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OGC

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OGC 78-7854
27 November 1978

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : [redacted] STAT
Assistant General Counsel

SUBJECT : S.2525--Proposed Intelligence Charter Legislation - Title II, SCC Issue Paper

Attached, for your information, are copies of the "finishing touches" to the SCC Issue Paper concerning Title II which you received last week, and of a summary of the position taken by Agency components as to the various issues in that paper. Included in the attachments is an introductory statement to the Issue Paper, replacements for issue statements II.1. and V.7., a set of the charter "principles" referenced in the introductory statement as Tab A to the Issue Paper, and a copy of the comments of the Senate Select Committee on Intelligence similarly referenced as Tab C. STAT

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Attachments

cc: [redacted]

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REPORT TO THE SCC
BY THE CHARTER LEGISLATION WORKING GROUP

Re: Title II of S. 2525

General Introduction

The declared purposes of Title II of S. 2525, as drafted, are to provide statutory authorizations for intelligence activities directed against U. S. persons or conducted within the United States, to establish "comprehensive statutory standards and procedures" for the conduct of such activities, to define the role of the Attorney General in this regard, and to provide remedies for persons whose rights may be violated by such activities. Given these purposes, and in order to more accurately assess the full impact of the bill on intelligence activities, it was the working group's view that all provisions in S. 2525 that are in the nature of restrictions on intelligence activities, wherever they appear, should be combined, and that restrictions which appeared to be related in nature should be considered together, in Title II.

That view accounts for the fact that this report deals with not only Title II of S. 2525 (Intelligence Activities and Constitutional Rights) in its entirety, but also those other portions of S. 2525 that have not previously been considered by the SCC, namely, (a) Part D of Title I (Procedures, Restrictions and Prohibitions Relating to Intelligence Collection Activities and Special Activities), and (b) Title III (Foreign Intelligence Surveillance), except for Part B (relating to electronic surveillance within the U. S.) that has been omitted from consideration here in light of the recent enactment of P.L. 95-511, the Foreign Intelligence Surveillance Act of 1978. It also accounts for the fact that the sequence of provisions in the working group revision of Title II does not match the sequence of provisions in Title II as drafted.

This report consists of an issue paper, keyed to the working group's reorganized version of Title II, and four attachments. Attached at Tab A is a copy of the principles approved by the President to guide the review of S. 2525; at Tab B is the working group revision of the relevant provisions of S. 2525; at Tab C is a copy of comments recently furnished by the SSCI staff with respect to the working group revision; and at Tab D is a copy of the relevant provisions of S. 2525, including not just Title II but also the relevant portions of Titles I and III.

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The working group revision at Tab B is not a consensus document except in a very limited sense, and it does not represent a working group recommendation to the SCC. While each of the revision's departures from S. 2525 is favored by at least some of the members of the working group, and while all members of the group agree that S. 2525 is far too detailed and restrictive and that the revision is preferable in terms of its organization, no member favors the revision in every respect. Indeed, some members believe that in many respects the revision departs too far from S. 2525, other members believe that in other respects it does not depart far enough, and some argue that the basic form adopted in the working group revision is not desirable.

In this latter regard, while the working group could have discarded S. 2525 completely and started from scratch, that approach was rejected for several reasons: first, S. 2525, albeit overly detailed to the point of resembling a tax code in its complexity, seemed to offer a workable framework many of the essentials of which could be usefully preserved; second, an approach that retained at least the general contours of S. 2525 seemed to offer a better chance of acceptance by the Congress, and third, proceeding through the S. 2525 provisions seriatim, adding, deleting, or modifying along the way, appeared to be the most thorough means of confronting the myriad of significant substantive and policy issues which are raised by the bill.

Having decided to work within the S. 2525 framework rather than to make a fresh beginning, the working group then proceeded to consider the specific provisions of S. 2525 and to discuss alternatives that would have the dual effect of simplifying the legislation and eliminating objectionable restrictions. This process was greatly complicated by the fact that the provisions in question are intended to be applicable generally to a broad range of intelligence agencies, making it necessary to accommodate within the language selected for the various authorities and limitations a wide variety of diverse interests, functions and responsibilities.

The remainder of this report is made up largely of statements of the issues that emerged from this process. These issues are grouped under the following headings, corresponding to the major headings in the working group's reorganization of Title II: I -- Purposes, Definitions, and Attorney General Responsibilities; II -- Authority to Collect, Retain and Disseminate Information; III -- Electronic Surveillance Outside the United States and Physical Searches; IV -- Relationships with Persons and Organizations; V -- Procedural

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Requirements; VI -- Remedies. Each group of issue statements is accompanied by a separate introduction summarizing the principal points of difference between S. 2525 and the working group revision. In addition to a statement of the issue, a comparison of the manner in which the subject is treated in S. 2525 and the working group revision, and a brief description of the relation between the subject matter and Executive Order 12036 and other relevant Presidential guidance, each issue statement attempts to explain in its description of the competing points of view the alternatives that were developed during the working group discussions.

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