

79. Presidential Directive/NSC-31¹

Washington, February 24, 1978

TO

The Vice President
The Secretary of State
The Secretary of Defense
The Attorney General
The Director of Central Intelligence

SUBJECT

Technical Surveillance for Foreign Intelligence Purposes (S)

The Attorney General has advised me that the President has the constitutional power to approve warrantless use of locational “beepers,” and concealed car cameras (as described in his memorandum of February 2, 1978)² which are used within the United States or directed against U.S. persons abroad if the person under surveillance is an agent of a foreign power. He has also advised me that those constitutional powers authorize approval of the use of minimal trespasses and seizures of personal property necessary to the installation, use and removal of the devices.

¹ Source: Carter Library, National Security Council, Institutional Files, 1977–1981, Box 1, PD-NSC 1-32 [2]. Secret.

² In a March 1 memorandum to Mondale, Vance, Brown, Bell, and Turner, Christine Dodson, NSC Staff Secretary, noted that the Attorney General’s memorandum was actually dated February 9, not February 3. The memorandum was not found.

I am satisfied that circumstances may arise which would be sufficiently compelling to justify use of these techniques for foreign intelligence and counterintelligence purposes, including international terrorism. Therefore, pending the enactment of legislation in this area, I delegate the power to the Attorney General and his successors in office, to approve, without prior judicial warrant, use of locational “beepers” and concealed car cameras, pursuant to the following standards and procedures:

1. Warrantless use of these techniques in circumstances where a warrant would be required in a criminal case will, except in emergency situations, only be authorized upon the personal approval of the Attorney General (or Acting Attorney General), and at the request of the head of the Department, Agency or Bureau desiring to use the technique.

2. Approval will not be granted unless the Attorney General (or Acting Attorney General) has satisfied himself that:

a. the requested surveillance is necessary to obtain significant foreign intelligence or counterintelligence information;

b. there is probable cause to believe the person who is the target of the surveillance is an agent of a foreign power;

c. the minimum physical intrusion necessary to obtain the information sought will be used; and

d. the surveillance does not involve the breaking or non-consensual entering of any real property.

3. Where necessary, the request and authorization may be oral, but shall be followed by written confirmation as soon as possible.

4. No surveillance shall continue for over 90 days without the written authorization of the Attorney General (or Acting Attorney General).

5. In addition, I authorize the Attorney General to adopt procedures governing the surveillances authorized herein to ensure their legality and propriety, which procedures shall provide for authorization in emergency situations and for the minimization of the acquisition, retention, and dissemination of information concerning United States persons which is not necessary for legitimate Government purposes.³

Jimmy Carter

³ Carter handwrote a sixth point: “Notify me when such surveillance is authorized.”