducted within the continental United States.

I suggest that these two points be clarified.

[REDACTED]

[REDACTED]

[REDACTED]

CLASSIFIED BY [REDACTED] EXEMPT FROM
GENERAL DECLASSIFICATION SCHEDULE OF
EXECUTIVE ORDER 11652 EXEMPTION CATE-
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PAGE 1 OF 1 PAGE.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

27 January 1976

MEMORANDUM FOR: See Distribution

SUBJECT: Proposed Executive Order Establishing Restrictions on
Foreign Intelligence Activities

As a follow-on to last Wednesday's Intelligence Breakfast, I am furnishing each of you a copy of the latest effort between Defense and Justice to arrive at an acceptable DRAFT executive order which the Department of Defense can support and recommend for Presidential signature.

I would appreciate receiving comments from each department or agency to the attached DRAFT no later than 1400, Wednesday, January 28, so that we will be in a position to convey any serious objections or problems with this language to the Attorney General and the White House staff.

In the event you do have any serious problems with this language, an advance telephone call to Mr. Robert T. Andrews, OX5-6804, alerting us to them will be appreciated.

~~signed~~ ~~Latimer~~

Richard A. Wiley

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DRAFT
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EXECUTIVE ORDER

Information about the capabilities, intentions and activities of other governments is essential to informed decision-making in the fields of national defense and foreign affairs. The measures employed to acquire such information should be responsive to the legitimate needs of our Government. At the same time they must be conducted at all times in a manner which preserves and respects our concepts of privacy and civil liberty.

Recent events have clearly indicated the desirability of government-wide directive which will ensure a proper balancing of these interests. The rules of operation prescribed by this Order are not intended to derogate from any other laws, regulations or directives further restricting the activities of our foreign intelligence agencies.

By virtue of the authority vested in me as President pursuant to my powers under Article II, Sections 2 and 3 of the Constitution, and statutes of the United States, including the National Security Act of 1947, and finding such actions necessary in the national interest, it is hereby ordered as follows:

SECTION I: Definitions.

As used in this Order, the following terms shall have the meanings ascribed to them below:

(a) "Collection" means any one or more of the gathering, analysis, dissemination or storage of non-publicly available information without the informed express consent of the subject of the information.

(b) "Employee" means a person employed by, assigned to, or acting for a foreign intelligence ^{collection} agency of the U.S.G.

(c) "Foreign intelligence" means information concerning the capabilities, intentions and activities of any foreign power, or of any non-United States person whether within or outside the United States, or concerning areas outside the United States; or concerning the protection of such information and its collection from detection or disclosure.

(d) "Foreign intelligence agency" means any department or agency of the United States Government, or component thereof, while it is engaged in the collection of foreign intelligence, but shall not include any department, agency, or component thereof to the extent that it is engaged in its authorized law enforcement functions, nor shall it include in any case the Federal Bureau of Investigation.

(e) "United States persons" means United States citizens, aliens admitted to the United States for permanent residence, and corporations or other organizations incorporated or organized in the United States

domestic ? (f) "Physical surveillance" means continuing visual observation by any means and acquisition of a non-public communication by a person not

a party thereto, or visibly present theréat, through any means which does not involve electronic surveillance.

(g) "Electronic surveillance" means acquisition of a non-public communication by electronic means, without the consent of a person who is a party to, or visibly present at, the communication.

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SECTION II: Scope; Adherence to Law and Ethical Standards.

(a) The provisions of this Order shall apply to covered activities within and without the United States, unless otherwise specified.

(b) All employees of all foreign intelligence agencies shall abide by all applicable laws of the United States and shall adhere to the highest standards of conduct.

SECTION III: Restrictions on Collection.

Foreign intelligence agencies shall not engage in any of the following activities:

(a) Physical surveillance directed against a United States person, except to the extent that such surveillance is in accordance with law, and is pursuant to procedures approved by the head of the foreign intelligence agency, and is directed against either:

(1) a present or former employee of such agency, its present or former contractors or their present or former employees, for the purpose of protecting foreign intelligence sources or methods from unauthorized disclosure, or

(2) a United States person who is in contact with either such a present or former contractor or employee, or with a non-United States person who is the subject of a foreign intelligence inquiry, but only to the extent necessary to identify such United States person, or

(3) a United States person outside the United States who is reasonably suspected of engaging in activities threatening the national security;

(b) Electronic surveillance within the United States or directed against United States persons abroad, except (in either case) in accordance with law and under procedures approved by the Attorney General; provided that under no circumstances shall the Central Intelligence Agency engage in electronic surveillance within the United States;

(c) Unconsented physical searches within the United States; or unconsented physical searches directed against United States persons abroad, except in accordance with law and under procedures approved by the Attorney General;

(d) Opening of mail or examination of envelopes of mail in the U.S. Postal channels, except in accordance with the provisions of United States Postal laws and regulations;

(e) Examination of Federal income tax returns or tax information except in accordance with the Internal Revenue Code and the implementing regulations thereunder;

(f) Infiltration of or undisclosed participation in any organization within the United States for the purpose of reporting on or influencing its activities or members.

(g) Operation of a proprietary company on a basis commercially competitive with United States businesses, except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company for financial gain shall be made on the basis of any substantive information not available to the public.

(h) Solicitation of foreign intelligence information from a United States person, unless the foreign intelligence agency reveals its true identity to such person.

(i) Collection of information concerning the domestic activities of United States persons except:

(1) Information concerning present or former employees, present or former contractors or their present or former employees, necessary to protect foreign intelligence sources or methods from unauthorized disclosure; and information concerning the identity of persons in contact with the foregoing or with a non-United States person who is the subject of a foreign intelligence inquiry.

(2) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons.

(3) Foreign intelligence information gathered abroad, or from voluntary foreign sources in the United States, or from electronic surveillance conducted by an agency other than the Central Intelligence Agency in compliance with Section III (b) above.

(4) Lawful dissemination to the appropriate law enforcement agencies of information incidentally gathered showing involvement in activities in violation of United States law.

(5) Storage of information required by law to be retained.

SECTION IV. Restrictions on Dissemination.

Information on the activities of United States persons shall not be disseminated by or to any foreign intelligence agency unless:

(a) The information had been lawfully gathered by the disseminating agency in furtherance of its authorized mission;

(b) The dissemination is made in furtherance of the authorized mission of the receiving agency, and with reasonable belief that the information is relevant to such mission; and

(c) The dissemination is not otherwise prohibited by law, or by procedures governing the gathering of the information pursuant to subsections III(a)-(c) above.

SECTION V. Restrictions on Testing and Experimentation.

Foreign intelligence agencies shall not engage in:

(a) Testing of electronic surveillance equipment within the United

States, except in accordance with law and under procedures approved by the Attorney General.

(b) Experimentation with drugs on human subjects, except with the informed consent, in writing and witnessed by a disinterested third party, of each such human subject and in accordance with the guidelines issued by the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

SECTION VI. Assistance to Law Enforcement Authorities.

No foreign intelligence agency shall, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or to State or local police organizations of the United States.

(b) Participate in or fund any law enforcement activity within the United States.

These prohibitions shall not, however, preclude (i) cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence, or (ii) provision of specialized equipment or technical knowledge for use by any other federal department or agency.

SECTION VII. Assignment of Personnel.

Foreign intelligence agency personnel may not be detailed elsewhere within the Federal Government except as authorized by law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency, except as may be directed by the latter. The then head of the host agency, and any successor, shall be informed of the detailee's association with the parent agency.

SECTION VIII. Law Enforcement Responsibilities.

Nothing in this Order shall limit the law enforcement functions, civil or criminal, of any department, agency, or component thereof, having such responsibilities.

SECTION IX. Implementation.

Each foreign intelligence agency shall, within 90 days, issue internal directives to implement this Order with respect to its foreign intelligence operations.

SOCOMM MESSAGEFORM

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PRIORITY			
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FROM: [REDACTED]

TO: [REDACTED]

~~SECRET~~ CITE [REDACTED] 7557

HANDLE VIA [REDACTED] CHANNELS ONLY

SECUR

[REDACTED] FOR GEN KULPA

[REDACTED] FOR MR. DIRKS

[REDACTED] FOR CAPT DARCY FROM MR. PLUMMER

SUBJECT: IMPLEMENTATION OF E.O. 11905

THE PRESIDENT'S NEW E.O. 11905 ON FOREIGN INTELLIGENCE CONTAINS A RESTRICTION ON ELECTRONIC SURVEILLANCE ACTIVITIES WITHIN THE UNITED STATES OR AGAINST U.S. PERSONS OVERSEAS. THE PRINCIPAL PARAGRAPH OF INTEREST IS SECTION 5, PARAGRAPH (B)(2), PAGE 27 QUOTED BELOW:

"FOREIGN INTELLIGENCE AGENCIES SHALL NOT ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES:

(S) ELECTRONIC SURVEILLANCE TO INTERCEPT A COMMUNICATION WHICH IS MADE

SPECIAL INSTRUCTIONS

[REDACTED]

DISTRIBUTION:

DNRO	X
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			J. W. PLUMMER DNRO

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FROM, OR IS INTENDED BY THE SENDER TO BE RECEIVED IN, THE UNITED STATES, OR DIRECTED AGAINST UNITED STATES PERSONS ABROAD, EXCEPT LAWFUL ELECTRONIC SURVEILLANCE UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL; PROVIDED, THAT THE CENTRAL INTELLIGENCE AGENCY SHALL NOT PERFORM ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES, EXCEPT FOR THE PURPOSE OF TESTING EQUIPMENT UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL CONSISTENT WITH LAW."

THE E.O. ALSO PROHIBITS PHYSICAL SURVEILLANCE WHICH IS DEFINED AS "...CONTINUING VISUAL OBSERVATION BY ANY MEANS..."

THE NRP HAS RECEIVED INTERIM AUTHORITY FROM THE DEPARTMENT OF DEFENSE TO PERFORM ESSENTIAL DOMESTIC SATELLITE PHOTO AND ELECTRONIC DATA COLLECTION FOR RESEARCH AND DEVELOPMENT AND ENGINEERING TEST PURPOSES. THE DIRECTOR OF THE NRO HAS BEEN ASSIGNED THE AUTHORITY AND

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<p>RESPONSIBILITY FOR ESTABLISHING AND IMPLEMENTING PROCEDURES TO INSURE THAT OPERATING ELEMENTS OF THE NRP ADHERE TO THE SPIRIT AND INTENT OF E.O. 11905. ACCORDINGLY, THE FOLLOWING POLICY AND PROCEDURES ARE SET FORTH FOR OPERATING ELEMENTS OF THE NRP. THESE PROCEDURES MAY BE SUBJECT TO CHANGE BASED ON FORTHCOMING GUIDANCE FROM THE JUSTICE DEPARTMENT.</p> <p>A. THE SPIRIT AND INTENT OF THE PROVISIONS OF E.O. 11905 PERTAINING TO ELECTRONICS AND PHOTO ACTIVITIES WILL BE STRICTLY ADHERED TO BY ALL ELEMENTS AND MEMBERS OF THE NRP.</p> <p>B. NRP INITIATED DOMESTIC ACTIVITIES WITH RECONNAISSANCE SATELLITES UNDER THE PROVISIONS OF THE AUTHORITY DELEGATED TO THE DNRO ARE LIMITED TO RESEARCH AND DEVELOPMENT AND ENGINEERING TEST REQUIREMENTS CONSISTING OF SIGNALS AND PHOTO INTELLIGENCE SYSTEMS TESTS AND GROUND TRUTH TESTS, SYSTEM OPERATIONAL CALIBRATION, AND OTHER ESSENTIAL EFFORTS RELATED TO THE DEVELOPMENT OF SATELLITE SYSTEMS. THE AUTHORITY TO CONDUCT DOMESTIC OPERATIONAL REQUIREMENTS, SUCH AS MAPPING, CHARTING AND GEODESY, IS RESERVED TO THE DCI.</p>			
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<p>C. EACH NRP INITIATED DOMESTIC REQUIREMENT WILL BE PERSONALLY APPROVED BY THE RESPECTIVE NRO PROGRAM DIRECTOR (I.E., GEN KULPA, MR. DUCKETT AND CAPT DARCY).</p> <p>D. DOMESTIC COLLECTION WILL BE MINIMIZED BY LIMITED ^{ING} RESEARCH AND DEVELOPMENT AND SYSTEM ENGINEERING TEST ACTIVITIES TO THOSE REQUIREMENTS WHICH CLEARLY CANNOT BE MET REALISTICALLY BY OTHER MEANS.</p> <p>E. DOMESTIC PHOTO AND ELECTRONICS DATA INADVERTENTLY OBTAINED ON U.S. PERSONS OR ORGANIZATIONS WILL NOT BE USED FOR ANY PURPOSES AND WILL BE DESTROYED AT THE EARLIEST PRACTICAL TIME (WHEN THE TARGET DATA IS NO LONGER OF TECHNICAL OR SCIENTIFIC USE).</p> <p>F. A WRITTEN RECORD CONTAINING THE DESCRIPTION OF EACH DOMESTIC RESEARCH AND DEVELOPMENT AND TEST REQUIREMENT WILL BE MAINTAINED.</p> <p>G. NRP CONTRACTORS WILL BE APPRISED OF THE PROVISIONS OF THIS DIRECTIVE AND COMPLIANCE REQUIREMENTS OF ALL ORGANIZATIONS SUPPORTING THE NRP.</p> <p>H. SHOULD ANY UNFORESEEN REQUIREMENTS ARISE WHICH WOULD DEVIATE FROM THE ABOVE PROVISIONS, THEY WILL NOT BE INITIATED WITHOUT THE PRIOR APPROVAL OF THE DNRO.</p>					
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<p>REQUEST EACH ADDRESSEE PROVIDE BY 1 JULY 1976, A 7 DETAILED PLAN WHICH IDENTIFIES PROCEDURES FOR:</p> <p>A. APPROVING NRP INITIATED REQUIREMENTS BY THE RESPECTIVE NRO PROGRAM DIRECTOR.</p> <p>B. MAINTAINING RECORDS ON AUTHORIZED DOMESTIC ACTIVITIES CONDUCTED WITH NRP SATELLITE RECONNAISSANCE ASSETS.</p> <p>C. DESTROYING DOMESTIC MATERIAL INADVERTENTLY OBTAINED ON U.S. PERSONS OR ORGANIZATIONS.</p> <p>D. REVIEWING NRP CONTRACTOR ADHERENCE TO THE APPLICABLE PROCEDURES OF THIS DIRECTIVE.</p> <p>THIS PLAN SHOULD BE ADDRESSED TO THE NRO STAFF, ATTENTION COLON [REDACTED] E-2 IMPDET.</p>								
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