



U.S. Department of Justice

Office of Legal Counsel

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Office of the  
Assistant Attorney General

Washington, D.C. 20530

MAY 24 1984

## MEMORANDUM FOR THE ATTORNEY GENERAL

The attachment to this memorandum discusses and evaluates the constitutionality under the Fourth Amendment of certain highly classified electronic surveillance activities conducted by the National Security Agency ("NSA") which fall outside the scope of the Foreign Intelligence Surveillance Act of 1978. Under Executive Order 12333, the President has delegated to you exclusive authority to "approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes . . . ." During the prior Administration, this Office was asked by the Attorney General to evaluate the constitutionality under the Fourth Amendment of certain NSA electronic surveillance activities in order to assist him in determining whether to approve those activities. [REDACTED]

[REDACTED] Meanwhile, in light of the issuance of Executive Order 12333, NSA proceeded to draft revised procedures to govern the activities discussed in the prior memorandum. This Office, with the concurrence of the Office of Intelligence Policy and Review, decided that a de novo analysis by this Office of NSA's activities and its new draft procedures would best serve your needs in exercising your authority under Executive Order 12333.

NSA has, pursuant to that Executive Order, submitted for your review through the Office of Intelligence Policy and Review draft procedures governing certain of its activities whose constitutionality is extensively discussed in the attachment. The Office of Intelligence Policy and Review is now working with NSA to revise a portion of the NSA draft procedures to make them consistent with the analysis presented in the attachment. Subject to those revisions, this Office concludes that NSA's procedures for conducting the activities evaluated in the attachment are consistent with the constitutional principles embodied in the Fourth Amendment.

NOTE: ATTACHMENT ON FILE  
WITH OIPR.

*Theodore B. Olson*  
Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel

TOP SECRET/CODE WORD MATERIAL ATTACHED.

When separated from classified attachment  
this document is unclassified.