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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

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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

LAWRENCE R. HOUSTON
General Counsel

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