



U.S. Department of Justice

Office of Intelligence Policy and Review

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Washington, D.C. 20530

1987

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1987 file
87-08
L.S.C.

MEMORANDUM FOR ELIZABETH R. RINDSKOPF
General Counsel
National Security Agency

Re: Attorney General Approval of Emergency
Use of Selection Terms

At approximately 6:00 p.m. on [redacted] 1987, the Attorney General approved the entry by NSA into its [redacted] of the names of two United States persons who are employees of the [redacted]. This approval was based on information provided by [redacted] of your staff to the effect that a reliable intelligence source had reported that these two individuals had been targeted for assassination by the [redacted]. Further, it was not possible to obtain the consent of these two individuals because they were away from their station [redacted] and could not be contacted immediately. It appeared to be imperative to act quickly to acquire any communications abroad by those involved in planning these assassinations before the [redacted] personnel returned to their station.

Based on these circumstances, the Attorney General authorized NSA to continue to select foreign communications concerning these two individuals until their consent could be obtained, the latter to be accomplished in an expeditious manner. The Department of Defense Procedures governing the activities of DOD Intelligence Components That Affect United States Persons provide a clear basis for collecting as to the first individual, who is outside the United States and whose life or physical safety may be reasonably believed to be in imminent danger. DOD 5240.1-R, Proc. 5, Pt. 2, § D.l.b.

Classified by Derivative: SIGINT Annex
Declassify On: OADR.

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As to the second individual, who is inside the United States, collecting communications to or from him would violate the Foreign Intelligence Surveillance Act and raise significant Fourth Amendment issues. However, it appears to be extremely unlikely that this individual will be engaging in any international or foreign communications. Further, strict minimization will be applied to ensure no use is made of any communications to or from this individual that may be obtained incidentally. These factors alleviate the FISA and Fourth Amendment issues and, since the NSA classified annex contains no relevant provisions, require resort to the general provisions of the DOD Procedures. Unfortunately, however, those Procedures provide no direct authority by which this collection may be authorized. Given the unique and urgent circumstances of this case, where the focus is the communications of others outside the United States who may be discussing violent acts against this individual, selecting communications concerning the individual may be justified by utilizing the implication of consent that underlies the emergency provision of the DOD Procedure as if this individual were also outside the United States.



MARY C. LAWTON
Counsel for Intelligence Policy
Office of Intelligence Policy and Review

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