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THE WHITE HOUSE

WASHINGTON

August 24, 1979

Vertical File
4881
Presidential Directives
Box 100

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MEMORANDUM FOR:

THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE CHAIRMAN, JOINT CHIEFS OF STAFF
THE DIRECTOR OF CENTRAL INTELLIGENCE

SUBJECT: Electronic Surveillance and Physical Searches Conducted by the Department of Defense Outside the United States for Foreign Intelligence Purposes (C)

I hereby amend Presidential Directive/NSC-19 to include a delegation of power to military judges to authorize electronic surveillance and physical searches directed against United States persons who are outside the United States. The military judges included in this delegation are those who are authorized by 10 U.S.C. section 826 to preside at general courts-martial and who are designated by the Secretary of Defense to exercise this delegation of power. The Secretary of Defense may designate only military judges who are located outside the United States. Military judges may exercise this power only through issuance of warrants and only with respect to persons who are subject to the Uniform Code of Military Justice. 10 U.S.C. section 802, articles 2(1)-(10). Warrants may be issued only on a finding of probable cause that the United States person is an agent of a foreign power and only when necessary to obtain significant foreign intelligence or counterintelligence. Physical searches may entail unconsented entry into real or personal property but shall use the minimum intrusion necessary to obtain information. This amendment also empowers military judges to approve surreptitious and continuous monitoring as defined in Executive Order 12036 under the same terms applicable to electronic surveillance. (S)

Jimmy Carter

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Classified by Harold Brown
Review on August 15, 1985

~~Declassify on 10000~~

Declassified/Released on 9/1/92
under provisions of E.O. 12356
by S. Tilley, National Security Council

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

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August 25, 1977


MEMORANDUM FOR

The Vice President
The Secretary of State
The Secretary of Defense
The Attorney General
The Director of Central Intelligence
The Chairman, Joint Chiefs of Staff

SUBJECT: Presidential Directive/NSC-19

Attached is a copy of PD/NSC-19, Electronic Surveillance Abroad and Physical Searches for Foreign Intelligence Purposes.

This PD is to be held closely and distributed only to those officers in your department or agency with a strict need to know.


Christine Dodson
Staff Secretary

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~~Classified by: Z. Brzezinski~~

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August 25, 1977

Presidential Directive/NSC-19

TO: The Vice President
 The Secretary of State
 The Secretary of Defense

ALSO: The Attorney General
 The Director of Central Intelligence
 The Chairman, Joint Chiefs of Staff

SUBJECT: Electronic Surveillance Abroad and Physical
 Searches for Foreign Intelligence Purposes (C)

I have reviewed the issues raised in the report of the Attorney General's PRM/NSC-11 Subcommittee to the SCC with respect to warrantless electronic surveillance directed against United States persons abroad, and warrantless physical searches (a) of certain premises or property within the United States and (b) of the premises or property of United States persons abroad. It is my understanding that:

- These searches and surveillances would be conducted solely for foreign intelligence and counterintelligence purposes, including intelligence on international terrorism.
- It is the Attorney General's view that the President has the constitutional authority to (a) approve warrantless electronic surveillance directed against Americans abroad who are agents of foreign powers and (b) approve reasonable warrantless physical searches directed against foreign powers or their agents in the United States and against Americans abroad who are agents of a foreign power. Since, however, no court has ever recognized this authority, the Attorney General's opinion is subject to judicial challenge.

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Classified by: Z. Brzezinski

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It is clear to me that reasonable physical searches and electronic surveillances for intelligence purposes necessary to the security and well-being of our nation should be authorized. The invocation of inherent Presidential powers to authorize such searches and surveillances, however, would subject such searches and surveillances to doubt and question not only by those who are concerned about the proper role of our intelligence agencies but also by those who must carry out the searches often at grave risk to themselves. Therefore, it is my firm belief that this Government's clandestine intelligence activities--and especially those which impact on the rights of Americans--should to the maximum extent possible be legitimized and affirmed by the Congress. Such affirmation is essential not only to reassure the public that our intelligence activities are conducted in a legal and proper manner but also as a policy statement that these activities are necessary and desirable for the security and well-being of the American people. Therefore, I direct that the Department of Justice, in coordination with the Departments of Defense and State, and the Central Intelligence Agency, draft for SCC review and my approval proposed legislation with respect to electronic surveillance abroad and physical searches both in the United States and abroad.

I remain concerned, however, that if compelling situations arise prior to such time as this legislation might be enacted, it may be necessary to the security and well-being of this nation to engage in physical searches in the United States and physical searches and electronic surveillance abroad directed against United States persons. Therefore, pending the enactment of legislation in this area, I delegate the power to the Attorney General and his successors in office, to approve, without prior judicial warrant, electronic surveillance directed against United States persons abroad.

This power and authority shall be exercised pursuant to the following standards and procedures:

- (1) A warrantless, non-consensual electronic surveillance directed against a United States person abroad will, except in emergency situations, only be authorized upon the personal approval of the Attorney General (or Acting Attorney General), upon the request of the head of the Department or Agency desiring the electronic surveillance.

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(2) Approval will not be granted unless the Attorney General (or Acting Attorney General) has satisfied himself that:

- (a) the requested electronic surveillance is necessary to obtain significant foreign intelligence or counter-intelligence information;
- (b) the United States person who is the target of the electronic surveillance is an agent of a foreign power; and
- (c) the minimum physical intrusion necessary to obtain the information sought will be used.

(3) Where necessary, the request and authorization may be oral, but shall be followed by written confirmation as soon as possible.

(4) No electronic surveillance directed against a United States person shall continue for over 90 days without the written authorization of the Attorney General (or Acting Attorney General).

(5) In addition, I authorize the Attorney General to adopt procedures governing the conduct of electronic surveillance abroad, whether or not directed against a United States person, to ensure its legality and propriety, which procedures shall provide for authorization in emergency situations and for the minimization of the acquisition, retention, and dissemination of information concerning United States persons which is not necessary for legitimate Government purposes.

I have already in my February 3, 1977 memorandum authorized and delegated the power to the Attorney General to approve the minimum necessary trespass or intrusion to implant an electronic surveillance device in the United States. I hereby delegate the power to the Attorney General to adopt procedures concerning, and to approve, certain warrantless physical searches of (a) the real or personal property of foreign powers in the United States, and (b) the personal property of persons in the United States or United States persons abroad who are agents of foreign powers. These physical searches shall be limited to (a) a search of personal property which is in the custody of the United States or its agents, or (b) a search of the premises of a foreign power by an agent of the United States who is lawfully on the premises, which extends beyond those specific areas to which the agent is entitled to have access.

This power and authority shall be exercised pursuant to the following standards or procedures:

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- (1) A physical search of the property or premises of a foreign power in the United States will only be authorized pursuant to procedures adopted by the Attorney General to insure its reasonableness, which procedures shall not authorize any breaking or non-consensual entering of any real property.
- (2) (a) A physical search of the personal property of persons in the United States or a United States person abroad will, except in emergency situations, only be authorized upon the personal approval of the Attorney General (or Acting Attorney General), upon the request of the head of the Bureau or Agency desiring the search.
 - (b) Approval to conduct such a search will not be granted unless the Attorney General (or Acting Attorney General) has determined that:
 - (i) the requested search is necessary to obtain significant foreign intelligence or counter-intelligence information;
 - (ii) the person whose property is to be searched is an agent of a foreign power;
 - (iii) the minimum physical intrusion necessary to obtain the information will be used; and
 - (iv) the search does not involve the breaking or non-consensual entering of any real property and any container to be searched is, at the time of the search, in the lawful custody of the United States or its agents.
 - (c) Where necessary, the request and authorization may be oral, but shall be followed by written confirmation as soon as possible.
- (3) I am not delegating the authority to make any physical search within the United States or of the property of United States persons abroad for foreign intelligence or counterintelligence purposes that involves the breaking or non-consensual entering of any real property or the search of any personal property which is not in the custody of the United States or its agents, except in emergency situations where a person's life is reasonably believed to be in imminent danger.

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- (4) In addition, I authorize the Attorney General to adopt procedures governing the conduct of physical searches authorized herein to ensure their legality and propriety, which procedures shall provide for authorization in emergency situations and for the minimization of the acquisition, retention, and dissemination of information concerning United States persons which is not necessary for legitimate Government purposes.

Nothing in this directive shall be deemed to authorize the warrantless opening of mail in United States postal channels, nor shall anything in this directive be deemed to affect PD/NSC-9.

Jimmy Carter

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