

~~TOP SECRET~~VERY SENSITIVE
~~TS/COMINT~~
Draft 3 - 9/10/75
GAFNSA MONITORINGISSUES OUTLINE

<u>Issues</u>	<u>Witnesses</u>	<u>Relevant Documents</u>
I. <u>General: Size, Authority, Capabilities</u>	Allen	
A. Size		
1. What is NSA's FY 1975 ⁷⁶ budget?		
a. NSA SIGINT		
b. NSA communications security		
c. Each Service Security Agency's budget		
d. Other		
e. Total		
2. What is NSA's FY 1975 ⁷⁶ budget?		
a. NSA SIGINT		
b. NSA communications security		
c. Each Service Security Agency's budget		
d. Other		
e. Total		
3. How many bases?		
a. Overseas		
b. In U.S.		

CLASSIFIED BY <i>Comint Staff</i> EXEMPT FROM OTHER DECLASSIFICATION SCHEDULES AND PROCEDURES § 1.4(c) (1) - (3) - (4) - (5) - (6) - (7) - (8) - (9) - (10) AUTOMATICALLY DECLASSIFIED ON <i>1/1/2000</i> (unless impossible, insert date or event)

~~HANDLE VIA COMINT CHANNELS~~

Issues

Witnesses

Relevant Documents

4. How much of NSA's FY 1975 budget was expended on monitoring of ILCs? Breakdown between voice and non-voice communications and by functions:

- a. Intercepting
- b. Storage, analysis
- c. Dissemination
- d. Total

5. How much of NSA's FY 1975 budget was expended on monitoring ILCs with one terminal in the United States? Breakdown between voice and non-voice communications and by functions:

- a. Intercepting
- b. Storage, analysis
- c. Dissemination
- d. Total

~~TOP SECRET~~

VERY SENSITIVE

~~TS/COMINT~~

Page Two

IssuesWitnessesRelevant Documents

B. Authority for Functions

Allen
Banner
Kern
Moody

1. What statutory authority?
2. What Executive Branch directives?
 - a. What are specific functions assigned to NSA?
 - (1) What is meant by "foreign communications" (NSCID-6)?
 - (2) Is domestic law enforcement an authorized function?
 - b. What restrictions are placed on NSA's monitoring of foreign communications?
 - (1) How define "press broadcasts"?
3. What restrictions does NSA now impose on itself regarding the monitoring of U.S. citizens?
 - a. At least one foreign terminal?
 - b. Not specifically target U.S. citizens?
 - c. Keep anonymity in dissemination of product regarding incidental intercepts of U.S. citizens?
 - (1) What specific rules exist now? In what documents?
 - (2) What prior rules existed in 1970? 1973?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
Page Three

Issues

Witnesses

Relevant Documents

Allen
Buffham
Kern

- C. Capabilities
 - 1. How intercept communications?
 - a. Telephone line/cable
 - b. High-frequency radio
 - c. Microwave
 - d. Satellite
 - 2. Who does intercepts?
 - a. NSA itself
 - b. Service Security Agencies
 - c. Allies [Detail not necessary]
 - d. Others

~~HANDLE VIA COMINT CHANNELS~~

IssuesWitnessesRelevant DocumentsII. Voice Intercepts

A. General capabilities

Allen
Kern

1. Total ILCs

- a. How many voice links are used in international lines of communications?
- b. What kind of traffic is carried over these links -- e.g., normal voice, facimiles?
- c. How much traffic is carried -- e.g., number of telephone conversations per month?
- d. How many of these links does NSA (or someone working with NSA) monitor?
- e. How many voice communications do you estimate were intercepted in 1974?
- f. How many summaries or abstracts were forwarded to NSA headquarters in 1974?
- g. How much is sent to NSA analysts?
- h. How much is disseminated to other agencies? By types of dissemination?
- i. How much is retained by NSA? How?

Allen
Kern
Moody

2. With one terminal within the United States

- a. How many of these voice links are used in international lines of communications?
- b. How much traffic is carried on these links -- e.g., number of telephone conversations per month?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~VERY SENSITIVE
TS/COMINT
Page FiveIssuesWitnessesRelevant Documents

- c. How many of these links does NSA (or someone working with NSA) monitor?
- d. How many voice communications do you estimate were intercepted in 1974?
- e. How many summaries or abstracts were forwarded to NSA headquarters in 1974?
- f. How much is sent to NSA analysts?
- g. How much is disseminated to other agencies?
- h. How much is retained by NSA? How?
- i. What specific links does NSA (or someone working with NSA) now monitor? From where?
- j. For what reasons?
- k. What specific links did NSA (or someone working with NSA) monitor one year ago? From where?
- l. For what reasons?
- m. Has NSA ever monitored all Trans-Atlantic telephone calls? Trans-Pacific calls?

Allen
Kern
Moody

B. U.S.-South American telephone calls

Buffham
Kern
Moody

1. Origin

- a. When did the monitoring of these calls begin?
- b. If it started other than at Sabana Seca in Puerto Rico, when did the Sabana Seca monitoring start?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~~~VERY SENSITIVE~~~~TS/COMINT~~

Page Six

IssuesWitnessesRelevant Documents

- c. Who proposed it?
- d. Who authorized it?
- e. What links were initially monitored?
- f. What type of intercept equipment is used at Sabana Seca for these calls?
2. Scope
- a. Who submitted names?
- b. What were the procedures for submitting names?
- c. Were names ever submitted by telephone? If so, how often?
- d. What justifications were required from the submitting authorities?
- e. What was the total number of U.S. citizens on the drug watch list?
- f. What was the highest number of U.S. citizens at any one time? When was this?
- g. How many telephone conversations were intercepted?
3. Value
- a. How much product was generated?
- (1) In the beginning?
- (2) At the high point of monitoring?

Buffham
Kern
Moody~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~
~~TOP SECRET~~

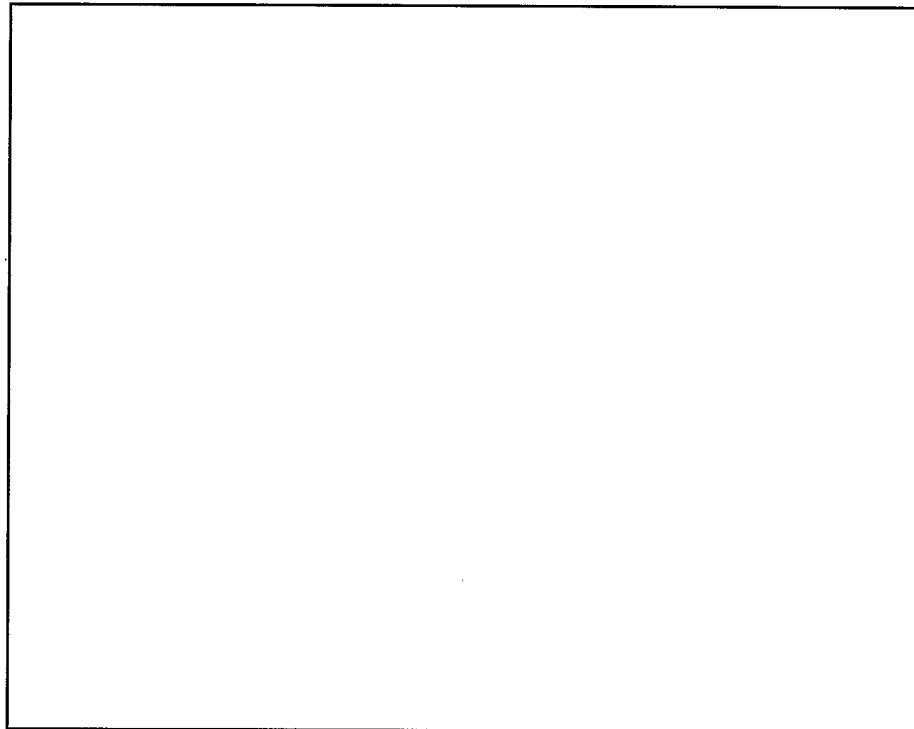
VERY SENSITIVE
~~TS/COMINT~~
Page Seven

Issues

Witnesses

Relevant Documents

- (3) In the two years preceding termination?
- b. How valuable was the product? E.g.,
 - (1) How many seizures of drugs can be directly linked to it?
 - (2) How many convictions for drug smuggling of
 - (a) Foreigners?
 - (b) U.S. citizens?



Buffham
Kern
Moody
Banner

EO 3.3b(1)

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~~~VERY SENSITIVE~~
~~TS/COMINT~~
Page EightIssuesWitnessesRelevant Documents

g. If so, with what conclusions?
Why?

Buffham
Kern
Moody
Banner

5. Termination of drug watch list

a. When did NSA discontinue its drug
watch list activity?

b. Why?

c. Who in NSA decided to terminate the ac-
tivity? Who was consulted before the deci-
sion -- e.g., Director, Deputy Director?

6. Continued monitoring of
etc. at Sabana Seca?

a. Why did NSA continue to monitor the New
York-Montevideo link at Sabana Seca after
termination of the drug watch list?

b. What other voice links with one U.S.
terminal continued to be monitored at
Sabana Seca?

c. What were the results of continued
monitoring? E.g.,

- (1) Amount of product
- (2) Number of prosecutions
- (3) Other information

d. When was this monitoring terminated?

EO 3.3b(3)
PL 86-36/50 USC 3605

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~
~~TOP SECRET~~

Issues

Witnesses

Relevant Documents

- e. By whom?
- f. For what reasons?
- g. Does NSA have any formal policy that would prohibit resumption of this U.S.-South American monitoring? If so, what is the policy and in what documents is it stated?

7. Destruction of files

- a. Were the watch list, product, and other documents about this activity destroyed?
- b. When?
- c. Who authorized it? When did the Director and Deputy Director become knowledgeable?
- d. Why the destruction?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~VERY SENSITIVE
TS/COMINT
Page TenIssuesWitnessesRelevant DocumentsIII. Non-Voice InterceptsAllen
Kern

A. General capabilities

1. Total international lines of communications (ILC)?
 - a. How many non-voice links are used in international lines of communication?
 - b. What kind of traffic is carried over these links -- e.g., telexes, computer data?
 - c. How much traffic is carried on these links -- e.g., number of telexes per month?
 - d. How many international links are monitored?
 - e. How much international non-voice traffic does NSA (or someone working with NSA) intercept? E.g., in 1974.
 - f. How much is forwarded to NSA headquarters? E.g., in 1974.
 - g. How much is sent to NSA analysts?
 - h. How much is disseminated to other agencies? By types of dissemination?
 - i. How much is retained by NSA? How?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE

~~TS/COMINT~~

Page Eleven

IssuesWitnessesRelevant Documents

2. ILCs with one terminal in United States

a. How many of these non-voice links are used in international lines of communication?

b. How much traffic is carried on these links -- e.g., number of telexes per month?

c. How many of these links does NSA (or someone working with NSA) monitor?

d. How much of this non-voice traffic does NSA intercept? E.g., in 1974.

e. How much is forwarded to NSA headquarters? E.g., in 1974.

f. How much is sent to NSA analysts?

g. How much is disseminated to other agencies? By types of dissemination?

h. How much is retained by NSA? How?

B. Watch Lists

Buffham
Kern
Iredell

1. Before October 1967

a. Origin

(i) When was the first watch list established?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~VERY SENSITIVE
TS/COMINT
Page TwelveIssues

- (2) By whom?
- (3) For what purpose?
- (4) Were any Americans on these lists?
Who? When?
- (5) Why were they put on these lists?
- (6) Which agencies were involved in
submitting names for the watch lists?
 - (a) FBI
 - (b) CIA
 - (c) DIA
 - (d) Military Services
 - (e) Secret Service/Treasury
 - (f) State Department
 - (g) Bureau of Narcotics and
Dangerous Drugs
 - (h) White House
 - (i) State or local police
 - (j) NSA Office of Security
 - (k) Others

WitnessesBuffham
Kerns
IredellRelevant Documents~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
 Page Thirteen

IssuesWitnessesRelevant Documents

(7) Did the Director or Deputy Director know about these watch lists? If so, when? Did they have to approve each name that was included? Each American citizen that was included?

Buffham
 Kern
 Iredell

(8) When did the Office of Security first submit names?

(9) Were any names submitted by telephone? Why (i.e., was there a rush)? By whom? How many? What names?

2. After October 1967 and Before 1 July 1969

Buffham
 Kern
 Moody
 Iredell
 Yarborough

a. Was the Yarborough cable the first time that NSA was tasked to place names of U.S. citizens and groups associated with black and antiwar movements on the watch list?

b. Who authored General Carter's 10/21/67 telegram reply to General Yarborough?

c. What was included on the watch list as a result of Yarborough's telegram?

d. What other new measures, if any, were taken in response to the Yarborough telegram?

e. Did anyone in NSA communicate orally with Yarborough concerning the telegram? If so, what happened?

f. Were there any meetings within NSA resulting from the Yarborough cable? If so, who was present? What came out of those meetings?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~VERY SENSITIVE
TS/COMINT
Page FourteenIssues

- g. Were there any meetings with other agencies as a result of the Yarborough cable? If so, who was present? What came out of those meetings?
- h. Which agencies submitted names of U.S. citizens to the watch list as a result of the Yarborough cable? (See list in Section 1, above, page twelve.)
- i. Who had to approve the inclusion of the name of any U.S. citizen? The Director or Deputy Director?
- j. Do you know what person or agency put together the roughly-typed four-page memorandum in the watch list files?
- k. When was it prepared?
- l. How was this memorandum used? Were the names and organizations listed in the memorandum put on the watch list? Which ones?
- m. Were any names submitted by telephone? Why? By whom? How many? What were the names? When was the last time this happened.
3. MINARET (post 1 July 1969)
- a. Charter
- (1) Who prepared it? Who suggested that it be prepared?
- (2) Who was consulted within NSA?

Witnesses

Buffham
Kern
Moody
Iredell
Yarborough

Relevant Documents

Buffham
Kern
Iredell
Moody

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~~~VERY SENSITIVE~~
~~TS//COMINT~~
Page FifteenIssues

(3) Who was consulted from other agencies or from the White House?

(4) Who approved it within NSA?

(5) Who approved it from other agencies or from the White House?

(6) What were the reasons for it?

(7) Was the legality of the intercept program questioned during this period? If so, by whom? With what result?

(8) Why was the intercept program suddenly considered so sensitive?

b. Targets. For each of the illustrative product examples (Times, McIntire, Abernathy, Hersh):

(1) Why were these communiques intercepted?

(2) Who submitted the requirements that resulted in their interception?

(3) How was the information used or disseminated after interception?

c. Scope

(1) Who submitted names?

(a) FBI

(b) CIA

Witnesses

Buffham
Kern
Iredell
Moody

Relevant Documents~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
Page Sixteen

Issues

Witnesses

Relevant Documents

- (c) DIA
- (d) Military Services
- (e) Secret Services/Treasury
- (f) State Department
- (g) BNDD
- (h) White House or NSC
- (i) State or local police
- (j) NSA Office of Security
- (k) Others

Buffham
Kern
Iredell
Moody

(2) What justifications were required from submitting authorities?

(3) What were the procedures for submitting names?

(4) Were any names submitted by telephone? Why? By whom? How many? What names?

4. Overall Scope of Watch List

a. How many total entries of U.S. citizens were on the watch list from its start through its termination?

b. What was the greatest number of U.S. citizens on the watch list at any one time? When?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
TS/COMINT
Page Seventeen

Issues

Witnesses

Relevant Documents

c. How much product was generated per month on average in 1971-1973?

- (1) For NSA analysts?
- (2) Disseminated to other agencies?
- (3) Retained by NSA?

Buffham
Kern
Iredell
Moody

d. How valuable was the product? E.g.,

- (1) Give two or three examples of its greatest value.

e. When did the General Counsel's Office first become aware of the watch list activity? What actions did it take?

Banner

5. Watch List Product

a. Collating intercepted material

- (1) What criteria were used to decide which messages were worth processing?

Kern
Iredell
Moody

- (a) Were all "hits" processed and reports typed up on them?

- (b) If not, were there any key individuals or groups about whom a transcript or gist was always prepared?

- (c) Who were they? E.g., Venceremos Brigade?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE

~~TS/COMINT~~

Page Eighteen

Issues

(2) How was the biographic information obtained that was included on the watch list product?

(a) Who compiled the footnotes?

(b) Did NSA have biographic information for everyone on the watch list?

(c) Did NSA also use the biographic information for individuals and groups mentioned in the messages who were not on the watch list?

(d) Did these include:

- Members of Congress
- Executive Branch officials
- Business persons
- Professors
- Labor leaders
- Other radicals who were celebrities
- Any others

(e) Did you also acquire information from other agencies that was included on the watch list product? If so, from which agencies? About which individuals?

Witnesses

Kern
Iredell
Moody
Tracy

Relevant Documents

*Munkler to Washlock
6/18/70*

HANDLE VIA COMINT CHANNELS

~~TOP SECRET~~VERY SENSITIVE
~~TS/COMINT~~
Page NineteenIssues

- b. Disseminating the product
- (1) What criteria were used to decide which messages were disseminated to which agencies?
 - (2) In what different ways was the information disseminated?
 - (3) Were any agencies barred from receiving a certain type of material? If so, describe.
 - (4) Did any agencies not want to receive material on particular individuals or groups? If so, describe.
 - (5) Why did you have to send out your 5/7/70 memorandum requesting that all agencies reaffirm their interest in the watch list product?
 - (a) Who suggested that memorandum?
 - (b) Who approved that memorandum?
 - (c) What was the response?
 - (d) Was there any question of the product's utility at that time?

6. Termination

- a. When did any official in the Department of Justice, besides the FBI, become aware that the names of U.S. citizens were on the watch list? Mitchell? How? What was the reaction?

WitnessesKern
Iredell
MoodyRelevant DocumentsBuffham
Kern
Iredell
Moody
Banner~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

~~VERY SENSITIVE~~
~~TS/COMINT~~
Page Twenty

Issues

b. When did NSA stop putting U.S. names (except for the very limited 4-5 entries from the Secret Service) on the watch list?

c. Why were the U.S. names so eliminated?

(1) Who proposed it first -- NSA, the Department of Justice, others?

(2) What legal issues and cases were involved?

d. Who are the remaining U.S. citizens/entities on the watch list? Who requested their inclusion?

7. File destruction

a. When were the watch list materials destroyed? For which years?

b. Why?

c. Who authorized their destruction?

d. Who was consulted? When did the Director or Deputy Director know?

Witnesses

Buffham
Kern
Iredell
Moody
Banner

Relevant Documents

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
 Page Twenty-One

IssuesWitnessesRelevant DocumentsIV. Files on U.S. Citizens/Entities

A. Biographic files

1. Were files maintained by C-5 on U.S. citizens?
2. When did this practice begin?
3. Why was it done?
4. Criteria for inclusion of U.S. names?
5. How many files on U.S. citizens were there at maximum point? Total over time?
6. Specific names?
 - a. Members of Congress
 - b. Executive Branch officials
 - c. Political activists
 - (1) Left-wing
 - (2) Black
 - d. News media persons
 - e. Professors
 - f. Business persons
 - g. Labor leaders

Kern
 Moody
 Tracy

C-5 Rhythmic Deficiency

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~
~~TOP SECRET~~

Issues

Witnesses

Relevant Documents

h. Celebrities -- e.g., movie stars

i. Others

Kern
 Moody
 Tracy

7. Sources of materials on citizens?

a. Open sources -- e.g., newspapers?

b. From within NSA

(1) SIGINT

(a) Were any of these U.S. citizens' communications intentionally intercepted by the Agency? E.g., watch list, MINARET.

(b) If not intentional, how?

(2) NSA Office of Security -- e.g., background investigations

(3) NSA Office of Personnel

c. From agencies outside NSA?

(1) FBI

(2) CIA

(3) DIA

(4) Military Services

(5) Secret Service/Treasury

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
~~IS/COMINT~~
Page Twenty-Three

Issues

Witnesses

Relevant Documents

- (6) State Department
- (7) BNDD
- (8) State or local police
- 8. Who had access?
 - a. Within NSA
 - (1) SIGINT analysts
 - (2) Office of Security
 - (3) Office of Personnel
 - (4) Others
 - b. Outside NSA
 - (1) FBI
 - (2) CIA
 - (3) DIA
 - (4) Military Services
 - (5) Secret Service/Treasury
 - (6) State Department
 - (7) BNDD
 - (8) Civil Service Commission
 - (9) White House or NSC

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

Issues

Witnesses

Relevant Documents

(10) State or local law enforcement agencies

(11) Private parties

(a) Potential employers of former NSA personnel

(b) Others

9. Do these files still exist?

a. When destroyed?

b. Why destroyed?

c. Who ordered destruction? Who consulted prior to destruction?

B. Organizations files

1. Are they maintained on U.S. organizations?

2. Have they been in the past?

3. When did this practice begin?

4. Why was it done?

5. Criteria for including specific U.S. organizations?

6. How many files on U.S. organizations at maximum point? Total over time?

~~HANDLE VIA COMINT CHANNELS~~

~~TOP SECRET~~

VERY SENSITIVE
TS/COMINT
Page Twenty-Five

Issues

Witnesses

Relevant Documents

7. Kinds of U.S. organizations included?
 - a. Political parties
 - b. Political groups
 - (1) Leftist
 - (2) Black
 - c. Corporations
 - (1) Oil companies, e.g.,
 - (a) Exxon
 - (2) Other companies
 - d. Labor unions
 - e. Social clubs, fraternities, civic associations, etc.
 8. Sources of materials on organizations?
 - a. Open sources -- e.g., newspapers?
 - b. From within NSA:
 - (1) SIGINT
 - (a) Were any of these organizations' communications intentionally intercepted by the Agency? E.g., watch list, MINARET?

~~HANDLE VIA COMINT CHANNELS~~

Issues.

Witnesses

Relevant Documents

- (b) If not intentional, how?
 - (2) Office of Security -- e.g., background investigations
 - (3) Office of Personnel
- c. From outside NSA
 - (1) Federal agencies
 - (2) State or local law enforcement agencies
 - (3) Others
- 9. Who had access?
 - a. Within NSA.
 - (1) SIGINT analysts
 - (2) Office of Security
 - (3) Office of Personnel
 - (4) Others

Issues

Witnesses

Relevant Documents

- b. Outside NSA
 - (1) FBI
 - (2) CIA
 - (3) DIA
 - (4) Military Services
 - (5) Secret Service/Treasury
 - (6) State Department
 - (7) BNDD
 - (8) State or local police
 - (9) Private parties
 - (a) Competitor corporations

- 10. When were files destroyed?
 - a. What reason for destruction?
 - b. Who ordered destruction? Who was consulted prior to destruction?

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
Page Twenty-Eight

Issues

Witnesses

Relevant Documents

Legal Authority

Banner

Allen House Testimony

A. Does NSA have a legislative charter?
What statutes?

1. 10 U.S.C. 133(d)?
2. 18 U.S.C. 798 (Divulgence of COMINT)?
3. 18 U.S.C. 952 (Divulgence of foreign diplomats' communications)?
4. PL 88-290 (Personnel security)?
5. Appropriations acts?
6. 18 U.S.C. 2511(3) (Omnibus Act's national security proviso)?
7. Any others?

Banner Memorandum

B. Do Executive Branch Directives provide NSA's charter?

Buffham
Banner
Kern
Moody

Banner Memorandum

Bartimo Memorandum

1. NSCID 6
 - a. What does the "technical and intelligence information" definition of COMINT include?
 - (1) Military intelligence?
 - (2) Political intelligence?
 - (3) International trade?
 - (4) Law enforcement collection?

~~HANDLE VIA COMINT CHANNEL~~

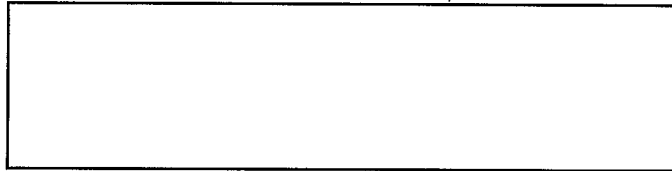
~~TOP SECRET~~

Issues

Witnesses

Relevant Documents

(b) If not, how justify watch list for BNDD?



Buffham
Banner
Kerns
Moody

Houston Memorandum

EO 3.3b(1)

(5) Others

2. DCID 6/3

a. Does the definition of "foreign communications" permit NSA to monitor:

Banner Memorandum

Bartimo Memorandum

(1) Communications between a foreign citizen inside the U.S. and a foreign citizen outside the U.S.?

(a) If not, how justify watch list product? E.g., Arab student groups.

Product

(2) Communications between a foreign citizen inside the U.S. and a U.S. citizen outside the U.S.?

(3) Communications between a U.S. citizen inside the U.S. and a foreign citizen outside the U.S.?

(a) If not, how justify watch list product? E.g., Abernathy communications.

Product

~~TOP SECRET~~

VERY SENSITIVE

~~IS/COMINT~~

Page Thirty

IssuesWitnessesRelevant Documents

(4) Communications between a U.S. citizen inside the U.S. and a U.S. citizen outside the U.S.?

Buffham
Banner
Kerns
Moody

(a) If not, how justify watch list product? E.g., Dellinger to Dellinger, Cleaver to Cleaver.

Product

(5) Communications between two foreign citizens, both within the U.S.?

(a) If so, should the charter be amended to eliminate this?

(6) Communications between a U.S. citizen and a foreign citizen, both within the U.S.?

(a) If so, should the charter be amended to eliminate this?

C. Do statutory prohibitions on wiretapping apply to NSA?

Banner

1. Omnibus Crime Control and Safe Streets Act of 1968?

18 U.S.C. 2510-2520

a. General issues

(1) Does any or all of the communications monitoring apparatus in the possession or control of the National Security Agency constitute an "electronic, mechanical, or other device," as defined

~~TOP SECRET~~
~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
Page Thirty-One

Issues

Witnesses

Relevant Documents

b. Voice communications

(1) Are the voice communications monitored by NSA "intercepted" within the meaning of § 2510(4) of the Act (including the issue of whether they are aurally "acquired") in the following cases? Assume in all cases that at least one terminal of the communication is located in the U.S.

(a) Where an NSA operator simply listens to part of the communication? To all of it?

(b) Where an NSA operator makes a summary, or "gist," of the conversation?

(c) Where all or part of the communication is recorded?

(d) Where a "gist" of the communication is forwarded to NSA for analysis?

(e) Where the recording of the communication is forwarded to NSA for analysis?

(f) Where a "gist" of the communication is forwarded to consumer agencies by NSA?

(g) Where a transcript of the communication is forwarded to consumer agencies by NSA?

~~TOP SECRET~~
~~EC - SECRET~~

VERY SENSITIVE
TS/COMINT
Page Thirty-Two

Issues

Witnesses

Relevant Documents

(2) For each of the above cases in which an interception has taken place within the definition of the Act, is the interception "willful," within the meaning of § 2511 of the Act, where:

(a) A U.S. name is keyword and that person is a party to the communication?

(b) A U.S. name is keyword and that person is not a party to the communication, but the communication is nevertheless intercepted because the name is mentioned?

(c) No U.S. name is keyword, but a U.S. citizen is a party to the communication, and the communication is intercepted because another keyword is mentioned?

(d) No U.S. name is keyword and that person is not a party to the communication, but the communication is nevertheless intercepted because another keyword is mentioned?

c. Non-voice communications: Are the non-voice communications monitored by NSA "intercepted" within the meaning of § 2510(4) of the Act in the following cases? Assume in all cases that at least one terminal of the communication is in the U.S. Address the issue of whether the communication is:

~~TOP SECRET~~

VERY SENSITIVE
TS/COMINT
Page Thirty-Three

IssuesWitnessesRelevant Documents

- (a) "acquired," and
- (b) whether the communication is acquired "aurally."

(1) Where the communication is susceptible to comprehension through the use of the human ear (e.g., the case of a simple telegram sent in Morse code), whether or not the human ear is actually used in the monitoring:

- (a) Where the communication is transcribed onto a paper tape?
- (b) Where the communication is further transcribed onto a magnetic tape?
- (c) Where the communication is cabled to NSA for analysis?
- (d) Where the communication is printed out at the interception site, at NSA, or elsewhere?
- (e) Where a transcript or summary of the communication is forwarded to consumer agencies?

(2) Where the communication is not susceptible to comprehension through the use of the human ear? Address the same issues for each of the same questions as listed above, (1) (a)-(e).

~~VERY SENSITIVE~~
~~TS/COMINT~~
Page Thirty-Four

IssuesWitnessesRelevant Documents

- (4) Are any of the non-voice communications monitored by NSA "wire communications" within the meaning of §.2510(1) of the Act?
- (5) For each of the above cases in which an "interception" has taken place, is the interception "willful" in each of the sets of circumstances set out under C.I.B.(2), above?
2. Federal Communications Act of 1934? What effect in the following cases?
- a. Voice communications?
- (1) Ship-to-ship radio broadcasts in U.S. waters?
- (2) Ship-to-U.S. shore telephone calls?
- (3) Radio-telephone calls?
- (4) Telephone calls traveling at some point by radio?
- b. Non-voice communications?
- (1) Ship-to-ship code transmissions in U.S. waters?

47 U.S.C. 605

~~TOP SECRET~~VERY SENSITIVETS/COMINT

Page Thirty-Five

Issues,WitnessesRelevant Documents

(2) Short-wave private radio broadcasts?

Banner

(3) Telegrams, telexes, etc?

D. Do constitutional prohibitions (Fourth Amendment) on wiretapping restrict NSA monitoring?

Banner House Testimony

1. Is warrantless monitoring for national security purposes constitutional?

Petersen 9/7/73 Memorandum to Kelly

a. Effect of Keith case (need warrant for domestic group seeking to influence or change U.S. Government by unlawful means)?

Kelly 9/10/73 Memorandum to Petersen

(1) Justification for warrantless surveillance of SNCC? Black Panthers? Women's Strike for Peace? Clergy and Laymen Concerned? Vietnam Veterans Against the War?

Richardson 10/1/73 Letter to Allen (and similar letters to other agencies)

b. Effect of Zweibon case (need warrant for domestic group affecting U.S. foreign relations and seeking to change policies of a foreign power)?

(1) Justification for warrantless surveillance of JDL, Meir Kahane, and Zweibon himself?

2. If a warrant is required in national security cases, does this apply to:

~~VERY SENSITIVE
TS/COMINT~~

Page Thirty-Six

~~TOP SECRET~~IssuesWitnessesRelevant Documents

a. Voice communications?

Banner House Testimony

(1) Where U.S. name is keyword, where that person is a party to the communication, and the communication is intercepted? Given to NSA analysts? Distributed to outside agencies?

(2) Where U.S. name is keyword, where that person is not a party to the communication, and where the intercepted communication has at least one terminal in the United States? Given to NSA analysts? Distributed to outside agencies?

(3) Where no U.S. name is keyword, where a U.S. citizen is party to the communication, and the communication is intercepted because another keyword is mentioned? Given to NSA analysts? Distributed to outside agencies?

(4) Where no U.S. name is keyword, where that person is not a party to the communication, where the communication has at least one terminal in the U.S., and the communication is intercepted because another keyword is mentioned? Given to NSA analysts? Distributed to outside agencies?

b. Non-voice communications (i.e., does the Constitution protect telegrams, telexes, etc.)?

(1) Where U.S. name is keyword, where that person is a party to the communication, and the communication is intercepted? Printed

~~TOP SECRET~~

VERY SENSITIVE

~~TS/COMINT~~

Page Thirty-Seven

IssuesWitnessesRelevant Documents

(2) Where U.S. name is keyword, where that person is not a party to the communication, and where the intercepted communication has at least one terminal in the United States? Printed out? Given to NSA analysts? Distributed to outside agencies?

(3) Where no U.S. name is keyword, where a U.S. citizen is party to the communication, and the communication is intercepted because another keyword is mentioned? Printed out? Given to NSA analysts? Distributed to outside agencies?

(4) Where no U.S. name is keyword, where that person is not a party to the communication, where the communication has at least one terminal in the U.S., and the communication is intercepted because another keyword is mentioned? Printed out? Given to NSA analysts? Distributed to outside agencies?

E. Factual Questions

Bartimo Memorandum

1. Have you ever prepared any memoranda on the lawfulness of:

a. monitoring links with one terminal in the U.S.?

b. the watch list activity?

~~TOP SECRET~~

VERY SENSITIVE
~~TS/COMINT~~
 Page Thirty-Eight

IssuesWitnessesRelevant Documents

2. If not, why not?
3. If so, identify the memoranda. What conclusions were reached?
4. What is your present evaluation of the lawfulness of the watch list activity with U.S. names on the list? Of

F. Future Charter

Allen
 Buffham
 Banner

EO 3.3b(1)

1. Should NSA have a specific legislative charter? If so,
 - a. Should it more carefully define "foreign communications"? If so, how?
 - b. "Foreign intelligence"? If so, how?
 - c. "National security"? If so, how?
 - d. Other?
2. Should there be any other legislative changes? E.g., in Omnibus Crime Control and Safe Streets Act? If so, how?
3. Should there be changes in the NSCID and relevant DCIDs? If so, how?

NSCID 6

DCID 6/3



National Security Archive,
Suite 701, Gelman Library, The George Washington University,
2130 H Street, NW, Washington, D.C., 20037,
Phone: 202/994-7000, Fax: 202/994-7005, nsarchiv@gwu.edu