Telephones

THE WHITE HOUSE

WASHINGTON

October 12, 1981

MEMORANDUM FOR THE WHITE HOUSE COMMUNICATIONS AGENCY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Guidelines for Off-the-Air Recording of Copyrighted Broadcasts

In your meetings with Mr. Goldfield and Ms. Lawton, you raised a number of questions concerning the legality and propriety of WHCA videotaping activities. This memorandum is premised on the facts as you have related them and sets forth the legal and policy constraints which must be considered with respect to the above-referenced subject.

I. Daily News Summary - WHCA assembles an edited version of the evening news for playback within the EOB complex on closed circuit. Tapes of these summaries are retained and furnished to the Archives for future deposit in the presidential library.

Under the copyright law, special provision is made for archival or library reproduction of copyrighted material, including news presented in audiovisual form. 17 U.S.C. 108(h). This reproduction is permitted when (i) the intended use is not commercial, (ii) the library or archives will be open to the public, and (iii) the reproduction itself includes a notice of copyright. 17 U.S.C. 108(a). The ultimate archival use of these summaries meets the tests of the statute, provided you include a notice of copyright with the videotape. The fact that WHCA, rather than the Archives, does the taping goes beyond the text of the statute. However, Archives has expressed a willingness to designate WHCA as its "agent" for this purpose and such designation would clearly strengthen your position in making the tapes.

Showing the tapes on closed circuit within the complex prior to transfer to the Archives would appear to constitute a "fair use" as such term is defined in Title 17 of the U.S. Code, Section 107. Such showing (i) is confined to a limited group, (ii) deals with legitimate news, (iii) involves information broadcast without charge to the public at large, and (iv) has little, if any, commercial effect on the copyright owner. In addition, it should be noted that the networks have long been aware of the practice and have not objected.

Therefore, it appears to be both legal and proper to continue the practice of taping the news summary. We encourage you, however, to insure that the tapes acknowledge the copyright ownership of the networks. Additionally, we will pursue the formal designation by Archives of WHCA as its agent to document the basis for permitting this taping.

II. Interview and Documentary Broadcasts - WHCA records interview and documentary broadcasts on request. These are, at various times, loaned to White House staff and to federal agencies. Such tape case bears a sticker which reads:

> "This videotape is property of the United States Government. Users are warned that any subsequent duplication, distribution or misuse of content could lead to infringements of existing copyright laws. Recipients will return tape to room 553, Old Executive Office Building by ____(date)____."

These tapes are ultimately deposited with Archives.

The authority to make tapes of news broadcasts in the form of interviews or documentaries is the same as that which permits you to tape the evening news as discussed above in Section I. The legal issue which needs to be addressed with respect to this practice, however, is the practice of loaning the tapes to officials or to federal agencies.

Loaning the tapes to White House officials to view in their offices is no different than showing them in the office over closed circuit. This would appear to constitute a fair use. Permitting White House officials to take such tapes home for viewing would also appear to be permissible, similar to the practice of taking documents home to work on. We note, however, that the court in the Betamax case, (Universal City Studios, Inc. v. Sony Corporation, Inc., 480 F. Supp. 429 (C.D. Cal. 1979)) declined to pass on the permissibility of loaning off-air recordings. Thus, there is no absolute legal resolution of the issue.

In Counsel's office view, the case for the permissibility of loaning the tapes to White House officials for home viewing and for "official" purposes would be strengthened if the sticker on the tape case were reworded to read as follows:

"This video tape is property of the United States Government; its contents are the property of the copyright holder. The tape may be used for official business only. The recipient will return the tape to room 553, Old Executive Office Building by (date)."

The practice of loaning the tapes outside the EOB complex to other agencies would also fall within the area unresolved by the Betamax case. However, since the Archival provision permitting reproduction of news broadcasts stresses availability to researchers outside the recording institution, 17 U.S.C. 108(a)(2), we believe loaning news tapes to other federal agencies would be permissible once you receive the Archives' designation as its agent. The tape should, of course, bear the revised copyright sticker language noted above. Moreover, return of the tape must be insisted upon.

III. Entertainment - Currently WHCA, on request of the President or First Family, will videotape entertainment programs. We understand that in prior Administrations this was also done occasionally for White House staff.

In our judgment, recording entertainment for the President or First Family who are the official "residents" in the complex is a permissible and fair use within the holding of the Betamax case. It is, in effect, "home use."

The same rationale cannot, in our view, be justified with respect to White House staff. They do not reside here and their number is too great to fall within the Betamax concept of "family viewing." The Archival justification cannot be extended to apply to entertainment programs. The applicable provision of the copyright law, 17 U.S.C. 108(h), permits reproduction of audiovisual materials only when they constitute "news." Accordingly, videotaping entertainment for closed circuit or home viewing by White House staff may well constitute copyright infringement and request for this service should be refused.

Since tapes of entertainment do not fall within the Archival provision of the copyright law, the tapes made for the President's use should not be turned over to the Archives. They should either be retained as a tape library in the Residence or reused once they have been viewed.

I hope this memorandum responds adequately to your concerns. If there are additional questions, do not hesitate to contact Mr. Goldfield or Ms. Lawton of my staff. If WHCA receives requests for videotapes falling outside the guidelines provided here, please consult us prior to responding to such requests.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 13, 1981

MEMORANDUM FOR FRED F. FIELDING
COUNSEL TO THE PRESIDENT

FROM: H.P. GOLDFIELD
MARY LAWTON

SUBJECT: Guidelines for Off-the-Air Recording of Copyrighted Broadcasts

Please find attached hereto a memorandum which we have prepared from you to WHCA with respect to the above-referenced subject.

Attachment

MEMORANDUM

16 SEP 1981

THE WHITE HOUSE

WASHINGTON

September 8, 1981

To Ed Hickey —
your thoughts at
this time, please

9/16/81

FOR: FRED F. FIELDING

FROM: D. EDWARD WILSON, JR

SUBJECT: White House Communications Agency Activities

This memorandum provides you with an update on this matter subsequent to my August 3, 1981 memorandum on the same subject.

Mary Lawton and I met with Col. John Mage, Executive Officer of the White House Communications Agency (WHCA), on Tuesday, August 25, 1981. Col. Mage is conducting his review of WHCA activities at the direction of Ed Hickey, and is to report to his Commanding Officer and to Mr. Hickey upon the conclusion of his evaluation and review. Contrary to my previous conversations with Col. Mage, the only direction he wanted from Mary and me was as to any laws which limit WHCA activities. I informed Col. Mage that there appeared to be no statutes directly affecting WHCA functions, but that several federal laws, such as the federal elections laws and the Hatch Act, have an indirect impact on WHCA. We did not discuss any particular matters within this topic.

In summary, it appears that while Col. Mage will continue to call on us from time to time as specific legal matters arise, we are not being called upon to help him draft a policy statement with regard to WHCA activities. He will, I assume, be preparing and submitting a report on his review to Ed Hickey. At that time, I suspect that you may be contacted to discuss the report with Ed Hickey as it affects White House operations.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 1, 1981

MEMORANDUM FOR D. EDWARD WILSON

FROM: DIANNA G. HOLLAND

SUBJECT: White House Communications Agency Activities

Would you please give Fred a status report on this subject, subsequent to your August 3, 1981 memorandum?

Thank you.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 1, 1981

MEMORANDUM FOR D. EDWARD WILSON

FROM: DIANNA G. HOLLAND

SUBJECT: White House Communications Agency Activities

Would you please give Fred a status report on this subject, subsequent to your August 3, 1981 memorandum?

Thank you.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 3, 1981

Status ?

MEMORANDUM FOR FRED F. FIELDING

FROM: D. EDWARD WILSON, JR.

SUBJECT: Limits of White House Communications Agency Activities

On Friday, July 24, 1981, I met with Col. John Mage, Executive Officer of the White House Communications Agency (WHCA). Col. Mage called the meeting because he has been directed by his Commanding Officer to provide an inventory of all activities undertaken by WHCA and a commentary on whether these activities are within the scope of WHCA's duties. Col. Mage is interested in enlisting my aid because, as he puts it, he is concerned that part of his report may become public at some time, and he does not want to embarrass the President.

Of primary concern to him are expenditures connected with political trips, particularly around election time. Because the White House Communications Agency is charged with support of the Commander-in-Chief, many of the expenses it incurs during the course of a trip are fixed, regardless of whether the trip is political. However, as Col. Mage explained, the incumbent receives a tremendous amount of free audio visual services during the course of a campaign and every campaign trip. Items such as the teleprompter used by the President in his most recent political addresses is an example of an expense that perhaps should properly be borne by the Republican Party and not by WHCA.

An entirely separate area in which WHCA has become involved is that of Executive Office of the President equipment. Two examples are readily apparent here -- dictation equipment and typewriters. During the transition periods into the Carter and Reagan administrations, both looked for an organization that could quickly provide support services and turned to WHCA. The result is that in addition to all of the some 200 televisions owned and assigned by WHCA to members of the Executive Office of the President (EOP), WHCA also "owns"

most of the Lanier dictating equipment in use in the EOP. Similarly, WHCA now has a complete storeroom full of typewriters which it ordered at the request of the incoming administration. These typewriters have never been distributed because no request for them has been made to WHCA. Col. Mage, and justly so I believe, thinks that WHCA should be out of the equipment control business.

Other areas of concern involve the WHCA computers and the White House Signal Office. Col. Mage mentioned several computer programs maintained on the WHCA computers by the Office of Administration. John Rogers has agreed, for example, to transfer some of these, including the OA payroll for the White House Office, off of WHCA's computers. The status of other programs not directly related to WHCA are still under discussion. For example, all of the resumes for people seeking positions in the government are maintained on WHCA computers. There is some question as to whether WHCA should shoulder the cost of maintaining this program. NSC will, in the near future, have the total use of one computer. As Col. Mage explains it, beginning with the Carter administration, the willingness of White House staffers to use a computer has exploded and, in order to plan for future needs, WHCA is currently in the process of purchasing a new one.

At the present time the number of "off-hook" connections to White House Signal is about the highest it has ever been under any administration (approximately 450). Another example is the White House Photography Office. The amount spent on high-quality color prints by this administration far outstrips that spent by the Carter administration. Col. Mage is concerned should any accounting be asked for by Congress in connection with a request to the Department of Defense.

Col. Mage realizes that the White House budget is politically sensitive and that each administration tries to keep this budget as small as possible. At the same time, he realizes that the WHCA budget, while becoming more and more public each year, still tends to become lost in the general Department of Defense budget. His task, and he would appreciate our aid in it, is to strike a balance between what WHCA should pay and what costs should be borne by the Executive Office of the President. In this regard, you should know that WHCA's charter is extremely broad and almost any item relating to communications can be covered within it.

Recommendation

That I review the election laws as they may apply to WHCA-performed services and provide Col. Mage with broad guidelines for his use in developing limits on WHCA activities.

Approve _____

Disapprove _____

Comment _____

THE WHITE HOUSE

WASHINGTON

February 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS /s/

SUBJECT: H.R. 4620: Telephone Recording Bill

OMB has asked for our views by 10:00 a.m. today on testimony to be delivered March 1 by GSA and by Mr. Wick before the Subcommittee on Legislation and National Security of the House Government Operations Committee. The testimony concerns H.R. 4620, a bill that would elevate current GSA anti-recording regulations to the level of statute, and make recordings or transcripts of telephone conversations subject to the Privacy Act. H.R. 4620 would prohibit one-party consent recording of telephone conversations on Government telephones, or by Federal employees discussing Government business on non-government telephones, unless the recording was for Attorney General approved law enforcement or counterintelligence purposes, public safety (e.g., emergency numbers), service monitoring, or for the use of the handicapped. The bill would subject any recordings or transcripts to the Privacy Act, 5 U.S.C. § 552a, which imposes limits on use and transfer of the recordings or transcripts to other agencies, and accords those recorded a right of access to the recording. No penalties appear to be imposed for violating the anti-recording provisions themselves, although criminal penalties do exist for violating the Privacy Act, and those penalties would apply to misuse of any recordings or transcripts if H.R. 4620 were to pass.

GSA's brief testimony opposes codifying the anti-recording regulations, on the ground that dealing with the problem through regulations affords the agency more flexibility, while the statutory approach would inhibit GSA from quickly responding to new problems as they arise. GSA supports, however, making recordings and transcripts subject to the Privacy Act.

Wick's testimony is inconsistent with the GSA approach. He expresses the hope that "a codification in law" will come out of the hearings that will help others avoid his mistakes, and states that if H.R. 4620 had been in place, "I can assure you I would have been more attentive to the issue."

We have not yet received testimony from NSA, which is also scheduled to be delivered before the Subcommittee.

In light of the sensitivity of these issues, we should discuss. I can then convey comments orally to OMB.

Attachment

THE WHITE HOUSE

WASHINGTON

March 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement of Keeney on H.R. 4826, a Bill Concerning Nonconsensual Recordings of Telephone Conversations

OMB has asked for our views by close of business today on the above-referenced proposed testimony. The testimony announces the opposition of the Department of Justice to H.R. 4826, a bill that would make it a criminal offense for any public official to record a telephone conversation without the consent of all parties to the conversation. The penalty would be up to one year imprisonment and/or a fine of up to $100,000.

In his testimony Keeney argues that the bill would hamper the performance of legitimate investigative and prosecutorial responsibilities. For example, federal employees could not record bribe offers to them, fire departments could not record emergency calls, and a Congressman who inadvertently forgot to obtain consent would commit a crime whenever he recorded a constituent's call to ensure appropriate follow-through. Keeney also notes that there is no reason the bill should apply only to public officials, and only to telephone conversations. These artificial limitations simply obscure the many problems associated with criminalizing this practice.

In the last page of his testimony Keeney states that the problem can be dealt with by a regulation or executive order, and notes that an executive order on the subject is currently being discussed. I telephoned Keeney who advised me that GSA has submitted a proposed executive order on this subject to OMB. I noted that we would prefer that there be no mention of any executive order, since we had not had an opportunity to consider the matter, or review GSA's proposal. Keeney understood and agreed to refer to "administrative sanctions" as an alternative to the criminal statute rather than a regulation or executive order. The attached draft memorandum for OMB notes that this change will be made.

Attachment

THE WHITE HOUSE

WASHINGTON

March 6, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Keeney on H.R. 4826, a Bill Concerning Nonconsensual Recordings of Telephone Conversations

Counsel's Office has reviewed the above-referenced proposed testimony. It is our understanding that the last page will be revised to delete all references to an executive order. Assuming such changes are made, we have no objections.

FFF:JGR:aea 3/6/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 6, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Keeney on H.R. 4826, a Bill Concerning Nonconsensual Recordings of Telephone Conversations

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FFF:JGR:aea 3/6/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # _____ CU

# WHITE HOUSE
# CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

**Name of Correspondent:** James Muir

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

**Subject:** Statement of Keeney on H.R. 4826, a bill concerning nonconsenual recordings of telephone conversations

| ROUTE TO: | | ACTION | | DISPOSITION | | |
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| Office/Agency | (Staff Name) | Action Code | Tracking Date YY/MM/DD | Type of Response | Code | Completion Date YY/MM/DD |
| CULTURE | | ORIGINATOR | 84/03/05 | | | / / |
| CULT 18 | | Referral Note: D | 84/03/05 | | S | 84/03/06 COB |
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

**Comments:** _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

March 5, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Defense
Central Intelligence Agency
National Security Council
General Services Administration
United States Information Agency

SUBJECT: Draft Justice (Keeney) statement on H.R. 4826, a bill concerning nonconsensual recordings of telephone conversations

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

COB TUESDAY, MARCH 6, 1984.

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
F. Reeder
M.A. Chaffee
A. Donahue
M. Uhlmann
F. Fielding
M. Horowitz

1984 MAR -5 PM 5:43

DRAFT

STATEMENT

OF

JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

NONCONSENSUAL RECORDINGS - H.R. 4826

ON

MARCH 8, 1984

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to present the views of the Department of Justice on H.R. 4826, a bill which would make it a criminal offense for a public officer or employee to record a telephone conversation without the consent of all the parties to the conversation. The bill would have a substantial adverse impact on investigations necessary in law enforcement, would put an additional strain on prosecutive resources, and would criminalize a number of useful practices in other areas. For these reasons the Department of Justice opposes its enactment. While I will be primarily addressing these aspects of the bill, I note that it also raises important issues for the agencies of the federal government which engage in intelligence operations and witnesses from the intelligence community will be addressing these concerns.

H.R. 4826 would amend title 18 of the United States Code by adding a new section 1924 to prohibit persons "holding office or employment in a nonforeign government" from making sound recordings of voice conversations taking place on telephones without the consent of all parties to those conversations. There are exceptions for government officials who conduct criminal investigations or make criminal arrests, who engage in foreign intelligence and counterintelligence work, who record telephone search warrants, and who suffer from physical handicaps.

The bill represents a radical departure from present law. Subsections 2511(2)(c) and (d) of title 18 operate to exempt one-party consensual interceptions of communications from the

prohibitory portions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510 et. seq.) unless the interceptor (i.e. the person who secretly records the conversation) (1) is not acting under color of law, and (2) intercepts for a criminal, tortious, or other injurious purpose. Otherwise, there is no federal statute which prohibits the surreptitious, one-party consensual interception of communications. However, the General Services Administration, pursuant to its authority to issue rules relating to the management and disposal of government property,[1] has promulgated regulations concerning the use of the federal telecommunication system. They are found at 41 C.F.R. Part 101-37. A portion of the regulations prohibits one party consensual interceptions with exceptions very similar to those in H.R. 4826. There appears to be only administrative sanctions for violation of this GSA regulation and, consequently, no federal criminal penalty presently exists for a government employee or officer who surreptitiously records his own telephone conversations on government telephones. H.R. 4826 would make this conduct a misdemeanor punishable by one year's imprisonment and a $100,000 fine.

Our primary concern with this bill is that even with its exception for law enforcement activities, it will inhibit the performance of legitimate investigative and prosecutive responsibilities because several important activities appear to fall outside the exemptions provided. For example, although the bill

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[1] See 41 U.S.C. 486(c).

would permit law enforcement agents to record their own conversations, it would not allow federal employees acting on their own or as an informant for law enforcement officers to record conversations concerning criminal activity. Thus, a federal employee who records a threat, a bribe offer, or an obscene or harassing telephone call would violate the statute. As a matter of fact, the statute would even apply in a situation where a totally honest and dedicated employee concluded from a course of dealing with a private citizen that he was about to be offered a bribe to take some improper action and informed the FBI, if, even with an FBI agent in his office, he recorded the telephone conversation that ensued when the offeror of the bribe called with the proposal. Moreover, because such a recording would have been made in violation of law by the federal official, it might be ruled inadmissible in a federal prosecution of the person offering the bribe. Thus, that person might go free while the employee, who acted only to thwart a crime, would face a potential criminal prosecution and a $100,000 fine.

Moreover, the bill would criminalize a number of common practices employed in the area of public safety that are not connected with criminal law enforcement. For example, since the bill applies to persons "holding office or employment in a nonforeign government," it would apparently apply to state and local governments. Thus, fire departments and other emergency organizations could no longer record emergency calls as a matter of course.

In fact, the phrase "holding office or employment in a nonforeign government" is unclear but would appear to apply to a Congressman or a member of his staff who recorded a conversation with a constituent who called seeking help in resolving a complicated social security matter if the staff member forgot to obtain the constituent's consent. Since there is no intent requirement, any such inadvertent violation would be covered.[2] Another example of such an unintended violation would be failing to obtain the consent of one party to a multi-party conference call to make a recording.

Finally, the coverage of the bill causes a number of inconsistencies. The most significant is its application only to government employees acting in the course of their office or employment. If it is felt that a one-party consensual recording of a telephone conversation by a government official or employee is so harmful as to be deserving of criminal punishment, it is hard to see why businessmen and others in the private sphere who engage in the practice should not also be penalized. We perceive no justification for this singular focus on government recording in the course of employment, inasmuch as the prohibitions of Title III of the Omnibus Crime Control and Safe Streets Act currently extend to private as well as public sector "interceptions". Indeed the phrase "course of such office or employment" would appear even to make the bill inapplicable to a government

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[2] We note that there is also ambiguity in the phrase "nonforeign government" as to the coverage of such places as Puerto Rico, Guam, the Virgin Islands, and American Samoa.

official who secretly recorded a telephone conversation on his office telephone concerning a matter unrelated to his work, such as a personal business matter, since such a conversation would apparently not be in the course of his employment.

Another inconsistency is limiting the coverage of the bill to telephone recordings while ignoring other very similar conduct such as having a secretary secretly listen in on an extension telephone and take verbatim shorthand notes. The harm or unfair advantage derived from this practice is not appreciably different from making a recording. Moreover, the bill is limited to the "recording of a voice conversation taking place on a telephone." It thus would not reach the equally harmful situation of a person's secretly recording a conversation with a visitor in his office without the visitor's consent or knowledge.

In short, Mr. Chairman, we see many problems with H.R. 4826. As you know, the Congress has labored for years to develop a balanced statutory scheme in the complex and highly technical area of electronic surveillance. Three separate statutes already come into play in this area.[3] Any additional legislation must be carefully crafted to comport with that scheme and, in our view, should recognize that there is a considerable difference between the harm caused by a person who secretly records his own telephone conversation and a person who intercepts a conversation

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[3] In addition to Title III of the Omnibus Crime Control and Safe Streets Act of 1968 which I have already discussed, they are the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et. seq.), and 47 U.S.C. 605 which protects the privacy of radio communications.

without the consent of either party. While we do not in any way condone the former type of conduct, we are not convinced that a criminal penalty is the appropriate response. For example, the occasional government employee who engages in such conduct absent justifying circumstances can be dealt with adequately by regulation or an executive order. A regulation or executive order could provide the appropriate sanction, including dismissal from office, for this activity and yet offer a more flexible approach to the problem than does a criminal statute. Also, a regulation or executive order can be much more quickly altered in response to the changing needs of law enforcement and the intelligence community than could a statute. In fact, as you probably know, an executive order on this subject is presently being discussed within the Administration.

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

ID # _____ CU

# WHITE HOUSE
# CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) ___/___/___

Name of Correspondent: Branden Blum

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

Subject: Statement of John Keeney concerning nonconsensual recordings - H.R. 4826 on March 8, 1984.

| ROUTE TO: Office/Agency (Staff Name) | ACTION Action Code | Tracking Date YY/MM/DD | DISPOSITION Type of Response | Code | Completion Date YY/MM/DD |
|---|---|---|---|---|---|
| CU HOU | ORIGINATOR | 84/03/05 | | | ___/___/___ |
| CU AT 18 | Referral Note: D | 84/03/05 | | S | 84/03/07 |
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KATHY -
THIS IS THE SAME AS THE TESTIMONY SENT OVER BY OMB.

John

ACTION CODES:
A - Appropriate Action
C - Comment/Recommend
D - Draft Response
F - Furnish Fact Sheet to be used as Enclos

OSITION CODES:
Answered C - Completed
Non-Special Referral S - Suspended

OUTGOING CORRESPONDENCE:
pe of Response = Initials of Signer
Code = "A"
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Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

DRAFT

POLICY STATEMENT ON RECORDING
OF TELEPHONE CONVERSATIONS

Questions have been raised concerning the recording of telephone conversations without the express consent of all parties to the conversation. This Administration is unequivocally opposed to this practice. Although not illegal under Federal law, the taping of ostensibly private conversations without the knowledge and consent of all parties is an intrusive practice inconsistent with this Administration's commitment to protecting privacy interests valued by all citizens. Concerns to promote efficiency and ensure accuracy may justify recording a conversation in certain instances, but such concerns do not justify dispensing with the requirement that all parties to the conversation be advised that this is being done. A policy against the recording of conversations without the consent of everyone involved not only protects privacy interests but also promotes full and frank exchanges necessary to the effective functioning of government.

The Administration policy covers not only telephone conversations but other ostensibly private conversations as well. This policy does not apply to recording of conversations by law enforcement authorities for accepted law enforcement purposes, consistent with applicable guidelines and the protections of the Fourth Amendment.

DRAFT

THE WHITE HOUSE

WASHINGTON

March 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Inquiry From Congressman Brooks on Telephone Recording

As we have discussed, Mike Horowitz has asked for our views on a proposed response to the January 18, 1984 letter from Congressman Jack Brooks concerning compliance with General Services Administration regulations on telephone recording. As it turns out, Brooks wrote to OMB, CEA, CEQ, USTR, and OFPP -- not OA. OA became involved because of Horowitz's suggestions that OA respond on behalf of the entire EOP, and that OA develop regulations concerning recording on behalf of the entire EOP. I recommend that we not support these suggestions, which Ed Wilson advises do not commend themselves to OA in any event. With your approval I will advise Horowitz's office that each agency that received a letter from Brooks should respond individually, and that we should not gratuitously devise a comprehensive response for the EOP as a whole. Each agency will, of course, have to verify the substance of its response to Brooks for itself, since we have no information about the practices in question at OMB, OFPP, CEA, CEQ, or USTR.

Thanks - do - ASAP, pls

3/24

DONE

3/26 JGR

(To CECILIA WIRTZ)

To: John Roberts
From: Cecelia Wirtz

February 14, 1984

MEMORANDUM TO: Fred Fielding

FROM: Mike Horowitz /s/

SUBJECT: Representative Brooks' Inquiry Regarding Interception of Telephone Conversations

Several units within the Executive Office of the President, Office of the U.S. Trade Representative, Council of Economic Advisers, Council on Environmental Quality, the Office of Federal Procurement Policy and the Office of Management and Budget, received the attached letter from Jack Brooks regarding our compliance with the GSA regulations on the use of listening-in or recording of telephone conversation (41 CFR 101-37.311). We have prepared an attached draft response that may be of use to other EOP agencies.

Although none of the EOP agencies have used recording devices for the purpose of intercepting telephone conversations, all have failed to adopt internal guidelines as required by the GSA regulation. I recommend that the Office of Administration develop an EOP policy document which can be reviewed by your office and each agency unit for later adoption. Ed Wilson, OA General Counsel, and Cecelia Wirtz of my staff, are now working on that project.

At this time, I recommend that we simply respond to Brooks by indicating that there has been no listening-in or recording of telephone conversations and that we say nothing of ongoing work to develop a regulation.

Attachments

cc: Geoffrey Carliner, CEA
Dinah Bear, CEQ
Claud Gingrich, USTR
John Giacomini, USTR
Ed Wilson, OA
Candy Bryant, OMB
Don Sowle/Pat Szervo, OFPP

DRAFT

Honorable Jack Brooks
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Brooks:

This is in response to your letters to David Stockman, Director of the Office of Management and Budget, and to Don Sowle, Administrator of the Office of Federal Procurement Policy, in which you requested information regarding compliance with the General Services Administration's (GSA) rules governing the use of listening-in or recording devices to intercept telephone conversations.

We have reviewed our records for 1983, and can report that:

- OMB has not installed equipment or authorized the installation of such equipment for the purpose of listening-in or recording of telephone conversations.
- There were no written determinations approved in 1983 in accordance with 41 CFR Section 101-37.311-4(a).
- No requests for approval or installation of such devices were submitted to GSA during 1983.
- As there were no listening-in or recording devices installed subject to the GSA regulation, the re-evaluation program described in 41 CFR 101-37.11(f) was not required.

Sincerely,

Joseph R. Wright
Deputy Director

DRAFT

NINETY-EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515





January 18, 1984

The Honorable David A. Stockman, Director
Office of Management and Budget
252 Old Executive Office Building
17th and Pennsylvania Avenue
Washington, D.C. 20503

Dear Mr. Stockman

Recent public reports indicate that high level government officials have allegedly listened in on or recorded telephone conversations without the knowledge or consent of all parties involved. Besides being improper and highly unethical, such activities may also be in violation of various Federal or State laws, regulations or existing tariffs, which were designed specifically to prevent such abuses from occurring. Notwithstanding the strong actions taken by the Congress over the last decade, it now appears there may be a reduced awareness by government officials as to their ethical and legal responsibilities in this area.

As you know, the General Services Administration (GSA) has promulgated regulations to ensure that these improper or illegal activities do not occur. To assist the Committee in its investigation of this matter, I request that you forward to this Committee, within 15 days, the agency instructions for implementing GSA regulation 101-37.311, including the supervisory controls required under 101-37.311-3(f). Further, I request that you provide the following documentation which is required to be maintained by your agency under 101-37.311-4. This includes: (1) all written determinations approved in 1983 by the agency head in accordance with 101-37.311-4(a); (2) all service personnel who were designated in writing during 1983 in accordance with 101-37.311-4(b); (3) all written agency policies containing the minimum instructions set forth in 101-37.311-4(b); (4) all requests to GSA for approval and installation of listening devices during 1983, and (5) a copy of the agency program required by GSA to reevaluate at least every two years the need for each determination authorizing the listening in on or recording of telephone conversations.

Your full cooperation in the Committee's investigation of this matter is greatly appreciated. With best wishes, I am

Sincerely,

JACK BROOKS
Chairman

14514

84/01/23

OFFICE OF MANAGEMENT AND BUDGET
CORRESPONDENCE CONTROL

OMB CONTROL NO: 17514
CORRESPONDENT : CHAIRMAN JACK BROOKS
ORGANIZATION : RPTX
DATE OF CORR. : 84/01/18

FOR ACTION : OC

INFO : DO AD/LA DADA
OTHER REF :

COMMENTS :

INSTRUCTIONS: PREPARE REPLY FOR DIRECTOR'S SIGNATURE
CARBON COPY TO OMB LEGISLATIVE AFFAIRS OFFICE

**********
* RESPONSE DUE TO DIRECTOR'S OFFICE *
* BY 84/02/06 *
**********

SUBJECT: INSTRUCTION RECORD TELEPHONE ACTIVITY INVESTIGATION

REMARKS:

| | PREPARED | CLEARED | CLEARED | CLEARED | CLEARED | CLEARED |
|---|---|---|---|---|---|---|
| SURNAME AND DIVISION | | | | | | |
| INITIALS AND DATE | | | | | | |