



Department of Defense DIRECTIVE

NUMBER 5505.9

April 20, 1995

IG, DoD

SUBJECT: Interception of Wire, Electronic, and Oral Communications for Law Enforcement

- References:
- (a) DoD Directive 5200.24 "Interception of Wire and Oral Communications for Law Enforcement Purposes," April 3, 1978 (hereby canceled)
 - (b) Sections 2510-2521, 2701-2711, and 3121-3127 of title 18, United States Code
 - (c) DoD 0-5505.9-M, "Procedures for Wire, Electronic, and Oral Interceptions for Law Enforcement," authorized by this Directive
 - (d) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
 - (e) through (k), see enclosure 1

1. PURPOSE

This Directive:

1.1. Replaces reference (a) to update policy and responsibilities governing the interception of wire, electronic, and oral communications for law enforcement under reference (b).

1.2. Provides guidance for the internal operation of the Department of Defense, but is not intended to, does not, and may not be relied on to create any right or benefit, substantive or procedural, enforceable by law against the United States or the Department of Defense, or its officers, employees, or agents.

1.3. Authorizes publication of reference (c) in accordance with reference (d).

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

2.2. Applies to the interception of wire, electronic, and oral communications for law enforcement by the DoD Components.

2.3. Does not apply to the following:

2.3.1. The interception of wire, electronic, and oral communications for counterintelligence or foreign intelligence, including information on the foreign aspects of narcotics production and trafficking.

2.3.2. The activities of the National Security Agency and the cryptologic elements of the Military Departments.

2.3.3. Telephone monitoring and recording authorized under DoD Directive 4640.1 (reference (e)).

2.3.4. Communications security activities authorized under DoD Directives C-5200.5 and 4640.6, and DoD 5240.1-R (references (f) through (h)).

2.3.5. Interceptions arising from technical surveillance countermeasures surveys authorized under DoD Instruction 5240.5 (reference (i)).

2.3.6. Installation of a pen register or trap and trace device on electronic communications lines on DoD property or under DoD jurisdiction for non-law enforcement activities.

2.3.7. Interceptions arising from overt video or audio equipment installed in marked patrol vehicles.

2.4. Does not affect Status of Forces or other specific agreements that may

otherwise limit implementation in any particular geographical area abroad.

3. DEFINITIONS

Terms used in this Directive are defined in DoD 0-5505.9-M (reference (c)).

4. POLICY

It is DoD policy that:

4.1. The Military Departments, the Defense Protective Service (DPS), and the IG, DoD, are authorized to procure and maintain equipment primarily designed for interception of wire, electronic, and oral communications, pen registers, and trap trace equipment. Use of such equipment for law enforcement is prohibited unless done in accordance with the procedures in reference (c), and Sections 2510-2521, 2701-2711, and 3121-3127 of 18 U.S.C. (reference (b)).

4.2. Nonconsensual interception of wire, electronic, and oral communications for law enforcement are techniques that shall not be considered as substitutes for normal investigative procedures. Nonconsensual intercepts shall be requested only in those circumstances where it is demonstrated that the information is necessary for law enforcement and cannot otherwise be reasonably obtained.

4.3. The Secretaries of the Military Departments, or designees, the IG, DoD, or designee, and the Director, Washington Headquarters Services (WHS), shall authorize consensual interception of wire, electronic, and oral communications for law enforcement with legal approval in conformance with the procedures and restrictions in DoD 0-5505.9-M (reference (c)). For the Defense Criminal Investigative Organizations (DCIOs), the approval level shall not be delegated to an official below the head of the organization.

4.4. The only DoD Components authorized to intercept wire, electronic, and oral communications, and to install or use pen register and trap and trace devices for law enforcement, as specified in reference (c) and in accordance with Section 2510(7) of reference (b), are as follows:

4.4.1. The criminal investigators of the U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal

Investigative Service (DCIS).

4.4.2. The DPS is authorized to employ only consensual interception techniques listed in reference (c), section A. of Chapter 1, after legal approval and approval by the Director, WHS. The authorization is limited to the extent that the interception techniques pertain to the enforcement of laws for the protection of persons or property under jurisdiction of the DPS.

5. RESPONSIBILITIES

5.1. The Inspector General of the Department of Defense, under DoD Directive 5106.1 and Pub. L. No. 95-452 (1978) (references (j) and (k)), shall:

5.1.1. Monitor implementation of procedures in reference (c).

5.1.2. Review the reports required by reference (c), ensure that they are in compliance with the instructions therein, and forward them to the Attorney General.

5.2. The General Counsel of the Department of Defense shall:

5.2.1. Provide advice to the Secretary of Defense and the IG, DoD, on all aspects of the implementation of this Directive.

5.2.2. Provide such assistance, as required, in obtaining authority to conduct activities authorized under DoD 0-5505.9-M (reference (c)).

5.3. The Director of Administration and Management, Office of the Secretary of Defense, through the Director, WHS, shall ensure that the head of the DPS establishes procedures for prompt processing of requests to conduct, and the authorization in emergency and nonemergency situations for consensual wire, oral, and electronic communication interception in compliance with reference (c).

5.4. The Secretaries of the Military Departments and the Inspector General of the Department of Defense shall, in their respective areas of responsibility, ensure that the heads of the DCIOs establish procedures in compliance with reference (c) for prompt processing of requests to conduct, and the authorization in emergency and nonemergency situations for, the following:

5.4.1. Wire, oral, and electronic communication interception.

5.4.2. Pen register device use and installation.

5.4.3. Trap and trace device use and installation.

5.5. The Secretaries of the Military Departments; the Inspector General of the Department of Defense; and the Director of Administration and Management, Office of the Secretary of Defense, through the Director, WHS, in addition to the responsibilities in subsections 5.3. and 5.4., above, shall, in their respective areas of responsibility:

5.5.1. Designate one or more senior officials in their respective DoD Component responsible for matters covered by reference (c).

5.5.2. Designate officials authorized to approve activities undertaken under reference (c).

5.5.3. Furnish to the IG, DoD, the list of designations made under paragraphs 5.5.1. and 5.5.2., above.

5.5.4. Ensure that the heads of the DCIOs and the DPS promulgate regulations specifying special storage and access requirements for applications, orders, recordings, and other records of information obtained through interception activities. The regulations shall include provisions for storage and access while the case is active and after the case has become inactive when the records have been transferred to a centralized facility.

5.5.5. Promulgate regulations, policies, and procedural controls and designate responsible officials for both internal and external dissemination of the information described in paragraph 5.5.4., above. Procedures shall include sufficient records reflecting dissemination of that information.

5.5.6. Ensure the submission of timely reports, as required by DoD 0-5505.9-M (reference (c)).

5.5.7. Ensure that the indices and other information required by reference (c) are established and maintained.

5.5.8. Ensure that controls are established for procurement and maintenance of interception equipment, as required by reference (c).

5.5.9. Ensure that personnel involved in the activities and techniques discussed in reference (c) are trained properly in applicable requirements and controls, including awareness of the criminal and civil sanctions for the illegal interception of wire, electronic, and oral communications.

5.6. The Secretaries of the Military Departments, in addition to the responsibilities in the subsections 5.4. and 5.5., above, shall:

5.6.1. Ensure that military judges are designated by the Judge Advocate General in the respective Military Department to carry out appropriate functions assigned under reference (c).

5.6.2. Ensure that copies of all promulgated issuances and revisions are provided to the IG, DoD.

6. INFORMATION REQUIREMENTS

The annual and quarter-annual reporting requirements in Chapter 2 of DoD 0-5505.9-M (reference (c)) have been assigned the following Report Control Symbols (RCSs):

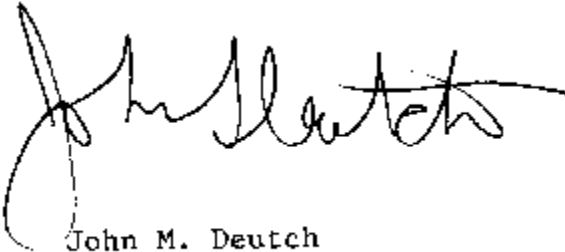
6.1. DD-IG(A)1901, for paragraph 5.1.1.

6.2. DD-IG(A)1907, for paragraph 5.1.2.

6.3. DD-IG(Q)795, for paragraph 5.1.3.

7. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in black ink, appearing to read "John M. Deutch". The signature is fluid and cursive, with a large initial "J" and "M".

John M. Deutch
Deputy Secretary of Defense

Enclosures - 1

1. References

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 4640.1, "Telephone Monitoring and Recording," January 15, 1980
- (f) DoD Directive C-5200.5, "Communications Security (COMSEC) (U)," April 21, 1990
- (g) DoD Directive 4640.6, "Communications Security Telephone Monitoring and Recording," June 26, 1981
- (h) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, authorized by DoD Directive 5240.1, April 25, 1988
- (i) DoD Instruction 5240.5, "(TSCM) Survey Program," May 23, 1984
- (j) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
- (k) Public Law 95-452, "Inspector General Act of 1978," October 12, 1978 (Appendix 3 of title 5, U.S.C.)