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APPROVED
JAN 2-1975

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: January 4, 1975

December 28, 1974

Posted 1/3
to archive 1/3

MEMORANDUM FOR

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill H.R. 15173
To Extend the National Wiretap Commission

Attached for your consideration is H.R. 15173, sponsored by Representative Kastenmeier and three others, which:

- Extends the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance until January 31, 1976;
- allows the Commission to hold closed meetings by a majority vote, and exempts records and transcripts of the Commission's closed meetings from disclosure pursuant to the Freedom of Information Act; and
- allows the Commission to listen to tapes produced by illegal wiretaps notwithstanding the prohibition in the Federal Criminal Code.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 15173 (Tab B).



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 8 3 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 15173 - To extend the National
Wiretap Commission
Sponsors - Rep. Kastenmeier (D) Wisconsin and three
others

Last Day for Action

January 4, 1975

Purpose

To extend until January 31, 1976 the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance, and for other purposes.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

No objection

Discussion

The National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance was originally established by the Omnibus Crime Control and Safe Streets Act of 1968. The purpose of the Commission was to conduct a comprehensive study and review of the operation of the Federal wiretapping law during its first six years and to review the operation of various State laws on the subject. The membership of the Commission was not complete until early 1974. Accordingly, the two-year life presently authorized for the Commission will expire on January 19, 1975 before the work of the Commission can be completed.

The enrolled bill would extend the life of the Commission until January 31, 1976 to allow the Commission to complete its task,



The enrolled bill would further:

- exempt the Commission from the Federal Advisory Committee Act and the Freedom of Information Act to enable it to examine transcripts and logs of tapes in closed meetings. It would be authorized to hold closed meetings on a majority vote of the Commission. These closed meetings would enable the Commission to operate while maintaining the privacy of those whose conversations have been recorded and while protecting the security of national security wiretaps and
- enable the Commission to listen to tapes produced by illegal wiretaps notwithstanding the prohibition in the Federal Criminal Code.

The bill does not authorize any further appropriations for the Commission. The original bill provided for an open-ended appropriation. The floor debate on the bill indicated that the increased costs attributable to the extension would have to be defended by the Commission before the appropriate appropriations committees.

Kilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures



Department of Justice
Washington, D. C. 20530

DEC 23 1974

Honorable Roy L. Ash
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

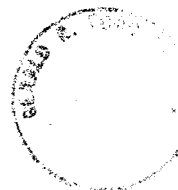
This Department has carefully reviewed enrolled bill H.R. 15173, a bill to extend until January 31, 1976, the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance, and for other purposes.

The Department of Justice interposes no objection to the approval of this bill.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General



Rec'd 12-24-74 (1:00 p.m.)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 23 1974

To: Sharon Hendricks
12-24-74
3:30 p.m. call in
upon receipt of bill in
H.H.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 15173 - To extend the National Wiretap Commission
Sponsors - Rep. Kastenmeier (D) Wisconsin and three others

Last Day for Action

January 4, 1975

Purpose

To extend until January 31, 1976 the authority of the National Commission for the Review of Federal and State Laws on Wire-tapping and Electronic Surveillance, and for other purposes.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

No objection

Discussion

The National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance was originally established by the Omnibus Crime Control and Safe Streets Act of 1968. The purpose of the Commission was to conduct a comprehensive study and review of the operation of the Federal wiretapping law during its first six years and to review the operation of various State laws on the subject. The membership of the Commission was not complete until early 1974. Accordingly, the two-year life presently authorized for the Commission will expire on January 19, 1975 before the work of the Commission can be completed.

The enrolled bill would extend the life of the Commission until January 31, 1976 to allow the Commission to complete its task.



THE WHITE HOUSE
WASHINGTON

December 27, 1974

MEMORANDUM FOR: WARREN HENDRIKS
FROM: MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 849
Enrolled Bill HR 15173
Extend National Wiretap Commission

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 849

Date: December 26, 1974

Time: 5:00 p.m.

FOR ACTION: Geoffrey Shepard *o.k.*
Max Friedersdorf *oh*
Phil Areeda *no ok*

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday December 30

Time: noon

SUBJECT:

Enrolled Bill H.R. 15173 - to extend the National
Wiretap Commission

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 849

Date: December 26, 1974

Time: 5:00 p.m.

FOR ACTION: Geoffrey Shepard ✓
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday December 30

Time: noon

SUBJECT:

Enrolled Bill H.R. 15173 - to extend the National
Wiretap Commission

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approval
H.C.S.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 849

Date: December 26, 1974

Time: 5:00 p.m.

FOR ACTION: Geoffrey Shepard
Max Friedersdorf
Phil Areeda ✓

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ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No Objections
P Areeda*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendrik
For the President

COMMISSION FOR THE REVIEW OF FEDERAL AND
STATE LAWS RELATING TO WIRETAPPING AND ELEC-
TRONIC SURVEILLANCE

AUGUST 23, 1974.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 15173]

The Committee on the Judiciary, to whom was referred the bill (H.R. 15173) to extend for one year the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance, and for other purposes, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Amend the title of the bill to read:

A bill to extend for one and one half years the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance, and for other purposes.

PURPOSE OF THE AMENDMENT

The amendment corrects a mistake in the title of the bill by changing the title to read that the bill extends for one and one half years, not one year, the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance.

PURPOSE OF THE AMENDED BILL

The purpose of the amended bill is to extend the life of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance. It also allows the Commission to hold closed meetings by a majority vote, exempts records and transcripts of the Commission's closed meetings from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552), allows the Commission to listen to tapes produced by illegal wiretaps, notwithstanding the provisions of 18 United States Code 2515, and reaffirms congressional intent as to the existence of the Commission.

STATEMENT

The National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance was authorized in the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351). However, that legislation provided that the Commission was not to come into existence until six years after the effective date of the Act. This was later changed to five years (P.L. 91-644). In the Organized Crime Control Act of 1970 (P.L. 91-452), Congress repealed the Wiretap Commission and created a new National Commission on Individual Rights which was also to study wiretapping among other subjects. This Commission has never met since its public members have yet to be appointed.

The Wiretap Commission was revived in the 1970 Amendments to the Omnibus Crime Control and Safe Streets Act (P.L. 91-644). However, although it officially came into existence on June 19, 1973, selection of its members was not completed until the spring of 1974, and the organizational meeting was not held until May 9, 1974. Present law requires that the Commission terminate on June 19, 1975, giving it barely half of the originally authorized two years to complete its work. In the opinion of the Committee, this is not an adequate amount of time in which to study this important subject. Therefore, the Committee recommends approval of the present legislation extending the life of the Commission an additional year and a half, until January 19, 1977.

In addition, the bill does the following:

It allows the Commission to hold closed meetings by a majority vote. The Federal Advisory Committee Act (5 U.S.C. App. I) requires that all Federal commissions hold open meetings. This bill would except the Commission from the Advisory Committee Act so that it may examine the transcripts and logs of wiretaps while maintaining the privacy of those whose conversations have been recorded. It would also enable the Commission to maintain the confidentiality of national security wiretaps. For the same reasons it exempts records and certain meeting transcripts from the Freedom of Information Act (5 U.S.C. 552).

The bill specifically allows the Commission to listen to tapes produced by illegal wiretaps. Title 18 United States Code, section 2515 presently prohibits any agency of the Government from receiving in evidence material obtained from an illegal wiretap. The purpose of this prohibition is to prevent the substance of such evidence being used against the subject of the wiretap. However, the Commission's interest does not lie in obtaining information regarding the subject of an illegal wiretap, but in examining the nature of the wiretap itself. The Committee feels that the Commission must be authorized to listen to such material if it is to study adequately the abuses of wiretapping and electronic surveillance.

Finally, the bill restates the legislative intent expressed in the Omnibus Crime Control Act of 1970 reviving the Commission.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates a Federal cost of \$500,000 based on information supplied by the Commission.

VOTES

No record votes were taken in the Committee's consideration of H.R. 15173.

COMMITTEE RECOMMENDATIONS

After careful consideration, the Committee is of the opinion that the bill should be enacted and accordingly recommends that H.R. 15173, as amended, do pass.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT
OF 1968

* * * * *

TITLE III—WIRETAPPING AND ELECTRONIC
SURVEILLANCE

* * * * *

SEC. 804. (a) There is hereby established a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (hereinafter in this section referred to as the "Commission").

(b) The Commission shall be composed of fifteen members appointed as follows:

(A) Four appointed by the President of the Senate from Members of the Senate;

(B) Four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

(C) Seven appointed by the President of the United States from all segments of life in the United States, including lawyers, teachers, artists, businessmen, newspapermen, jurists, policemen, and community leaders, none of whom shall be officers of the executive branch of the Government.

(c) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) It shall be the duty of the Commission to conduct a comprehensive study and review of the operation of the provisions of this title, in effect on the effective date of this section, to determine the effectiveness of such provisions during the six-year period immediately following the date of their enactment.

(e) (1) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(A) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary,

without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 a day for individuals.

(2) In making appointments pursuant to paragraph (1) of this subsection, the Chairman shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

(f) (1) A member of the Commission who is a Member of Congress shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(2) A member of the Commission from private life shall receive \$100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(g) (1) **[The]** *Notwithstanding section 2515 of title 18, United States Code, the Commission or any duly authorized subcommittee or member thereof may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated by the Chairman or such member.*

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (1) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(3) The Commission shall be "an agency of the United States" under subsection (1), section 6001, title 18, United States Code for the purpose of granting immunity to witnesses.

(4) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is author-

ized and directed to furnish to the Commission, upon request made by the Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States, to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

(5) *Whenever the Commission or any subcommittee determines by majority vote to meet in a closed session, sections 10(a) (1) and (3) and 10(b) of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. Appendix) shall not apply with respect to such meeting, and section 552 of title 5, United States Code, shall not apply to the records, reports, and transcripts of any such meeting.*

(h) The Commission shall make such interim reports as it deems advisable, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress within the **[two-year]** *three and one-half year* period following the effective date of this subsection. Sixty days after submission of its final report, the Commission shall cease to exist.

(i) (1) Except as provided in paragraph (2) of this subsection, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(A) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(j) There is authorized to be appropriated such sum as may be necessary to carry out the provisions of this section.

(k) The foregoing provisions of this section shall take effect upon the expiration of the fifth year period immediately following the date of the enactment of this Act.

* * * * *

○

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To extend until January 31, 1976 the authority of the National Commission for the Review of Federal and State Laws on Wiretapping and Electronic Surveillance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 804(h) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 197; 18 U.S.C. 2510 note), is further amended by striking out "within the two-year period following the effective date of this subsection." and inserting in lieu thereof "on or before January 31, 1976."

SEC. 2. Section 804(g) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new paragraph:

"(5) Whenever the Commission or any subcommittee determines by majority vote to meet in a closed session, sections 10(a) (1) and (3) and 10(b) of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. Appendix) shall not apply with respect to such meeting, and section 552 of title 5, United States Code, shall not apply to the records, reports, and transcripts of any such meeting."

SEC. 3. The first sentence of paragraph (1) of section 804(g) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out "The Commission or any duly authorized subcommittee" and inserting in lieu thereof: "Notwithstanding section 2515 of title 18, United States Code, the Commission or any duly authorized subcommittee".

SEC. 4. For purposes of section 108 of title 1, United States Code, section 20(c) of the Omnibus Crime Control Act of 1970 shall be deemed to provide expressly for the revival of section 804 of the Omnibus Crime Control and Safe Streets Act of 1968.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

S.J. Res. 40 ✓	B. 3481 ✓	H.R. 8958 ✓	H.R. 14600 ✓
S.J. Res. 133 ✓	S. 3548 ✓	H.R. 8981 ✓	H.R. 14689 ✓
S.J. Res. 262 ✓	S. 3934 ✓	H.R. 9182 ✓	H.R. 14718 ✓
✓S. 251 ✓	✓S. 3943 ✓	✓H.R. 9199 ✓	✓H.R. 15173 ✓
✓S. 356 ✓	✓S. 3976 ✓	✓H.R. 9588 ✓	✓H.R. 15223 ✓
✓S. 521 ✓	✓S. 4073 ✓	✓H.R. 9654 ✓	✓H.R. 15229 ✓
✓S. 544 ✓	✓S. 4206 ✓	✓H.R. 10212 ✓	✓H.R. 15322 ✓
✓S. 663 ✓	H.J. Res. 1178 ✓	✓H.R. 10701 ✓	✓H.R. 15977 ✓
✓S. 754 ✓	✓H.J. Res. 1180 ✓	✓H.R. 10710 ✓	✓H.R. 16045 ✓
✓S. 1017 ✓	✓H.R. 421 ✓	✓H.R. 10827 ✓	✓H.R. 16215 ✓
✓S. 1083 ✓	✓H.R. 1715 ✓	✓H.R. 11144 ✓	✓H.R. 16596 ✓
✓S. 1296 ✓	✓H.R. 1820 ✓	✓H.R. 11273 ✓	✓H.R. 16925 ✓
✓S. 1418 ✓	✓H.R. 2208 ✓	✓H.R. 11796 ✓	✓H.R. 17010 ✓
✓S. 2149 ✓	✓H.R. 2933 ✓	✓H.R. 11802 ✓	✓H.R. 17045 ✓
✓S. 2446 ✓	✓H.R. 3203 ✓	✓H.R. 11847 ✓	✓H.R. 17085 ✓
✓S. 2807 ✓	✓H.R. 3339 ✓	✓H.R. 11897 ✓	✓H.R. 17468 ✓
✓S. 2854 ✓	✓H.R. 5264 ✓	✓H.R. 12044 ✓	✓H.R. 17558 ✓
✓S. 2888 ✓	✓H.R. 5463 ✓	✓H.R. 12113 ✓	✓H.R. 17597 ✓
✓S. 2994 ✓	✓H.R. 5773 ✓	✓H.R. 12427 ✓	✓H.R. 17628 ✓
✓S. 3022 ✓	✓H.R. 7599 ✓	✓H.R. 12884 ✓	✓H.R. 17655 ✓
✓S. 3289 ✓	✓H.R. 7684 ✓	✓H.R. 13022 ✓	
✓S. 3358 ✓	✓H.R. 7767 ✓	✓H.R. 13296 ✓	
✓S. 3359 ✓	✓H.R. 8214 ✓	✓H.R. 13869 ✓	
✓S. 3394 ✓	✓H.R. 8322 ✓	✓H.R. 14449 ✓	
✓S. 3433 ✓	✓H.R. 8591 ✓	✓H.R. 14461 ✓	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.