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# United States Senate

SELECT COMMITTEE ON INTELLIGENCE  
WASHINGTON, DC 20510

ROBERT DOLE, KANSAS, EX OFFICIO  
ROBERT C. BYRD, WEST VIRGINIA, EX OFFICIO

85-0820

March 11, 1985

85-0868

[Redacted]

STAT

Office of General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear [Redacted]

STAT

As I mentioned to you a few days ago, staff on the Judiciary Committee have referred me the enclosed bill which would prohibit federal officials from tape-recording their own official telephone calls. The staff is concerned to be sure that the exemptions included for intelligence activities are sufficient to safeguard these activities from undue limitation under the bill.

I would appreciate having your office take a look at this bill to see if lawful and authorized foreign intelligence or counterintelligence operations could be affected in any way. Thank you for your cooperation.

Sincerely,



Daniel P. Finn  
Minority Counsel

8

DPF/sm  
Enclosure

029820.362

S.I.C.

AMENDMENT NO. \_\_\_

Calendar No. \_\_\_

Purpose: To prohibit Government employees from secretly taping conversations with others.

IN THE SENATE OF THE UNITED STATES--98th Cong., 2d Sess.

S. \_\_\_\_

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Metzenbaum

Viz:

1 At the appropriate place in the bill, insert the  
2 following:

3 Sec. . (a) Chapter 119 of title 18, United States  
4 Code, is amended by adding after section 2511 the following  
5 new section:

6 ``\$ 2511A. Prohibition on taperecording by Government  
7 officials

8 ``(a) No official, employee, or agent of the United  
9 States or of any department or agency thereof, while acting  
10 in his or her official capacity, shall record or authorize  
11 another person to record a telephone communication to which  
12 such person is a party, notwithstanding the provisions of  
13 paragraphs (c) and (d) of section 2511, and subject to  
14 subsection (b) of this section. Anyone who violates this  
15 section shall be fined not more than \$1,000 or imprisoned not  
16 more than six months, or both.

17 ``(b) Subsection (a) shall not apply if--

18 ``(1) all parties to the communication have given  
19 prior consent to such interception;

20 ``(2) the person recording the communication is--

21 ``(A) an investigative, law enforcement,  
22 security, foreign intelligence, or  
23 counterintelligence officer acting within the normal

1 course of his or her employment; or

2 "(B) performing a law enforcement, security,  
3 foreign intelligence, or counterintelligence function  
4 under the direction and control of an officer  
5 described in subparagraph (A);

6 "(3) the communication constitutes a tortious or  
7 criminal act or threatens to perform a tortious or  
8 criminal act;

9 "(4) the recording is performed by a handicapped  
10 employee, provided a physician has certified (and the  
11 head of the agency or designee concurs) that the employee  
12 is physically handicapped and the head of the agency or  
13 designee determines that the use of a recording device is  
14 required to perform the duties of the position;

15 "(5) the person recording the communication is  
16 acting in accordance with--

17 "(A) in the case of an official, employee, or  
18 agent of the Congress of the United States, rules  
19 approved by each house of Congress, as applicable;

20 "(B) in the case of an official, employee, or  
21 agent of the Judiciary of the United States, rules  
22 approved by the Judicial Conference; and

23 "(C) in the case of all other officials,  
24 employees, or agents of the United States--

25 "(i) regulations approved by the Attorney  
26 General; or

27 "(ii) guidelines approved by the Attorney  
28 General, if the Attorney General determines that  
29 there is a compelling governmental interest in  
30 not making the guidelines public.

31 Determinations to allow the recording of a communication  
32 under clause (5), shall take into account and balance the  
33 right to privacy of the parties to the conversation and  
34 the interest of the Government in breaching such

1       privacy.".

2       (b) The table of sections for chapter 119 of title 18,  
3       United States Code, is amended by adding immediately after the  
4       item for section 2511 the following:

      "2511A. Prohibition on taperecording by Government  
          officials.".

5       (c) The amendments made by this Act shall be effective 60  
6       days after the date of enactment of this Act.