THE WHITE HOUSE

WASHINGTON

May 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Testimony by Oliver Revell Concerning Narcotics Abuse and Control -- May 22, 1984 (FBI Testimony for Rangel Hearing)

We have been provided with a copy of testimony FBI Assistant Director Oliver B. Revell proposes to deliver on May 22 before the House Select Committee on Narcotics Abuse and Control. The testimony reviews the role of the Bureau in the national drug law enforcement effort. Revell begins by discussing the assignment of concurrent jurisdiction in drug cases to the FBI, and the new FBI/DEA relationship. He goes into some detail concerning the relationship at the working level, emphasizing that the FBI focuses on drug cases with organized crime, public corruption, or sophisticated financial aspects. Revell points to the large increase in Title III wiretaps in drug cases, due in large measure to the FBI's new role in such cases. The testimony goes on to discuss the Bureau's contributions to the Organized Crime Drug Enforcement Task Forces and the National Narcotic Border Interdiction System. The prepared statement concludes with a discussion of three large-scale drug cases developed by the FBI.

I have reviewed the testimony and have no objections.

Attachment

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Name of Correspondent: Cary Copeland DOJ

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Subject: Testimony by Oliver Revell concerning Narcotics Abuse and Control - May 22, 1984 (FBI Testimony for Rangel hearing)

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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5/81

U.S. Department of Justice
Office of Legislative and
Intergovernmental Affairs

Office of the
Assistant Attorney General

Washington, D.C. 20530

5/21/84

Adrian Curtis
Dick Williams

At last I am forwarding FBI draft testimony for the Rangel hearing.

C H C

Cary Copeland
633-4117

cc: Bob Powis
Fred Fielding

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

"DRAFT"

TESTIMONY

BY

OLIVER B. REVELL

ASSISTANT DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

HOUSE SELECT COMMITTEE ON

NARCOTICS ABUSE AND CONTROL

WASHINGTON, D.C.

MAY 22, 1984

Chairman Rangel, members of the House Select Committee on Narcotics Abuse and Control, I would like to express my appreciation for the opportunity to provide you with information concerning the FBI's contribution to the National Drug Law Enforcement Effort.

The delegation of Concurrent Jurisdiction in Drug Matters to the FBI, and the role played by the FBI in drug law enforcement, can best be captured by a review of the Bureau's involvement in drug enforcement efforts since June, 1981.

Following the appointment of FBI Executive Assistant Director Francis M. Mullen, Jr., as Acting Administrator of DEA on June 22, 1981, at Director Webster and Mr. Mullen's direction, a contingency from the FBI and select DEA personnel were tasked with developing a joint FBI/DEA investigative strategy for narcotics enforcement. This Advisory Group developed several key recommendations which were presented to Judge Webster and Mr. Mullen. The most significant recommendations included: that the FBI be authorized investigative jurisdiction concerning matters within Title 21 of the U.S. Code; that the DEA Administrator be the Federal Government's principal narcotics enforcement official; however, remain under the general policy supervision of the Director, FBI; and further, that the personnel, administrative and enforcement policies of DEA be reviewed, restructured and rewritten as necessary to bring them more in line with existing FBI policy. These recommendations were released in a September 14, 1981, report by the Advisory Group to Mr. Mullen and Director Webster.

These events stimulated a transition of the Bureau's activities in narcotics enforcement from a limited role of providing intelligence information and other support services to a role of fully incorporating the FBI's structure, resources and expertise in organized crime and financial flow investigations into the overall Federal narcotics effort.

On January 21, 1982, Attorney General William French Smith issued an Order delegating to the FBI concurrent investigative jurisdiction of violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970, also known as the Controlled Substance Act, Title 21, U.S. Code. The Order further stated that DEA was being placed under the general supervision of the Director, FBI, and that the Administrator of DEA would report to the Attorney General, through the Director, as appropriate. The Attorney General announced that this delegation of jurisdiction and reorganization was designed to augment the drug enforcement efforts of DEA by dedicating a portion of the FBI's manpower and resources, targeted against drug trafficking.

Over the next couple of months, the Department of Justice (DOJ), FBI and DEA personnel worked closely in drafting a statement that would clarify the complementary roles of FBI/DEA in this new arrangement. On March 12, 1982, a document entitled "Implementation Directive for Concurrent Drug Investigative Jurisdiction Between the Drug Enforcement Administration and the Federal Bureau of Investigation," commonly referred to as the "Blue Book," was released to provide guidance to Agents of both agencies to follow in their day-to-day activities. The book starts with the premise that the FBI would supplement and complement the efforts of DEA in jointly attacking the narcotics problem, the number one crime problem in America. The Directive goes on to iterate that DEA would continue to be "the primary architects of the Federal Drug Enforcement Program with the assistance and coordination of their FBI counterparts."

The Directive delineates the roles of the FBI and DEA by stating that the FBI will focus its resources on drug investigations involving traditional organized crime families; nontraditional organized criminal groups with violent propensities; ethnic organized crime groups that have a significant impact in an area of the country; and financiers as well as corrupt public officials who aid, assist or who are engaged in illegal criminal activities related to narcotics trafficking. DEA will continue to focus on investigations of major drug organizations, high-level smugglers, distributors, manufacturers and other priorities as established by DEA. The "Blue Book" further states that both agencies would buttress each other's investigative role by a cooperative exchange of intelligence information and informant development. The Directive noted that both agencies would pursue their investigative priorities utilizing the Continuing Criminal Enterprise (CCE) and Racketeer Influenced and Corrupt Organizations (RICO) Statutes and developing conspiracy investigations that would focus on the illegal enterprise rather than individual subjects. The Directive pointed out that this approach would emphasize the need to more frequently utilize civil and criminal forfeiture, thereby removing the economic assets that support the organization.

This document acknowledged that this type of investigative philosophy would require sophisticated investigative techniques including long-term undercover operations, Title III electronic surveillances, tracing the financial assets and the linkage of business operations, financial assets and subjects to solidify conspiracy cases.

The Implementation Directive contains a joint policy statement regarding the necessity of jointly coordinating investigations by the two agencies. The policy guidance encompasses, for both Headquarters and field personnel, investigative instructions regarding the sharing of investigative expenses; access to each other's index and intelligence systems; handling of informants; technical and laboratory support services; procedures to be followed in seizing assets; FBI handling of selected fugitive matters, administrative guidance regarding procedures in handling sensitive investigative techniques, i.e., allowing drugs to enter traffic, reverse undercover operations and use of sham or show narcotics.

Major issues that needed to be addressed immediately included the extent of manpower and other resources that the FBI might dedicate to narcotics matters. FBI management was cognizant of the inherent problems related to narcotics enforcement; specifically, that the nature of the work could cause an enormous resource drain at the expense of other investigative programs. As a result of this serious concern, the FBI established fieldwide criteria in opening narcotics investigations and set forth administrative controls, i.e., required FBIHQ approval to open a narcotics investigation, and Headquarters approval to purchase narcotics in a field investigation. This centralized management approach to narcotics was prescribed to ensure that quality investigations would be worked by field divisions based on national standards. These management controls also require that any drug investigation undertaken by the FBI requires notification to DEA in order to obtain existing intelligence information and make a joint assessment whether or not the particular case should be worked jointly or separately. DEA also is required to give notification to the FBI of investigations instituted by DEA to insure coordination and make use of existing FBI intelligence information.

Another area that FBIHQ and field SACs reviewed with close scrutiny involved the use of the "buy-bust" investigative technique by the FBI in narcotics investigations. It was the opinion of senior managers that in order to achieve the objective of reaching beyond street level dealers and distributors, that the "buy-bust" technique should not be used except in very selective situations, i.e., arrest of high echelon trafficker in possession of narcotics evidence or development of a cooperative subject. FBI policy requirements dictated that a purchase of narcotics evidence would be used to establish probable cause for search warrants, evidence for grand jury presentation and as a basis for application for electronic surveillance. The purchase of narcotics as an investigative method would not be used merely to acquire large quantities of controlled substances or taking narcotics off the street. This approach would be contrary to the concept of concentrating our resources to focus on the narcotics enterprise, financiers and corrupt public officials, by the use of long-term investigative techniques such as undercover operations, consensual monitoring and electronic surveillance with the expectation of developing narcotics conspiracy investigations.

These and other issues regarding the development of a Narcotics Program for the FBI and a responsible day-to-day working arrangement with DEA consumed a significant amount of time and effort during the first year of this relationship. This new responsibility for the FBI was particularly challenging because the FBI was given no new resources when the jurisdiction was conferred, and thus required that resources be drawn from other investigative programs. Despite the complexities of this project, the FBI became a full partner in a short time carrying more than 1200 narcotics investigations by January, 1983.

Over the last two years, the growth of our involvement in narcotics investigations has been significant. As of May 1, 1984, the FBI was involved in the investigation of 1,799 narcotics and dangerous drug cases. These cases represent a variety of organized criminal groups and trafficking patterns. To illustrate the various types of investigations being handled by the FBI, the following categories of cases are set forth to provide a clearer picture of the dimension of our investigative activities:

A.	Traditional Organized Crime/La Cosa Nostra (LCN) Related...	175	39 *
B.	Non-Traditional Organized Crime.....	243	42 *
C.	Narcotics/Financial Flow.....	104	26 *
D.	International Trafficking Groups/Cartels.....	187	71 *
E.	Major Impact Significant Traffickers.....	673	113 *
F.	Corruption of Public and Law Enforcement Officials.....	81	11 *
G.	Other Narcotics-Related Matters.....	33	1 *
	TOTALS	1496	303

* Indicates the number of Task Force cases by category.

The total number of investigations currently being conducted in conjunction with DEA is 766. This latter figure points out the significance of our working relationship with DEA.

Another significant statistic bearing upon the FBI's overall effort in narcotics enforcement is the number of Title III electronic surveillances instituted in narcotics investigations. During Fiscal Year (FY) 1983, Title III electronic surveillance was instituted on 84 occasions, and extensions were obtained on 71 occasions for a total of 155 applications. During FY 1984 to date, Title III electronic surveillance was instituted on 93 occasions, and extensions were obtained 112 times during this period for a total of 205 applications. DEA has worked jointly with the Bureau in many of those cases. Additionally, it should be noted that over this two-year period, the level of manpower commitment devoted to narcotics matters has increased from slightly more than 100 Agents in Janurary 1982, to over 1,087 as of March, 1984.

We have attempted to concentrate these resources in areas consistent with the national priorities in narcotics enforcement. These areas include efforts directed against the LCN's extensive involvement in heroin importation; and the operation of outlaw motorcycle gangs throughout the United States in the manufacture and distribution of methamphetamines, PCP and other controlled substances.

These types of investigations have uncovered instances of corruption of both public and law enforcement officials and we are pursuing this corruption aspect aggressively. Extensive effort is being made on our part to develop investigations into the various international trafficking cartels that have had a major impact in both the cocaine and heroin trade in the United States. These groups include significant heroin traffickers who import directly from Southwest Asia; Western Europe, Sicily in particular; and major cocaine groups whose sources of drugs are in South and Central America. We are working with various components of the Treasury Department in an attempt to trace the flow of money from these operations in and out of this country.

On October 14, 1982, the President introduced a national program directed at organized crime and narcotics trafficking in the United States. The program known as the "Organized Crime Drug Enforcement (OCDE) Task Forces" called for the creation of drug task forces in 12 different areas of the country. These Task Forces were in addition to the South Florida Task Force that was created earlier and directed at interdiction efforts.

These new task forces, under the leadership of the Attorney General, are now fully operative and have brought to bear the combined resources of more than 1200 Agents and Prosecutors from the Department of Justice and Treasury, to combat organized crime and other major traffickers' involvement in drug abuse.

This initiative was also designed to provide for active participation by state and local law enforcement in the development of a national strategy for handling drug investigations of mutual interest.

The task force concept has received the support of the United States Congress and a substantial appropriation of funds was made available by the Congress for this undertaking. The allocation to the FBI has allowed us to replace 334 experienced Agents who were dedicated to narcotics enforcement upon receipt of concurrent jurisdiction, enhance technological capabilities and implement further automation efforts.

The emphasis is on coordination among prosecutors and investigators. For example, the task force utilizes the extensive undercover experience of DEA Agents, the expertise of the FBI in electronic surveillance and complex financial investigations, the full resources of the Internal Revenue Service in gathering evidence of unreported income and valuable intelligence information that the U.S. Customs Service receives in its day-to-day interdiction activities. The task force concept is designed to provide extensive support, where needed, from the U.S. Coast Guard and other branches of the armed services. The task forces

are extensively using automated data processing equipment, micro-computers for major investigations and sophisticated communications equipment contributed by the participating military agencies. Aircraft surveillance in these narcotics investigations is as common as ground surveillance in our normal operations.

As of May 1, 1984, the FBI is currently participating in approximately 303 OCDE task force cases and has more than 556 Agents involved, on a full-time basis, in this Program. We do not expect instantaneous results; however, over the last few months several significant indictments and convictions have been achieved as a result of this Program.

Another major effort designed to curb the impact of the narcotics problem in the United States was announced by the White House in March, 1983. This program established the National Narcotics Border Interdiction System (NNBIS) with the responsibilities of the coordination and dissemination of intelligence information directed at interdicting drugs.

The FBI is a member of NNBIS and provides a full-time liaison Agent and an intelligence analyst to each of the NNBIS regional offices. This Agent and analyst assist NNBIS by providing information to NNBIS for dissemination to appropriate Federal, state and local law enforcement agencies; facilitating the gathering and analysis of FBI intelligence information relative to interdiction matters; and, in coordination with DEA, is the point of contact for NNBIS in providing follow-up on cases within the Bureau's jurisdiction.

We hope that once NNBIS is fully established, that it will compliment the efforts of the OCDE task force and contribute measurably to the overall Federal effort directed against the narcotics problem. The additional resource represented by NNBIS' access to military participation constitutes a significant increase in the interdiction effort.

SIGNIFICANT INVESTIGATIONS

JULIO ZAVALA,

ET AL;

A case developed by the FBI's San Francisco and Los Angeles Offices illustrates the effectiveness of cooperation and coordination among many Federal and local law enforcement agencies under the OCDE Task Force concept. In this case, more than 200 kilos of cocaine were recovered while being off-loaded from a ship in the San Francisco Harbor. Twelve subjects were arrested and 5 weapons seized, including a semiautomatic shoulder weapon. A few weeks later, more than 150 pounds of cocaine were recovered while being off-loaded from a ship in the Los Angeles Harbor with 11 additional arrests. More than 200 law enforcement officers representing three local jurisdictions and OCDE Task Force agencies participated in those arrests and searches.

In excess of fifty subjects have been indicted. Twenty-nine of those indicted have entered pleas of guilty.

GUY ANTHONY DI GIROLAMO,

ET AL

In November 1981, the FBI initiated an investigation concerning the illegal activities of Guy Anthony Di Girolamo and his association with Montreal LCN boss Frank Santo Cotroni. By way of background, prior investigation established that while Di Girolamo was incarcerated at the Federal Penitentiary at Lewisburg, Pennsylvania, between 1975 and 1979, he developed a relationship with known narcotics traffickers, including Cotroni.

Pursuant to court-ordered wire intercepts, the New Haven Office of the FBI electronically intercepted three telephone numbers that were being used by Di Girolamo to contact Cotroni and his associates in this narcotics operation. As a result of these surveillances and other investigative techniques, a Federal grand jury returned a 3-count indictment on June 16th, 1983 charging Di Girolamo, his wife and their two sons with violations of Title 21, USC, Sections 841 (a)(1) (Distribution) and 846 (Conspiracy).

Additionally, on July 14, 1983, a Federal grand jury returned a 4-count indictment charging Cotroni, di Girolamo, Abbamonte and three other subjects with violations of Title 21, USC, pertaining to the failure to file the required documents relative to the transporting of currency outside the United States.

Canadian authorities have recently arrested Cotroni, and Di Girolamo was arrested by Bureau Agents in New Haven, Connecticut. Canadian and American authorities are now working out arrangements for the extradition of Cotroni.

FRANK CASTRONOVO,
GIUSEPPE GANCI, SALVATORE CATALANO,
GAETANO BADALAMENTI, ET AL

What has been described by the Attorney General as the most significant heroin investigation ever undertaken by the Department of Justice recently resulted in the indictment of over 50 subjects with additional indictments expected. On April 9, 1984, arrest and search warrants were executed in Illinois, Wisconsin, Pennsylvania, New Jersey, New York and Italy in connection with an international heroin importation conspiracy directed by the leadership of the New York-based Sicilian Faction of the Bonanno organized crime family and their counterparts, the Sicilian Mafia, located in and around Palermo, Sicily. These highly organized groups were using pizza parlors across the United States as a cover for their heroin distribution operations and extensive money laundering activities.

The warrants issued in this case were based on substantial probable cause that the principal subjects were involved in a racketeering enterprise. Search warrants were executed simultaneously and resulted in the seizure of narcotics, cash, jewelry, weapons, vehicles and voluminous narcotics and financial records. Numerous automatic weapons were seized and several weapons have been identified as the types used in professional contract killings. Additionally, several weapons were equipped with silencers and scopes. Further, bulletproof vests, flak jackets and a tranquilizer gun were part of the arsenal.

This investigation was conducted by the FBI, with significant assistance from the DEA, IRS, New York Police Department and with the close cooperation of Italian authorities. Italian officials conducted several companion investigations in Italy, resulting in the arrest of nine Italians thus far and the seizure of businesses and property valued in the tens of millions of dollars. These seizures were primarily based on the information exchanged between the FBI and Italian authorities.

The financial records gathered from this organization disclosed the magnitude of the financial empire controlled by the Badalamenti organized crime family in Sicily.

This investigation also achieved a milestone for Italian authorities in that the arrest of Badalamenti in Madrid, Spain, ended an intensive fugitive investigation by Italian authorities for their "most wanted fugitive." Badalamenti had been a fugitive from Italy since 1972.

This investigation is continuing and will focus on the organization's funneling of millions of dollars into financial institutions around the world. The investigation involved major contributions by law enforcement in the United States, Italy, France, Luxembourg, Belgium, Germany, Switzerland, Spain and Canada. More than 165 FBI Agents were committed at the height of this investigation and instituted the most extensive electronic and physical surveillances ever used in a narcotics matter.

Prosecutors and investigators are optimistic that the convictions obtained in this matter will have a serious disruptive effect on international heroin importation by Sicilian organized crime members.

I have provided an overview of the FBI's Narcotics Program and pointed out just a few of the significant narcotics investigations. I trust my remarks served to assist the Committee.

I want to thank the members of this Committee for allowing me to provide testimony on this significant topic.

I am now prepared to answer any questions you may have.

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Frank Carr of GSA on S. 2669, a Bill "To Prohibit Government Employees From Secretly Taping Conversations With Others"

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

ID # _____ CU

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Name of Correspondent: James Murr

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Subject: Statement of Frank Carr of GSA on S 2669, a bill "To prohibit Government employees from secretly taping conversations with others."

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Central	ORIGINATOR	84 06 11			
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 11, 1984

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice - Jack Perkins (633-2113)
Department of Defense - Werner Windus (697-1305)
Central Intelligence Agency
National Security Council
Department of the Treasury - Carole Toth (566-8523)

SUBJECT: Draft GSA testimony on S. 2669, a bill "To prohibit Government employees from secretly taping conversations with others."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 10:00 A.M. Tuesday, June 12, 1984. (NOTE: A hearing is scheduled for 6/13/84).

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: A. Curtis M.A. Chaffee A. Donahue C. Wirtz
F. Reeder P. Fielding C. Evangel

S. 2669 — GSA

STATEMENT OF

FRANK CARR

ASSISTANT ADMINISTRATOR, OFFICE OF

INFORMATION RESOURCES MANAGEMENT

GENERAL SERVICES ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

SENATE JUDICIARY COMMITTEE

June 13, 1984

Mr. Chairman and members of the Subcommittee, I wish to express my appreciation for the opportunity to testify today on S. 2669, a bill to prohibit Government employees from secretly taping conversations with others.

The Federal Telecommunications System (FTS) is under the control and management of the General Services Administration (GSA). Within GSA, these authorities and responsibilities have been delegated to the Office of Information Resources Management. The FTS is the primary system for use by Federal employees in the conduct of Federal government business and includes both the intercity voice network and the consolidated local telephone service. Except for specified exceptions, listening-in or recording conversations on the FTS is prohibited by GSA regulations (41 CFR 201-37.311; formerly 41 CFR 101-37.311).

The regulations permit non consensual monitoring of telephone conversations only when authorized and handled in accordance with the requirements of the Omnibus Crime Control and Safe Streets Act of 1968 and the Foreign Intelligence Surveillance Act of 1978. With respect to listening-in or recording of conversations in cases where one party has consented to the interception, exceptions to the general prohibition include, in addition to interceptions for law enforcement and counterintelligence purposes, monitoring (1) for public safety purposes, (2) to allow a handicapped employee to perform official duties, (3) to monitor the quality of agency service, or (4) with the consent of all parties to the conversation. Each of the exceptions contains limitations to ensure that monitoring is allowed only when absolutely necessary.

S. 2669 would amend Title 18, United States Code, by adding a new section covering the interception of Federal employees telephone conversations. The bill, with limited law enforcement and intelligence exceptions, prohibits the secret interception by Federal employees of any conversation to which the employee is a party. The bill makes such an interception a criminal offense by the Federal employee with a penalty of a $1000 fine, six months imprisonment or both.

We are concerned that the bill does not clearly provide for the legitimate needs of Federal agencies for limited listening-in or recording of conversations. While the bill provides that the Attorney General will issue guidelines and regulations permitting interceptions, it is not clear whether these regulations and guidelines will cover law enforcement type activities generally under the Attorney General's purview or will also encompass the mission related activities of those agencies which have legitimate needs for monitoring conversations.

GSA's regulations were structured to provide for exceptions to the general prohibition on listening-in or recording whenever the agency head or his designee determines that the legitimate needs of the agency required the conversation to be monitored. Our experience indicates that the exceptions mentioned before are essential for the agency's proper functioning. If neither this bill nor the Attorney General's guidelines and regulations are extended to cover legitimate agency missions, this bill will prevent agency employees from effectively carrying out their responsibilities.

We would like to point out that the proposed bill, although an amendment to the Omnibus Crime Control and Safe Street Act, is applicable only to Federal employees. The statute extends to all persons, not just government officials and employees. This

raises the question of why are we limiting this proposal to only Federal employees when the statute prohibits secret interceptions of communications by any person.

This concludes my prepared statement, Mr. Chairman. I would be glad to respond to questions you or other members of the Subcommittee may have.

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Mark Richard Concerning the Senate's Advice and Consent to the Ratification of Law Enforcement Treaties; Prison Transfers; Mutual Assistance; and Extradition Treaties

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

ID # CU

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Name of Correspondent: Maria Walicki

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Statement of Mark Richard concerning the Senate's advice and concent to the Ratification of Law Enforcement Treaties: prison transfers; mutual assistance; & extradition treaties.

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DRAFT

STATEMENT OF MARK M. RICHARD

DEPUTY ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

U.S. DEPARTMENT OF JUSTICE

CONCERNING THE SENATE'S ADVICE AND

CONSENT TO THE RATIFICATION OF

LAW ENFORCEMENT TREATIES

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

JUNE 14, 1984

DRAFT

Madam Chairwoman and Members of the Committee, thank you for the opportunity to appear before this Committee today to express the strong support of the Department of Justice for the six extradition treaties, two mutual assistance treaties in criminal matters, and three prisoner transfer treaties which have been transmitted to the Senate for its advice and consent to ratification.

The Criminal Division of the Department of Justice, through its Office of International Affairs, has participated directly in the negotiation of all of these treaties. I am the Deputy Assistant Attorney General responsible for that Office. Accompanying me today are Philip T. White and Michael Abbell, the Director and Associate Director of that Office.

During the first 180 years of this country's history, the broad oceans which separate the United States from most of the rest of the world largely insulated it from the problems posed by transnational criminal activity. While interstate criminal activity became of increasing importance during this period, all such activity takes place within our borders, and Congress has the power to grant the Executive and Judicial Branches sufficient authority to adequately investigate and prosecute it. Additionally, through the adoption of interstate compacts and uniform laws, such as the Uniform Criminal Extradition Act and the Uniform Act to Secure the Attendance of Witnesses from

Without a State in Criminal Proceedings, the States themselves have the power to enhance their ability to effectively combat criminal activity occurring wholly within the United States.

With the major advances in transportation, communication, and data processing technology in the past fifteen years, our ocean borders no longer provide effective insulation against transnational criminal activity. Consequently, such activity is being encountered with ever-increasing frequency. For example, in the 1960's the total number of international extradition requests to and by the United States seldom exceeded twenty per year. By 1978, the number of such requests reached 100. This year we expect to make and receive a total of more than 400 extradition requests. Based on past experience, we expect approximately one-third of these requests to relate to narcotics trafficking, one-third to crimes of violence, and one-third to white collar and other crimes.

As then Assistant Attorney General D. Lowell Jensen stated last year in testimony before the Senate Permanent Subcommittee on Investigations, on Law Enforcement Problems Arising from Foreign Bank Secrecy Laws:

> While Congress has the authority to confer adequate powers on the other branches of government to cope with the transition from purely local to interstate criminal activity because all such activity occurred in the United States, its ability to provide federal law enforcement authorities and courts with sufficient means to

> deal with transnational criminal activity is much more circumscribed. We are no longer dealing with one sovereign nation, but with many. The activities of United States investigative agents and prosecutors involved in such cases are regulated not only by United States law, but also by the laws of the countries in which all or a part of the criminal activity with which they are concerned took place.... Thus, if we are to deal effectively with such activity, we must enlist the cooperation of the affected foreign countries. No longer is the problem a purely domestic one.

The treaties before this Committee today, all of which were signed within the past twenty months, reflect the increased commitment the Departments of Justice and State are making to develop mechanisms for effective international law enforcement cooperation. They are part of a continuing program of our respective Departments to negotiate a network of treaties and agreements to greatly improve the effectiveness of this country's international law enforcement efforts -- particularly in combatting the scourge of international narcotics trafficking.

The extradition treaties before the Committee make significant substantive and procedural improvements in our ability to obtain extradition from Costa Rica, Ireland, Italy, Jamaica, Sweden, and Thailand, and to extradite fugitives from those countries who are found in the United States. Specifically, they:

-- Broaden significantly the scope of offenses for which extradition may be granted;

-- Enhance our ability to obtain extradition and, therefore, to prosecute crimes committed outside of the United States which affect this country -- e.g., conspiracies to import drugs into the United States;

-- Eliminate impediments to extradition from the application of the statutes of limitations of a requested country which were designed solely with that country's substantive and procedural criminal laws in mind; 1/

-- Require either the extradition of nationals on the same basis as non-nationals or the submission of the case for purposes of prosecution to the appropriate authorities of the requested country;

-- Provide for the temporary surrender of fugitives serving sentences in a requested country; 2/

-- Clarify extradition procedures and documentation and evidence requirements to eliminate and forestall the problems which have arisen under the present Italian and Swedish extradition treaties;

1/ Except the Swedish Supplementary Convention.

2/ Costa Rica, Italian, and Swedish treaties only.

-- Establish a direct channel between the United States Department of Justice and the appropriate agency of our treaty partner for requesting provisional arrest for extradition in situations where the continued flight of the fugitive appears likely;

-- Provide for high quality legal representation of our extradition requests and control of the litigation of foreign requests in our courts through cross representation of such requests; and

-- Establish procedures for simplified extradition when the person sought wishes to waive formal extradition.

Mutual assistance treaties in criminal matters, such as the Swiss, Dutch, and Turkish treaties, which are presently in force, and the Italian and Moroccan treaties, which are before the Committee, are particularly important to the successful investigation and prosecution of transnational criminal activity when compulsory process (e.g. a subpoena duces tecum or a warrant for search and seizure) is necessary to obtain evidence at the investigative stage or when evidence must be obtained in a manner which makes it admissible in a criminal trial in the requesting country.

By establishing Central Authorities for making, transmitting, and overseeing the execution of such requests, mutual assistance treaties greatly expedite the process of obtaining evidence from abroad in comparison to letters rogatory, which must be used when no such treaty is in force. Mutual assistance treaties, subject to specified grounds of denial, make assistance generally mandatory rather than discretionary as with letters rogatory. They also provide for the standardization of the contents of requests, procedures for facilitating the admission in evidence of foreign business records on the basis of the certification of an appropriate witness in the requested country, and guarantees that testimony can be taken in the requested country in a manner that provides effective cross-examination and thereby meets the requirements of the Confrontation Clause of the Sixth Amendment of the Constitution.

The Italian and Moroccan treaties also contain provisions on forfeiture which are intended primarily to deprive narcotics traffickers of their profits. These provisions will require legislation in the United States before they can be implemented. The Swiss treaty, although it contains no specific provisions on forfeiture, has been used by Switzerland, with the cooperation of the United States, to freeze tens of millions of narco-dollars in the Swiss bank accounts of American and Colombian drug traffickers pending proceedings for forfeiture to the Swiss canton in which such funds are located in accordance with Swiss law.

The Italian treaty also contains a provision which will enable a requesting country to obtain an order from a court in the requested country compelling the appearance of a witness from the requested country at a criminal proceeding in the requesting country. A person testifying in a requesting country pursuant to such an order will receive guarantees of safe conduct while in that country and use immunity with respect to testimony given at any criminal proceeding in that country. He also will be able to move to quash such an order as being unreasonable or oppressive. The concept on which this provision is based has been accepted uniformly at the interstate level through the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. This treaty is the first which applies this concept in the international sphere. Because our requirements on confrontation of witnesses do not exist in Italy, which admits hearsay and uncross-examined testimony in evidence in criminal proceedings, we anticipate this provision will be much more frequently used by the United States than by Italy. The Departments of Justice and State have provided the Committee with a legal analysis of the Constitutionality of this provision in the Article-by-Article analysis of the treaty submitted previously.

Finally, we believe the prisoner transfer treaties before the Committee will enhance law enforcement cooperation between the United States and its treaty partners, improve the ability of

the United States to persuade other countries to extradite their own nationals, [3/] and further efforts of United States investigative agents and prosecutors to convince prisoners to provide evidence and testimony against their criminal associates. It also will greatly lessen the hardships on the families of Americans imprisoned abroad, who often are the innocent victims of the crimes committed by their loved ones, and will improve the prospects for the successful reintegration of such prisoners into American society.

At the same time, we do not believe that prisoner transfer treaties significantly diminish the deterrent effect of the foreign prison sentences which are enforced in the United States under such treaties. It must be remembered that, under these treaties, the United States is always free to refuse the transfer of a particular offender. For example, if the Drug Enforcement Administration believes that a Class I American drug trafficker incarcerated in a foreign prison would be better able to manage the continuing operations of his organization from an American prison, the United States may refuse his transfer. Although we

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3/ The extradition treaty with the Netherlands, which entered into force in 1983, contains a nationality provision requiring both countries to extradite their nationals on the same basis as non-nationals if there is a prisoner transfer treaty in force between them. The Netherlands is a signatory to the Council of Europe convention. When both the United States and the Netherlands have ratified that convention, the provision in the extradition treaty will become effective.

have never been presented with a request to transfer from such a high level American trafficker, we have frequently rejected the transfer from the United States of foreign nationals who are Class I traffickers on the recommendations of DEA and the prosecuting United States Attorney.

For the reasons set forth above, the Department of Justice strongly urges that the Senate promptly advise and consent to the ratification of the eleven law enforcement related treaties pending before this Committee.

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR BRAD CATES
SPECIAL COUNSEL, INTERGOVERNMENTAL
AFFAIRS, DEPARTMENT OF JUSTICE

FROM: JOHN G. ROBERTS JGR
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statements of Victoria Toensing and Mary Lawton Concerning S. 2669 -- Nonconsensual Recordings on June 13, 1984

Counsel's Office has reviewed the above-referenced statements, and finds no objection to them from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Subject: Statement of Victoria Toensing concerning S. 2669 - Nonconsensual Recordings on June 13, 1984

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Author	ORIGINATOR	84/06/12			1 1
CLMT 18	Referral Note: B	84/06/12			84/06/12 COB
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DRAFT

STATEMENT OF

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMINAL LAW

CONCERNING

S. 2669 - NONCONSENSUAL RECORDINGS

ON

JUNE 13, 1984

DRAFT

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to present the views of the Department of Justice on S. 2669, a bill that would prohibit federal officers and employees from ~~secretly recording~~ intercepting a wire or oral conversation to which they are a party. The Department of Justice opposes this legislation because it would be harmful to law enforcement operations without enhancing privacy interests, and also because it unreasonably singles out federal employees for coverage while leaving unaffected ~~such secret recordings of conversations~~ identical conduct by other persons.

Capital Background

The criminal code presently covers wiretapping in some detail. Chapter 119 of Title 18, United States Code sets out a complete scheme for regulating the interception of wire and oral communications. Because Chapter 119 was originally enacted as Title III of P.L. 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, the law in this area is commonly referred to as "Title III." The term "intercept" is defined in Title III (18 U.S.C. 2510(4)) as "the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device." Hence although the word "intercept" normally brings to mind a surreptitious overhearing of a conversation without the knowledge or consent of either party to it, the above-quoted definition is so broad that it applies to any recording of a wire or oral conversation including one to which the person making the recording is a party. ~~However,~~

As you know, Title III was given long and careful consideration by the Congress. As a result, it contains two extremely important provisions which would be altered by this bill.

First, Title III (section 2511(2)(c)) states that it is not unlawful under this chapter "for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given permission or consent to such interception." Second, Title III (section 2511(2)(d)) states that it is not unlawful "for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act."

Thus, Title III (subsections 2511(2)(c) and (d)) operates to exempt the recording of a conversation without the consent of all parties to it from the prohibitions of Chapter 119 unless the person making the recording (1) is not acting under color of law and (2) records for a criminal, tortious, or other injurious purpose. Otherwise there is no federal statute that prohibits the secret recording of one's own conversations. However, the General Services Administration (GSA), pursuant to its authority to issue government-wide rules relating to the management and

disposal of government property set out in 40 U.S.C. 486(c), has promulgated regulations for the use of the Federal Telecommunications System (FTS). 41 C.F.R. 101-37.311 prohibits, with certain exceptions, the one-party consensual ~~recording~~ INTERCEPTION of conversations on the FTS or any other telephone system approved in accordance with the Federal Property and Administrative Services Act of 1949.

capital Proposed Legislation

S. 2669 would amend Chapter 119 by adding a new section 2511A making it a ~~misdemeanor,~~ crime punishable by imprisonment for up to six months and a fine of up to $1,000, for any official, employee, or agent of the United States, while acting in his official capacity, to intercept ~~-~~ that is to record -- a wire or oral communication to which he is a party, notwithstanding the provisions of 2511(2)(c) or (d).[1]

capital Discussion

We oppose the enactment of this bill because making a federal crime of this conduct would cause unnecessary burdens for law enforcement personnel. Passage of the bill would be an overreaction to the highly publicized conduct of one federal official -- which we in no way condone -- but which had nothing to do with law enforcement.

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[1] The bill provides, in lines 1 and 2 on page 2 that such a recording is an offense "notwithstanding the provisions of paragraphs (c) and (d) of section 2511." It is likely that the sponsors of S. 2669 intended that this phrase should read "notwithstanding the provisions of paragraphs (c) and (d) of subsection 2511(2)."

The Supreme Court has held that ~~the recording of~~ intercepting or recording one's own conversations is not an invasion of privacy that violates the Fourth Amendment.[2] Therefore, in our view, Title III struck the correct balance, in terms of penal sanctions, in only prohibiting THE ~~recording~~ INTERCEPTING of one's own conversations for a harmful purpose. As a practical matter, we cannot conceive of a case in which a person who ~~recorded~~ INTERCEPTED his own conversation should be prosecuted as a criminal unless the ~~recording~~ INTERCEPTION was made with a criminal or otherwise injurious intent, the very type of one party consensual ~~recording~~ INTERCEPTION covered by Title III. The ~~recording~~ INTERCEPTING of one's own conversations when done for some other purpose is simply not so serious a matter as to justify ~~the imposition of criminal penalties or~~ the diversion of any of the Justice Department's scarce investigative and prosecutive resources from other offenses.

We take this position because, contrary to the apparent premise of S. 2669, we do not believe that ~~recording~~ INTERCEPTING one's own conversation without the knowledge of another party to it involves a ~~significant~~ criminally prohibited invasion of privacy. Rather, as the Supreme Court has indicated, what is involved is, at bottom, a breach of trust that the specific words, tone, and inflection of the conversation are limited to the parties to it, and this breach of trust arguably does not even occur until ~~the~~ A recording OF THE INTERCEPTION is played for or furnished to a person not a party to the

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2 See, e.g. United States v. White, 401 U.S. 745, 749-750 (1971); Lopez v. United States, 373 U.S. 427 (1963).

conversation. Even then, the conduct of the person making and using the recording is not by any stretch of the imagination as serious as the true invasion of privacy, punishable under Title III today, that occurs when a conversation is secretly overheard or recorded without the consent of any party.

In short, we believe that any harm done by a one-party consensual ~~recording~~ INTERCEPTION (other than for a criminal or injurious purpose) is not a matter warranting the application of penal sanctions and, in the case of an employee of the Executive Branch of the Federal Government, is already adequately subject to the application of appropriate administrative sanctions.

Moreover, we object to, and do not understand the rationale for, the bill's approach of making it a crime for a federal official or employee to engage in the conduct of ~~recording~~ INTERCEPTING his own conversations, while ignoring the identical conduct by all other persons. S. 2669 would reach the ~~recording~~ INTERCEPTING of a telephone conversation by an employee in the Department of Agriculture, a Senate staff aide, or a federal judge, but would not apply to the identical conduct by, for example, a businessman, state official, or an attorney in private practice. Yet Title III, which this bill would amend, is not limited to the federal establishment. The offenses it creates, in the interests of protecting privacy, are applicable throughout the private sector and to officials and employees of State and local governments, as well as those employed by the federal government. If the proponents of S. 2669 genuinely believe, contrary to our own views, that the conduct to

be proscribed by the bill does constitute a serious breach of privacy, justifying the creation of a federal criminal remedy, then logically the bill should apply equally to all individuals and not only to those persons working for the United States and its departments and agencies.[3]

In addition to these matters of overriding concern, we also point out that S. 2669 appears to suffer from a number of drafting flaws. For example, the bill punishes whoever "violates" its provisions but fails to include any scienter requirement such as "knowingly" or "intentionally". Thus, it would apparently cover inadvertent violations, such as an official who forgot to obtain the consent of one of several parties to a multi-party conference call to make a recording.

Moreover, proposed subsection 2511A(b) provides that the section's prohibitions against the ~~recording~~ ONE PARTY CONSENSUAL INTERCEPTION of conversations shall not apply in four listed circumstances. However, the bill is silent as to whether the defendant would bear the burden of proving that his ~~making of the recording~~ INTERCEPTING THE COMMUNICATION was covered by one of these exceptions or whether the government would bear the burden of proving that his conduct was outside of any of them. Of course the defendant normally has the burden of proof of an affirmative defense. But proposed subsection 2511A(b)(3)

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3 In fact, because of the bill's limitation to persons "while acting in [their] official capacity," its prohibitions would not even apply to a federal official who secretly recorded a telephone conversation on his office telephone concerning a matter unrelated to his work, such as a personal business matter.

provides that the section does not apply to a person making the ~~recording~~ INTERCEPTION if he was acting pursuant to a regulation approved by the Attorney General or unpublished guidelines approved by the Attorney General if the Attorney General determines there is a compelling governmental interest in not making the guidelines public, and proposed subsection 2511A(b)(4) provides that the section does not apply to a person ~~recording~~ INTERCEPTING a communication constituting a criminal or tortious act or threatening to perform such an act. Requiring a defendant to prove that his conduct was within one of these exceptions would be extremely burdensome and unfair. For example it would be very difficult for a defendant to show that the Attorney General had followed all administrative requirements in approving a regulation or in deciding that an unpublished guideline would suffice. Also, requiring the defendant to prove that the communication constituted a tort, a crime, or a threat thereof would necessitate, in effect, a trial within a trial on this question. In any event, the question of burden of proof of the exceptions needs to be clarified.

Likewise, in our view, the exception allowing ~~a recording~~ A ONE PARTY CONSENSUAL INTERCEPTION of a communication "constituting" a tort or a crime is too narrowly drawn. At a minimum, it should apply in cases where the person making the recording shows that he acted in a reasonable, good faith belief that the communication he recorded constituted such an act or a threat to commit such an act.

Also, as I mentioned, the bill would apply to officials, employees, and agents of the Judicial and Legislative Branches of the government as well as of the Executive Branch. Thus, it would conflict with the present requirement of Rule 41(c)(2)(d) of the Federal Rules of Criminal Procedure that a magistrate make a recording of a call in which a federal law enforcement officer requests the issuance of a search warrant in circumstances which do not permit the presentment of a written affidavit.

We also have some concern with the provision in the bill that all regulations or guidelines permitting one-party consensual interceptions be promulgated or approved by the Attorney General. We realize that this provision was included to allow secret recordings in situations where they are reasonable, and we agree that the Attorney General is an appropriate official to issue regulations for the executive branch pertaining to ~~record-~~ SUCH INTERCEPTIONS ~~ings~~ made for purposes such as law enforcement, national security, and intelligence. However, we do not think that the Attorney General should issue or approve regulations that apply to the legislative or judicial branches. And even within the executive branch there are situations other than those relating to law enforcement, security, and intelligence in which one-party consensual recordings might also be reasonable and which are hard to foresee by the Attorney General. Therefore, we think that the head of each agency should also be allowed to issue regulations exempting ~~recordings~~ ONE PARTY CONSENSUAL INTERCEPTIONS made by employees of his or her agency. For example, a regulation allowing a recording by a handicapped or

temporarily injured person would seem reasonable in many instances.[4] On the other hand, we are aware that many handicapped persons specifically reject the idea that they should be treated differently with respect to the way they do their jobs and would oppose such a regulation. This is the type of decision made much more appropriately by the head of each agency than by the Attorney General for the government as a whole.[5]

Mr. Chairman, that concludes my prepared testimony and I would be happy to answer any questions the Subcommittee may have.

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[4] See, for example, 41 C.F.R. 101-37.311-3(d), which permits recordings by handicapped persons provided a physician has certified that the use of a recording device is required for the performance of the person's duties and the head of his or her agency has concurred with the physician's certification.

[5] Another example might be an exemption, applicable to certain agencies for recording conversations in a foreign language with which the called person was not familiar, or an exemption in particular areas such as federal enclaves, for the recording of emergency messages so as to permit an accurate response by medical or firefighting personnel.

DRAFT

STATEMENT OF

OF

MARY C. LAWTON
COUNSEL FOR INTELLIGENCE POLICY
OFFICE OF INTELLIGENCE POLICY AND REVIEW

BEFORE

THE

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMINAL LAW

CONCERNING

S. 2669 - NONCONSENSUAL RECORDINGS

ON

JUNE 13, 1984

DRAFT

Mr. Chairman and Members of the Subcommittee, as Counsel for Intelligence Policy at the Department of Justice, I would like to thank you for inviting me to testify on behalf of the Intelligence Community regarding S. 2669.

Let me begin by saying that the testimony I am about to give has been discussed and coordinated with the intelligence agencies. For the reasons stated by Ms. Toensing as well as reasons peculiar to intelligence agency operations, the Department of Justice opposes the enactment of S. 2669 as unnecessary and unreasonable. S. 2669 would impede legitimate, preexisting governmental programs that protect the security of highly sensitive and classified information and operations of government.

The intelligence agencies point to several examples of the deleterious effect that S. 2669 would have on these functions. First, it is unclear whether the exemption provided in section (b)(2)(A) for the interception of communications for security purposes would cover communications security programs conducted by the National Security Agency and the Department of Defense. As the Department of Justice explained in a letter to the House of Representatives commenting on similar legislation,

communications security monitoring involves the listening to and/or recording of communications transmitted over government telecommunications systems at the agency involved, to determine whether the users of those systems are advertently or inadvertently disclosing classified information.

Employees of agencies that conduct communications security monitoring are notified that monitoring may be taking place either by a notice on the telephone instrument itself, by notices posted on bulletin boards and the agency telephone directory, notice given during briefings of new employees, or in individual notices to the employees themselves. However, no notification is provided to persons calling in to a monitored system from outside a government agency or contractor.

If S. 2669 is enacted, these programs could be threatened, leaving the government unable to determine the effectiveness of the measures it has taken to protect against the unauthorized disclosure of classified information, as well as being unable to assess the nature and extent of the classified information available to foreign powers that might monitor United States communications systems.

The Department of Defense further objects to S. 2669 for a related reason. This legislation could impair the monitoring and recording of command and intelligence center communications. Similar in operation to communications security monitoring, the purpose of command and intelligence center communications monitoring is to determine the accuracy of orders given to and from such centers over official telecommunications systems, and the appropriateness of the responses of personnel who receive orders from the centers. The term "command and intelligence centers" refers to a broad range of Defense Department activities that include the disposition of armed forces, the implementation of the Defense Department's foreign intelligence mission, emergency police and fire reporting, air traffic control, distress calls from ships and aircraft, and the coordination of actions resulting from bomb threats and hijacking incidents. Again, the passage of S. 2669 could unnecessarily impede the operation of these vital programs.

In joining NSA and the Department of Defense in opposing S. 2669, the CIA raises additional concerns peculiar to its mandate and operations. CIA is concerned that the exemptions provided in section (b)(2) of the bill will not be sufficient to permit the continuation of ongoing CIA operations. In certain cases, security and operational functions overlap so that

operational personnel may on occasion perform security functions. S. 2669 may prohibit these personnel from crossing operational and security lines in the performance of their duties if the phrase in section (b)(2)(A), "acting within the normal course of his or her employment," is narrowly construed.

Furthermore, the terms "security, foreign intelligence, or counterintelligence function . . ." in subsection (b)(2)(B) may not be sufficiently broad to encompass all CIA's functions. Unfortunately these cannot be discussed in detail in open session.

Finally, although to my knowledge no agency currently has such a program, several agencies have considered automatically recording all telephone calls that are received by the agencies' general operators in order to accurately record threatening calls. Most agencies have telephone equipment that permits an operator to transfer a call to a security office once the operator perceives a call to be a threat. However, a threatening caller has often left the line and the details of a call are lost by the time an operator determines that a call is threatening and switches the call to security. If a call is not threatening, which most are not, an operator would simply erase the recording before the next call. S. 2669 would prohibit this type of public safety recording when the call does not clearly constitute a criminal or tortious act.

A further example is the recording of ambulance dispatches which ensures that information concerning the location of a victim is accurately received, and that emergency personnel respond adequately. Recent newspaper accounts illustrate the gravity and importance of recording these calls, yet S. 2669 would prohibit this type of recording at the federal level.

A final example is the recording of calls concerning waste, fraud and abuse in government, again in order to obtain accurate information. Unless such calls themselves constitute a criminal or tortious act, S. 2669 would prohibit their recording. This creates a substantial risk that accurate information providing leads to potential fraud cases or identities of abusers, conveyed during the call, would be lost.

Thank you, Mr. Chairman and Members of the Subcommittee; that concludes my testimony. I would be happy to respond to any questions you may have.

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