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FROM: Chief, Division D - 7B44 Hqs - Red [Empty box] DATE: 7 May 1973

	TO OFFICE	NAME	SIGNATURE	DATE
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REMARKS

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7 May 1973

MEMORANDUM FOR: Deputy Director for Operations

FROM : Chief, Division D

SUBJECT : Potentially Embarrassing Activities
Conducted by Division D

REFERENCE : Your staff meeting, 7 May 1973

1. There is one instance of an activity by Division D, with which you are already familiar, which the Agency General Counsel has ruled to be barred to this Agency by statute: the collection [Redacted] of international commercial radio telephone conversations between several Latin American cities and New York, aimed at the interception of drug-related communications. The background on this is briefly as follows:

[Redacted]

[Redacted] Therefore on 29 September 1972 NSA asked if Division D would take over the coverage, and on 12 October 1972 we agreed to do so. On 14 October a team of intercept operators from the [Redacted] began the coverage experimentally. On 13 January 1973, NSA wrote to say that the test results were good, and that it was hoped this coverage could continue.

Because a question had arisen within Division D as to the legality of this activity, a query was addressed to the General Counsel on this score (Attachment A hereto). With the receipt of his reply (Attachment B), the intercept activity was immediately terminated. There has been a subsequent series of exchanges between Division D and the General Counsel as to the legality of radio intercepts made outside the U.S., but with one terminal being in the U.S., and the General Counsel

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has ruled that such intercept is also in violation of CIA's statutory responsibilities.

2. We are carrying out at present one intercept activity which falls within this technical limitation--i.e., of having one terminal in the U.S. [REDACTED]

[REDACTED]

[REDACTED] since the [REDACTED] LINK being monitored carries a large number of totally unrelated conversations, the operators do intercept other traffic, frequently involving U.S. citizens--for example, BNDD staffers talking to their agents. I have described this situation to the General Counsel, and his informal judgment was that, as long as the primary purpose of the coverage is a foreign target, this is acceptable. He suggests, however, that it might be desirable to inform the Attorney General of the occasional incidental intercept of the conversations of U.S. citizens, and thus legalize this activity. We will pursue this with Mr. Houston.

[REDACTED]

4. An incident which was entirely innocent but is certainly subject to misinterpretation has to do with an equipment test run by CIA [REDACTED] technicians in Miami in August 1971. At that time we were working jointly to develop short-range agent DF equipment for use against a Soviet agent in South Vietnam. [REDACTED] and a field test was agreed upon. The Miami area was chosen, and a team consisting of Division D, Commo, [REDACTED] personnel went to Miami during the second week of August. Contact was made with a Detective Sergeant [REDACTED] of the Miami Beach Police Department, and tests were made from four different hotels, one a block away from the Miami Beach Auditorium and Convention Hall. A desk clerk in this hotel volunteered the comment that the team was part of the official security checking process of all hotels prior to the convention. (The Secret Service had already been checking for possible sniper sites.) As the team's report notes, "The cover for the use of the hotel is a natural."

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[Redacted]

5. Another subject worthy of mention is the following:

In February 1972, [Redacted]

[Redacted] contacts in U.S. telecommunications com-
panies [Redacted]

[Redacted] for copies of the telephone call slips per-
taining to U.S.-China calls. These were then obtained regu-
larly by Domestic Contact Service in New York, pouched to
DCS Washington, and turned over to Division D for passage
to FE/China Operations. The DDP was apprised of this activity
by Division D in March 1972, and on 28 April 1972 Division D
told DCS to forward the call slips to CI Staff, Mr. Richard
Ober. Soon thereafter, the source of these slips dried up,
and they have ceased to come to Mr. Ober. In an advisory
opinion, the Office of General Counsel stated its belief that
the collection of these slips did not violate the Communica-
tions Act, inasmuch as they are a part of a normal record-
keeping function of the telephone company, which does not
in any way involve eavesdropping.

[Large Redacted Area]

Atts:

A. DivD memo to OGC 26 Jan 73

B. OGC memo to DivD 29 Jan 73

[Redacted]

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[Redacted]

[Redacted]

26 January 1973

MEMORANDUM FOR: General Counsel

SUBJECT : Intercept of Communications in the U. S.

1. CIA is intercepting at our communications site [Redacted] high frequency, international radio telephone calls originating [Redacted] in New York and being broadcast to South America or being directed to New York from South America. Some calls are relay calls through New York but not originating or terminating there. The calls involve both U. S. citizens and foreign nationals.

2. [Redacted] the intercept team screens the telephone calls for drug-related matters. NSA receives the traffic from CIA in the form of magnetic tape. [Redacted]

3. I would appreciate your very early views as to where this intercept activity falls with respect to U. S. law. Even if it is legal or we can secure the necessary authorizations, it seems to me there is extra flap potential associated with reports going into the BNDD mechanism, particularly since they may well become the basis for executive action.

[Redacted]

(Signed), [Redacted]

Acting Chief, [Redacted]

Distribution:
Orig & 1 - Addressee

[Redacted]

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Copy 1 of 2

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29 January 1973

MEMORANDUM FOR: Acting Chief, Division D

SUBJECT: Intercept of Communications in the U. S.

REFERENCE: 26 Jan 73 Memo for GC fr AC/Division D,
Same Subject

1. In referent you request our views as to the legal aspects of a radio telephone intercept activity carried on at our communications site [Redacted]

2. The basic law is contained in section 605 of the Communications Act of 1934, 47 U. S. C. 605, which prohibits interception of any radio communication without the authorization of the sender and also prohibits divulging the substance thereof to any person. Chapter 119 of Title 18, U. S. C., makes the interception of any wire or oral communication a crime punishable by \$10,000 or five years' imprisonment, or both. There are two exceptions to these prohibitions:

a. The first provides for application through the Department of Justice to a Federal court for a court order authorizing such interception for specific purposes in connection with law-enforcement duties. Since this Agency is prohibited by statute from any police or law-enforcement activities, obviously we cannot operate under this exception.

b. The other exception is contained in section 2511 of Title 18, U. S. C., at subsection (3). This provides that the prohibition cited above on interception shall not

[Redacted]

[Redacted]

limit the constitutional power of the President to take such measures as he deems necessary to protect against attack, to obtain foreign intelligence information deemed essential to the security of the United States or to protect such information, and to protect the United States against overthrow by force or other unlawful means or against any other clear and present danger to the structure or existence of the Government.

3. The type of information you describe in your memorandum does not appear to fall within any of these categories and since its ultimate destination is BNDD, it appears to be collection for law-enforcement purposes, which as noted above is barred to this Agency by statute.

4. For your information, in most cases where there is a criminal prosecution for violation of the narcotics laws, the Department of Justice queries us as to whether we have engaged in any interception in connection with the defendants. If a case should involve the interception being made [redacted] it would be deemed to be unauthorized and in all probability the prosecution would have to be dropped by the Government. It is our view, therefore, that such interception should be carried on by appropriate law-enforcement agencies in accordance with the authority of chapter 119 of Title 18, U. S. C.



LAWRENCE R. HOUSTON
General Counsel

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Copy 1-Addressee
Copy 2-General Counsel

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