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DOE/IG-0299

**U.S. Department of Energy**  
Office of Inspector General

September 1991



Report on

**Inspection of Surveillance  
Equipment and Activities at  
DOE Field Office, Richland**

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**U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL**

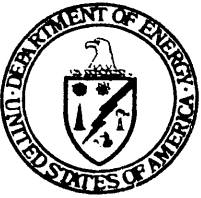
**INSPECTION OF  
SURVEILLANCE EQUIPMENT AND ACTIVITIES  
AT DOE FIELD OFFICE, RICHLAND**

Report No. DOE/IG-0299  
Date Issued: September 30, 1991

Office of Inspections  
Washington, D.C. 20585

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**The Secretary of Energy**  
Washington, DC 20585

October 8, 1991

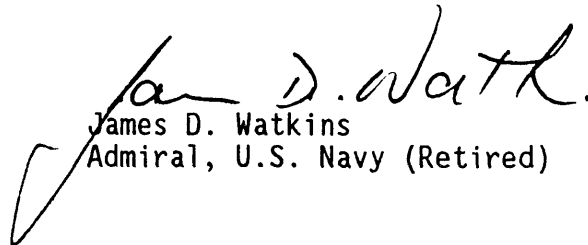
MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: INSPECTOR GENERAL (IG) REPORT CONCERNING SURVEILLANCE  
EQUIPMENT AND ACTIVITIES AT THE DOE FIELD OFFICE,  
RICHLAND

I have reviewed your draft report entitled, "Inspection of Surveillance Equipment and Activities at DOE Field Office, Richland."

As you may be aware, Under Secretary Tuck issued a memorandum on August 13, 1991, entitled, "Disposition of Department of Energy (DOE) Technical Surveillance Equipment," which instructed all Field Offices to transfer all equipment and devices designated as Technical Surveillance Equipment (TSE) to the Central Training Academy (CTA) for temporary storage until such time as legal and logistical arrangements could be made for its transfer to Federal, State or local law enforcement organizations as appropriate (copy attached). This action was taken to eliminate any potential for the misuse of the TSE or improper actions by members of the DOE community even though no evidence of misuse was found during your inspection. In addition, the Office of Security Affairs has initiated a number of additional corrective actions to address the recommendations set forth in your report.

Thank you for your continued efforts to ensure the Department's accountability.

  
James D. Watkins  
Admiral, U.S. Navy (Retired)

Attachment

United States Government

Department of Energy

# memorandum

DATE: August 13, 1991

REPLY TO  
ATTN OF: SA-123

SUBJECT: Disposition Of Department Of Energy (DOE) Technical Surveillance Equipment

TO: Manager, DOE Field Office, Albuquerque  
Acting Manager, DOE Field Office, Chicago  
Manager, DOE Field Office, Idaho  
Manager, DOE Field Office, Nevada  
Manager, DOE Field Office, Oak Ridge  
Manager, Pittsburgh Naval Reactors Office \*  
Manager, DOE Field Office, Richland  
Manager, DOE Field Office, San Francisco  
Acting Manager, DOE Field Office, Savannah River  
Manager, Schenectady Naval Reactors Office \*  
Manager, DOE Field Office, Rocky Flats  
Director, Central Training Academy, AL  
\* Thru NR

As a result of a recent inspection by the DOE Office of Inspector General into covert surveillance activities and capabilities within DOE, the Secretary has directed that all equipment and devices designated as Technical Surveillance Equipment (TSE) be transferred to the Central Training Academy (CTA) for temporary storage. The TSE will remain at the CTA until such time as legal and logistical arrangements can be made for the transfer of this property to local, state, or Federal law enforcement organizations as appropriate. You are required to send the TSE designated on the inventories provided by your staff, as modified by Field Operations personnel during their recent equipment review at your facilities, to the CTA within 2 weeks from the date of this memorandum.

TSE is defined, consistent with correspondence from Edward J. McCallum, Director, Office of Safeguards and Security (OSS), dated July 10, 1991, as "any device primarily designed for surreptitious acquisition of nonpublic communications or activities, without the consent of all persons who are party to the act. This will include any device that is specifically designed for audio, video, or acoustic covert surveillance." Technical Surveillance Countermeasures (TSCM) equipment and intelligence related work for others programs doing research and development are not included in this directive. Audio and video surveillance equipment utilized by protective forces and security organizations are the primary focus of this directive, including such items as throw phones, miniature radio frequency transmitters, miniature cameras, and pinhole lenses.

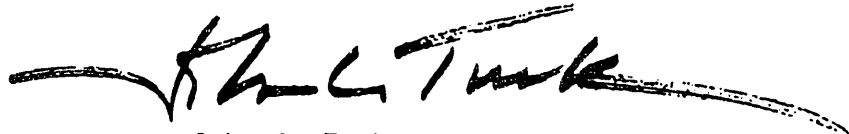
Logistical arrangements for receipt of the property should be made through Don Cook, Director, CTA, FTS 845-6435. A thorough inventory of the equipment shall be performed prior to shipment with one copy of such inventory to be forwarded to Mr. McCallum, one copy to be forwarded to Mr. Cook under separate cover, and one copy included in the shipment. The CTA

shall physically verify the inventory and document its receipt, and provide a receipt for all equipment to the sending field office. The CTA shall also be responsible for designating a Federal employee as the person responsible for security of this equipment and performing an inventory every 30 days. Written verification of this inventory shall be maintained in a file at the CTA and a copy forwarded to Mr. McCallum every 30 days.

In the future, should a piece of equipment be questioned or come to your attention that may fall into the category of TSE, you will immediately notify the DOE Director of Safeguards and Security for an accurate determination and possible disposition.

The Office of Security Affairs is currently engaged in discussions with the Federal Bureau of Investigation (FBI) to develop a memorandum of understanding whereby the FBI will explicitly assume all responsibility for hostage negotiation situations, as appropriate. The outcome of these discussions will be conveyed to the field at the earliest possible time.

Any questions concerning this matter should be referred to Harry Hann, Technical and Operations Security Branch, SA-123, at FTS 233-5562 or 301-353-5562.

A handwritten signature in black ink, appearing to read "John C. Tuck", with a long horizontal flourish extending to the right.

John C. Tuck  
Under Secretary

CC:  
EH-4  
SA-13

United States Government

Department of Energy

# memorandum

DATE: September 30, 1991

REPLY TO: IG-1

ATTN OF:

SUBJECT: INFORMATION: Report on the Inspection of Surveillance  
Equipment and Activities at DOE Field Office,  
Richland

TO: The Secretary

## BACKGROUND:

The subject final report is provided to inform you of our findings and recommendations and to give you an opportunity to comment. The purpose of this inspection was to review surveillance activities by DOE Field Office, Richland (RL) and contractor employees at the RL Hanford site for efficiency and economy and compliance with laws and regulations. The scope of the inspection included a review of surveillance activities, procedures, training, types of surveillance equipment, and management controls over the equipment and activities.

## DISCUSSION:

Department of Energy Acquisition Regulation (DEAR) 908.7114, "Wiretapping and eavesdropping equipment," states that "Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited." DOE Order 5636.1, "Prohibitions on Wiretapping and Eavesdropping," states that "Devices designed specifically for wiretapping or eavesdropping shall not be procured with DOE funds or installed or used in any building, installation, or real property owned or leased by the U.S. Government for the use of the U.S. Department of Energy." DOE Order 5636.1 was published July 11, 1978.

Our inspection found that a RL contractor, a former RL contractor, and other DOE field office contractors had acquired surveillance equipment, some primarily designed for covert surveillance use, in contravention to the provisions of DEAR 908.7114 and DOE Order 5636.1.

We found DOE had not clearly defined technical listening equipment and that there were varying interpretations of what equipment was considered technical listening equipment.

We found RL had not complied with the DOE Safeguards and Security requirement that possession and control of technical

listening equipment be maintained by a Federal Officer, and that RL had not conducted an inventory of technical listening equipment, i.e., covert audio surveillance equipment, at least every 30 days as they stated to DOE Headquarters that they would.

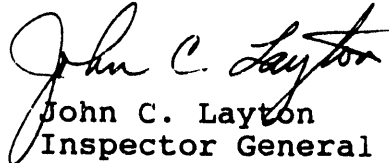
Our inspection found that RL had not required contractors to notify RL or to obtain RL approval for procurement of eavesdropping equipment.

We found DOE had not established any guidelines for the destruction or disposal of covert surveillance equipment. We also found that neither DOE Headquarters nor RL had established any guidelines, standards, or procedures covering the conduct of covert surveillances in support of investigative work.

We further found that DOE had failed to comply with GSA regulations requiring an agency head determination on the use of listening-in and recording devices and the re-evaluation of each agency's "beep tone" telephone recorder program at least every two years.

Management concurred with our recommendations and is in the process of implementing the recommendations. Management's comments and our responses are summarized in the report.

The Under Secretary approved an Action Plan on June 7, 1991, to address most of the issues raised in the report.

  
John C. Layton  
Inspector General

Attachment

cc:  
Deputy Secretary  
Under Secretary  
General Counsel  
Manager, DOE Field Office, Richland  
Director, Office of Environmental Restoration and Waste  
Management  
Director, Office of Procurement, Assistance and Program  
Management  
Director, Office of Administration and Human Resource  
Management  
Director, Office of Information Resources Management Policy,  
Plans and Oversight  
Acting Director, Office of Security Affairs



**INSPECTION OF  
SURVEILLANCE EQUIPMENT AND ACTIVITIES  
AT DOE FIELD OFFICE, RICHLAND**

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**U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INSPECTIONS**

**INSPECTION OF  
SURVEILLANCE EQUIPMENT AND ACTIVITIES  
AT DOE FIELD OFFICE, RICHLAND**

PURPOSE AND SCOPE

The purpose of this inspection was to review surveillance activities by the Department of Energy's (DOE) Field Office, Richland (RL) and contractor employees at the RL Hanford site for efficiency and economy and compliance with laws and regulations. The scope included surveillance activities, procedures, training, types of surveillance equipment, and management controls over the equipment and activities. We also looked at Departmental policies and procedures regarding the equipment and activities. Allegations of illegal surveillance that came to our attention during the course of this inspection were referred to the Department of Justice.

As part of our review, inspectors were on-site at RL from February 11, 1991, through March 1, 1991. Follow-up trips to RL were also made in April, May, and June 1991. We also conducted interviews at Albuquerque, Savannah River, and Germantown of former RL employees and RL contractors who were on travel. Officials from DOE's Office of General Counsel (OGC), Office of Security Affairs, and Office of Safeguards and Security (S&S) were also interviewed regarding the Department's purchase and possession of wiretapping and eavesdropping devices. We obtained 75 signed sworn statements from 55 individuals during the course of the inspection.

SUMMARY OF OBSERVATIONS AND CONCLUSIONS

Our inspection found that a RL contractor, a former RL contractor, and other DOE Field Office contractors had acquired eavesdropping equipment in contravention of DOE Order 5636.1 and Department of Energy Acquisition Regulation (DEAR) 908.7114. DOE Order 5636.1 prohibits the procurement, installation, or use of devices designed primarily to surreptitiously intercept communications without the knowledge of at least one of the participants. The DEAR prohibits the acquisition of devices primarily designed to be used surreptitiously to overhear or

record conversations.

In 1980, DOE officials pointed out the need to revise DOE Order 5636.1 to correspond with revised procedures for consensual monitoring issued by the Department of Justice (DOJ) in that year. In 1984 the then Secretary of Energy told Chairman Brooks, House Committee on Government Operations, that DOE Order 5636.1 would be revised to implement General Services Administration (GSA) regulations on listening-in and recording of telephone conversations. DOE Order 5636.1 has not been updated since it was issued in July 1978.

RL had not complied with the DOE Safeguards and Security requirement that possession and control of technical listening equipment be maintained by a Federal Officer.

RL had not conducted an inventory of technical listening equipment, i.e., covert audio surveillance equipment, at least every 30 days as they stated to DOE Headquarters that they would.

RL had not required contractors to notify RL or to obtain RL approval for procurement of eavesdropping equipment.

DOE had not established any guidelines for the destruction or disposal of covert surveillance equipment.

Neither DOE Headquarters nor RL had established any guidelines, standards, or procedures covering the conduct of covert surveillance in support of investigative work.

DOE had not clearly defined technical listening equipment. We found varying interpretations of what equipment was considered technical listening equipment.

DOE had failed to comply with GSA regulations requiring an agency head determination on the use of listening-in and recording devices and the re-evaluation of each agency's "beep tone" telephone recorder program at least every two years.

## BACKGROUND

### Hanford Site

The RL Hanford site was acquired by the Federal Government in 1943 for the construction and operation of facilities to produce plutonium for the atomic weapons program. The site encompasses approximately 570 square miles. For over 20 years, facilities at Hanford were dedicated primarily to the production of plutonium for national defense and management of the waste generated by chemical processing operations. Various non-nuclear activities

have been conducted at the Hanford site since 1943; and in later years, programs at the Hanford site have become increasingly diverse.

RL has been a multi-program Field Office responsible for management of the Hanford site and assigned Departmental programs. On July 12, 1990, RL was assigned to report to the Office of Environmental Restoration and Waste Management. This action was taken to recognize that the major mission at the Hanford site places greater emphasis on environmental restoration and ecological programs. RL is responsible for contract administration and administrative support functions. Management and program implementation is accomplished through four major management and operating (M&O) contractors:

- o Westinghouse Hanford Company (WHC) - responsible for site operations and engineering;
- o Battelle Memorial Institute - responsible for research at the Pacific Northwest Laboratory (PNL);
- o Hanford Environmental Health Foundation - responsible for providing occupational medicine and environmental health support services; and
- o Kaiser Engineers Hanford Company - responsible for providing architectural, construction, and engineering services to DOE and its contractors.

#### Definitions and Terminology

The term "surveillance" was not defined in any of the documents provided by the Department or its contractors. For this inspection, we defined surveillance as an investigative technique involving electronic observation or listening directed at a person or place. Although this definition covers overt surveillance, this inspection focused on surveillance where not all parties were aware of the surveillance, and thus, the surveillance is clandestine. We will refer to this as "covert surveillance" in this report.

Further, we defined "covert surveillance equipment" as devices primarily designed, or intended, for use in covert surveillance. Our definition of covert surveillance equipment relies on aspects of definitions from DOE Order 5636.1, "Prohibitions on Wiretapping and Eavesdropping", dated July 11, 1978, which defines eavesdropping, wiretapping, and a wiretapping or eavesdropping device as follows:

- o "Eavesdropping - Interception, through use of electronic equipment, of a conversation involving one or more

individuals without the knowledge of at least one of the participants."

- o "Wiretapping - The direct or inductive coupling of an electronic device to lines transmitting communications without the knowledge of at least one of the participants."
- o "Wiretapping or Eavesdropping Device - An electronic device designed primarily (emphasis added) to surreptitiously intercept communications without the knowledge of at least one of the participants."

We also included in our definition equipment intended for surreptitious wiretapping or eavesdropping, although the equipment may not necessarily have been primarily designed for this purpose. A thorough inspection of surveillance equipment and activity should include, we believe, equipment intended for covert surveillance.

DOE also uses the term "Technical Listening Equipment", or "TLE", when referring to eavesdropping and/or wiretapping devices. To our knowledge, TLE was first defined by the Chief, Technical and Operations Security Branch, Office of Safeguards and Security, DOE, in a December 3, 1987, memorandum to all field Safeguards and Security Divisions.

This memorandum (we are excerpting from an unclassified version) defines TLE as equipment that is ". . . PRIMARILY DESIGNED TO BE USED SURREPTITIOUSLY TO OVERHEAR AND/OR RECORD CONVERSATIONS . . ." However, the memorandum then lists examples of equipment, some of which are not primarily designed for surreptitious recording or listening, but rather are devices whose intended use is for these purposes. In responses to the December 3, 1987, memorandum that provided lists of TLE, the responding locations identified both equipment primarily designed or intended for surreptitiously overhearing or recording of conversations.

An inventory of TLE in a February 1991 RL procedures document lists 37 pieces of equipment some of which may be intended for covert surveillance but were not primarily designed for covert surveillance. Thus, even though the formal definition of TLE refers only to equipment primarily designed for covert audio surveillance, we found documents that included equipment as TLE that was not primarily designed for covert audio surveillance.

The key definitions used in this report may be summarized as follows:

- o Covert Surveillance - electronic observation or listening where all parties are not aware of the surveillance, and
- o Covert Surveillance Equipment - equipment primarily designed or intended for use in covert surveillance.

Covert surveillance equipment can be divided into:

- o covert video surveillance equipment, and
- o covert audio surveillance equipment.

## RESULTS OF INSPECTION

The results section is divided as follows:

- A. POLICIES ON PROCUREMENT AND USE OF SURVEILLANCE EQUIPMENT
- B. SAFEGUARDS AND SECURITY ORGANIZATION AND SURVEILLANCE EQUIPMENT
- C. SURVEILLANCE ACTIVITY
- D. SURVEILLANCE MANAGEMENT CONTROLS
- E. PROCUREMENT AND CONTROL OF SURVEILLANCE EQUIPMENT

### A. POLICIES ON PROCUREMENT AND USE OF SURVEILLANCE EQUIPMENT

A number of policies including acquisition regulations, DOE orders, DOJ requirements, and GSA regulations, apply to the procurement and use of surveillance equipment. Selected aspects of these policies, DOE efforts to revise DOE policy, and a summary of our findings regarding the implementation of these policies are discussed below.

#### Department of Energy Acquisition Regulation (DEAR) 908.7114 and DOE Order 5636.1

DEAR 908.7114, "Wiretapping and eavesdropping equipment," states that "Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited." The language in DEAR 908.7114 has been in existence since September 27, 1969, when it was included in the Atomic Energy Commission procurement regulations. The Federal Acquisition Regulation (FAR), Part 2, "Definitions of Words and Terms," defines the term "acquisition" as follows:

". . . the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated."

DOE Order 5636.1, "Prohibitions on Wiretapping and Eavesdropping," states that "Devices designed specifically for wiretapping or eavesdropping shall not be procured with DOE funds or installed or used in any building, installation, or real property owned or leased by the U.S. Government for the use of the U.S. Department of Energy." DOE Order 5636.1 was published July 11, 1978.

Our inspection found that a RL contractor, a former RL contractor, and other DOE Field Office contractors had acquired surveillance equipment, some primarily designed for covert surveillance use, in contravention to the provisions of DEAR 908.7114 and DOE Order 5636.1. A list of 37 items of TLE, i.e., covert audio surveillance devices, was reported by RL in February 1991. Within the limited scope of our review, we found that DOE has had this type of covert surveillance equipment since at least 1985.

Much of this equipment at RL has been "off-the-shelf" equipment that was then modified with contractor labor and materials. The modifications were to allow the equipment to perform surreptitious listening or recording either for training purposes or in operational situations. When this off-the-shelf equipment is modified, the Department has acquired, we believe, equipment primarily designed for surreptitious listening or recording.

A June 14, 1991, memorandum from the Director, DOE S&S, to the Director, RL S&S provides support for this position. The Director, DOE S&S states that ". . . A piece of equipment which has been modified or repackaged specifically for use in electronic eavesdropping automatically qualifies as an ESD" (Electronic Surveillance Device).

#### Department of Justice Reporting Requirements

On September 22, 1980, then Attorney General Civiletti issued a memorandum regarding consensual monitoring of verbal conversations. This memorandum set forth procedures for obtaining authorization to intercept verbal communication without the consent of all parties to a conversation. The memorandum also contained a requirement to annually report equipment intended (emphasis added) for the surreptitious interception of telephone or verbal, non-wire communications, in the possession of agencies. This memorandum rescinded an earlier memorandum

dated October 16, 1972, which is included in the references to DOE Order 5636.1.

On October 14, 1980, the DOE Assistant General Counsel for International Development and Defense Programs sent a memorandum to the Director, DOE S&S and to all Chief Counsels stating that DOE Order 5636.1 should be updated to reflect the changes contained in the 1980 memorandum from the Attorney General. To date, DOE Order 5636.1, issued on July 11, 1978, has not been revised.

On November 7, 1983, then Attorney General Smith issued a memorandum to the Heads and Inspectors General of Executive Departments and Agencies, superseding the Attorney General's memorandum of September 22, 1980. This 1983 memorandum established new authorization procedures with relevant rules and guidelines. The memorandum continued the annual equipment inventory reporting procedures established by the Civiletti memorandum: "In October of each year, each department or agency shall submit to the Attorney General an inventory of all devices which are intended (emphasis added) for the surreptitious interception of telephone or verbal, non-wire communications, including devices used to intercept communications pursuant to the warrant provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended." The memorandum asked the Heads and Inspectors General of Executive Departments and Agencies to assure close compliance with the procedures and rules of the memorandum. Although the procedures in the Attorney General's memorandum for approval of consensual monitoring excluded interception of telephone communications, the equipment reporting requirement specifically included equipment intended for interception of telephone communications.

During our inspection, we found equipment at RL which was intended for the surreptitious interception of verbal or telephone communications. A February 1991 inventory of RL covert audio surveillance equipment contains equipment, or TLE, some of which was intended for covert audio surveillance. Several other DOE Field Offices have reported possessing the same, or similar, equipment.

This equipment has not been reported to the Department of Justice as required by the Attorney General's memorandum of November 7, 1983. On July 3, 1991, the Chief, Technical and Operations Security Branch, Office of Security Affairs, DOE, contacted the Director, Office of Enforcement Operations, Criminal Division, DOJ, to determine the type of equipment DOE should be reporting to DOJ. The Director, Office of Enforcement Operations, concurred in a letter prepared by the Chief, Technical and Operations Security Branch, DOE. That memo includes the statement that:



". . . devices that were procured with the intent of being used as surreptitious audio surveillance devices in support of undercover operations were reportable to your agency.

In view of the above, I am led to assume that "throw telephones", video cameras, telephone pen registers, tape recorders, commercially available electronic "baby sitters", and equipment used for training aids, not intended for covert, operational use are not reportable."

However, on August 8, 1991, the Director, Office of Enforcement Operations, Criminal Division, DOJ, sent a letter to the Chief, Technical and Operations Security Branch, Office of Security Affairs, DOE, stating that "As I understand the use of the throw telephone . . . such devices should be included in the required annual report."

#### General Services Administration (GSA) Regulations

Policies regarding the recording of or the listening-in on telephone calls are described in the Federal Information Resources Management Regulation (FIRMR) Subpart 201-6.2 (41 CFR 201-6.2). The FIRMR requires an agency head determination for the use of listening-in devices and an agency program to re-evaluate at least every two years the need for each determination authorizing the listening-in on or recording of telephone conversations.

The Director, Information Management Division, DOE, stated that the FIRMR is, and has been, applicable to the telephone system at RL and the RL Hanford site. Richland has 17 telephone systems, i.e. "beep tone" systems, meeting this description. These systems are associated with security and emergency telephone numbers. Each system has a number of channels, or telephone lines, that can be used. Based on documents provided by RL, there are approximately 120 "beep tone" telephone lines in use at RL, with enough capacity for approximately another 100 telephone lines to be added.

In February 1984, a staff attorney in the DOE Office of General Counsel wrote to the Chief, Security Operations Branch, DOE, informing him that the use of recording devices with "beepers" is within the scope of GSA's regulation limiting listening-in or recording (41 CFR 101-37.311-4). (The GSA regulations set forth in 41 CFR 101-37.311 have subsequently been redesignated 41 CFR 201-6.2, i.e., FIRMR Subpart 201-6.2. The FIRMR was amended in Federal Register Volume 55, No. 250, December 28, 1990, and replaced 41 CFR 201 effective April 29, 1991.)

DOE officials could not provide us with the required agency head

determination approving the use of these systems. We were told by DOE officials that DOE does not have a program for the periodic re-evaluation of the "beep tone" telephone systems within DOE as required by the GSA regulations.

On January 18, 1984, Congressman Jack Brooks, then Chairman, Committee on Government Operations, House of Representatives, wrote to then DOE Secretary Donald Hodel asking Secretary Hodel to report to him regarding DOE implementation of the GSA regulation on recording conversations. On March 22, 1984, Secretary Hodel responded to Chairman Brooks stating that DOE's written policy, found in DOE Order 5636.1, with respect to the listening-in or recording of telephone conversations was being revised to implement GSA regulations. Despite this commitment, DOE has not revised DOE Order 5636.1.

#### Policy Statement on Surveillance Equipment

The Chief, Technical and Operations Security Branch, Office of Safeguards and Security, DOE, stated that in 1987, when he was the DOE Technical Surveillance Countermeasures (TSCM) Program Manager, he was charged with bringing electronic eavesdropping equipment under control. Therefore, on December 3, 1987, he issued a memorandum to field Safeguards and Security Divisions, entitled "TSCM Possession of Technical Listening Equipment (TLE) (U)."

This memorandum (we are extracting from an unclassified version) states that TLE is ". . . PRIMARILY DESIGNED TO BE USED SURREPTITIOUSLY TO OVERHEAR AND/OR RECORD CONVERSATIONS . . ." The equipment listed as being covered, however, also included equipment intended for surveillance use but not necessarily primarily designed for surveillance use. The memorandum states that "THE PROCUREMENT OF THIS EQUIPMENT BY DOE OFFICES AND/OR CONTRACTORS IS IN CONTRAVENTION TO THE PROVISIONS OF DEAR 908.7114. BY LAW, THE POSSESSION AND CONTROL OF THIS EQUIPMENT MUST BE MAINTAINED BY A FEDERAL OFFICER."

When asked for the legal citation for the requirement regarding possession and control of TLE by a Federal Officer, he said that 18 USC was "the law" referred to in the memorandum. However, we were unable to find the basis for the policy statement that the equipment must be maintained by a Federal Officer, nor was he able to identify this provision in 18 USC, which was purported to be the basis for his memorandum.

The December 3, 1987, memorandum from the then DOE TSCM Program Manager to field Safeguards and Security Divisions was, we believe, addressing equipment possessed by both the field TSCM activities and field protective force activities. The only DOE Headquarters (HQ) policy development efforts we found regarding

TLE equipment during our inspection were by TSCM personnel although it was not clear what the responsibility of the TSCM program was for covert surveillance equipment acquired for protective forces.

#### Efforts to Develop Policy

DOE officials have made repeated unsuccessful attempts to revise DOE Order 5636.1.

The DOE TSCM Program Manager from 1985 to 1987 said that he was aware in 1985 that the RL and Idaho (ID) Operations Offices had possession of equipment prohibited by DEAR 908.7114 and DOE Order 5636.1. He said that he knew the equipment should not have been purchased; however, it was already on hand when he became the DOE TSCM Program Manager. He said that the surveillance equipment was procured for protective force purposes and was not TSCM equipment.

On May 7, 1986, he issued a memorandum to the Director, Security Division, Office of Safeguards and Security, DOE, regarding special technical equipment. The memorandum stated that RL (Battelle-PNL) and ID had appropriate accounting, inventory, and control procedures for such equipment. However, a critical item was absent, i.e., specific approval for procurement and retention of the equipment. One recommendation made in the memorandum was to contact the OGC to determine the legal "ramifications" associated with procurement and retention of the equipment.

In response to this recommendation, on July 31, 1986, a HQ TSCM contract employee wrote a letter to the then DOE TSCM Program Manager regarding TSCM possession of technical listening equipment. Attached to the letter were questions to be forwarded to the OGC regarding the authority for TSCM to possess and use eavesdropping equipment. The contract employee subsequently died and his concerns were not forwarded to OGC.

A former DOE TSCM Program Manager stated that in 1984 he consulted with OGC staff attorneys, and another former DOE TSCM Program Manager told us that in 1987 he also consulted with OGC staff attorneys, regarding a draft to replace DOE Order 5636.1. Both managers said that OGC would not concur on the draft proposals, and therefore, DOE Order 5636.1 has not been revised. We found four drafts of DOE Order 5636.1 that were written to incorporate the language found in the GSA regulations regarding listening-in or recording telephone conversations. However, the drafts did not address the fact that DEAR 908.7114 prohibits acquisition of devices primarily designed to be used surreptitiously to overhear or record conversations. The revised drafts of DOE Order 5636.1 were narrowed in scope to cover only telephone conversations and retitled from "Prohibitions on

Wiretapping and Eavesdropping" to "Listening-In and/or Recording of Telephone Conversations."

A staff attorney in the DOE Office of the Assistant General Counsel for General Law nonconcurred on DOE S&S's draft of DOE Order 5636.1A on August 21, 1987. Another staff attorney for the OGC said that he subsequently consulted with DOJ attorneys regarding the draft order and was advised to proceed cautiously because "This area of the law is quite complex and has been further complicated by recent legislation, which has yet to be tested by extensive litigation." The staff attorney said that the recent legislation referred to by DOJ attorneys was the Electronic Communications Privacy Act of 1986.

On July 22, 1988, a staff attorney for OGC sent a memorandum to the Office of Management and Administration (MA) stating that a memorandum withdrawing OGC's nonconcurrence had been prepared, and that the draft proposal would be submitted to DOJ for review. A draft letter from the DOE Assistant General Counsel for General Law to DOJ regarding a revised departmental order on listening-in and/or recording of telephone conversations was obtained. However, staff from the Office of the Assistant General Counsel for General Law could not find any record that this letter was forwarded to DOJ. One staff attorney said that the DOE TSCM Program Manager and an MA Program Analyst did not pursue the issue with the OGC.

An OGC staff attorney said that in 1987 she gave DOE S&S officials verbal guidance stating that TSCM personnel should not use equipment prohibited by the order. The staff attorney stated that an opinion concerning purchase of the equipment was not provided since she believed the subject should be addressed by procurement attorneys.

On July 10, 1987, the Director, Idaho S&S, sent a memorandum to the Director, DOE S&S concerning the prohibition contained in DEAR 908.7114 of the acquisition by DOE of wiretapping and eavesdropping equipment. The memorandum from ID states that DOE Order 5636.1, regarding the use and deployment of wiretapping and eavesdropping equipment, was being rewritten and was in draft form, and therefore, requested a clarification or waiver by DOE S&S of DEAR 908.7114 to ensure that ID could continue to maintain and control such equipment. No response to the ID request for clarification of DEAR 908.7114 was provided.

The DOE TSCM Program Manager from 1987 to 1989 stated that when he was the DOE TSCM Program Manager the procurement of TLE was not a TSCM issue because the equipment was purchased by the protective forces, not by TSCM. He further related that policies for the protective forces are developed by the DOE S&S Physical Security Branch. The current Chief, Physical Security Branch

said that from a DOE S&S perspective, no one has addressed DOE Order 5632.7, "Protective Forces," concerning the procurement and use of this equipment.

DOE Order 5636.3, dated January 27, 1982, established the TSCM program. In February 1988, the order was revised and issued as DOE Order 5636.3A. However, neither order addressed whether the TSCM program is exempt from the provisions of DEAR 908.7114 or DOE Order 5636.1.

A memorandum, dated August 2, 1988, from the Manager of the Savannah River Operations Office (SR) to the Acting Director, DOE S&S states that the SR legal staff had determined that a waiver from DOE S&S per DOE Order 5636.1 is required prior to procurement of TLE. DOE Order 5636.1 does not contain a provision allowing a waiver as requested by SR. SR made a similar request in 1986. SR did not receive a response from DOE S&S to either request.

Subsequent to our initial on-site work in February 1991, the DOE TSCM Program Manager and the Director, RL S&S, signed an undated "Memorandum of Agreement" (MOA). The MOA detailed the support that RL would provide to the DOE TSCM Program Manager regarding the Technical Security Resources Center's mission. The MOA listed the following classifications of equipment: crisis situation equipment, electronic training devices, technical listening equipment, telephone training devices, and wiretapping or eavesdropping devices. The MOA defined TLE as "Any device specifically designed for surreptitious wiretapping or eavesdropping." The MOA defined wiretapping and eavesdropping as follows:

- o "Wiretapping - the direct or inductive coupling of an electronic device to lines transmitting communications without the knowledge of at least one of the participants."
- o "Eavesdropping - interception, through use of electronic equipment, of a conversation involving one or more individuals without the knowledge of at least one of the participants."

These definitions are very similar to those found in DOE Order 5636.1.

In April 1991, the DOE TSCM Program Manager stated that RL no longer possessed technical listening equipment based upon these definitions. However, on May 9, 1991, the Chief, Technical and Operations Security Branch, DOE, informed the Director, RL S&S, that the MOA was not in force and RL should not handle the equipment as stated in the MOA. The Chief, Technical and

Operations Security Branch, DOE, stated that the DOE TSCM Program Manager did not have authority to enter into such an agreement.

In May 1991, we requested two RL S&S officials to review the February 1991 list of equipment identified as TLE and identify what is, and is not, TLE. The RL Equipment Control Officer stated that he was unable to do this. Later, the Director, RL S&S, stated that he also could not do this and that this was a HQ S&S function and not an RL S&S responsibility. When a PNL S&S official was asked the same question regarding the same list, that official identified several pieces of equipment as TLE.

In a memorandum dated March 22, 1991, from the Director, DOE S&S, to the Director, Office of Information Resources Management Policy, Plans and Oversight, Office of Administration and Human Resource Management (AD), DOE, reference is made to a "1987 letter" from Chairman Jack Brooks, House Committee on Government Operations, directing the Department of Energy to "re-scope" the provisions of DOE Order 5636.1 to address listening-in and recording of telephone conversations. Attached to the memorandum was a draft revision of the order (i.e., 5636.1A), prepared in 1990 by the DOE TSCM Program Manager. The memorandum states that it is not principally the responsibility of DOE S&S to revise and issue the order, and that AD should develop the policy addressing this subject (i.e., DOE Order 5636.1) as this order deals with telecommunications practices and procedures.

The Director, DOE S&S stated in the March 22, 1991, memorandum ". . . that the purchase of TLE for the purpose of surreptitious audio intercept is specifically prohibited in the TSCM Procedural Guide." We did not find this prohibition in the guide and the Chief, Technical and Operations Security Branch, DOE, confirmed that the statement was not in the TSCM Procedural Guide.

In addition, neither DOE S&S officials nor the Office of the Executive Secretariat could provide us with a copy of the 1987 letter from Chairman Brooks which was referred to in the S&S memorandum of March 22, 1991, to AD.

#### B. SAFEGUARDS AND SECURITY ORGANIZATION AND SURVEILLANCE EQUIPMENT

This section reviews the general organization, law enforcement authority, responsibilities and structure, and specialized equipment of the RL safeguards and security organization.

##### General Organization

The safeguards and security function at RL and the RL Hanford site is performed by three different organizations: (1) the RL

S&S with a staff of 25 federal employees; (2) Westinghouse Hanford Company S&S with 575 employees, of which 394 are assigned to the Hanford Patrol; and (3) Battelle - Pacific Northwest Laboratory S&S with a staff of 123 employees. (An organization chart is presented in Figure 1.)

#### Law Enforcement on the Hanford Reservation

The Federal Government, through DOE, has "proprietary jurisdiction" at the Hanford site since the land is owned by the Federal Government. Under this proprietary jurisdiction, the "law enforcement activities" of the Hanford Patrol Officers, who are actually employees of an M&O contractor, are conducted under a combination of Federal, State, and local authority.

In the following sections, we discuss the basis for the Federal, State, and local authorities; a concern about Federal activity using State rules and procedures; and an agreement by an RL official which provides indemnification from DOE to Benton County.

#### Federal Authority

Section 161k, "Carrying of firearms," of the Atomic Energy Act, provides authority to anyone authorized to carry firearms under the section to make arrests without warrant for any offense committed in the person's presence or for any felony under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing a felony. This section relates primarily to weapons and special nuclear materials. On December 4, 1981, Public Law 97-90 amended this section to provide that the Federal arrest authority conferred by the section is in addition to any arrest authority under other laws. On November 14, 1986, Public Law 99-661 further amended this section to (1) establish an authorization for the arrest of an individual who is in direct flight from an area where a prescribed offense has occurred, and (2) formally extend arming and warrantless arrest authority to contractors at all tiers.

Section 161k is implemented by 10 CFR 1047, "Limited Arrest Authority and Use of Force by Protective Officers." Officers are able to effect an arrest for 19 felonies and eight misdemeanors involving violations of Federal law.

#### State and Local Authority

Day-to-day law enforcement (i.e., other than the 19 felonies and eight misdemeanors under Federal law) is under State and local jurisdiction. Hanford Patrol Officers, except for the two identified below, are sworn Deputies of the Benton County

Sheriff's Department with limited commissions. The commission allows the members of the Hanford Patrol to enforce State and local laws on the Hanford site.

Two officers of the Hanford Patrol have more than limited commissions and are assigned to the Office of Criminal Investigations (OCI). Both are deputized to investigate violations of State law or Federal violations where the Federal Bureau of Investigations (FBI) and Office of Inspector General (OIG) have declined jurisdiction.

In commenting on this report, RL management stated that the policy that OCI investigate certain State law violations had been coordinated with local representatives of the OIG, the Benton County prosecutor, and the FBI. Examples of cases in this category are thefts of government property under \$1,000, thefts of personal property, vandalism, and narcotics violations.

#### Management of Enforcement of State and Local Laws

The Benton County Sheriff stated that he does not supervise or manage the operations of the Hanford Patrol. Supervision and management is provided by the Westinghouse Hanford Company. The overall DOE contract, including these activities, is under the management of RL Federal employees. We were told that four RL Federal employees are also sworn Benton County Deputy Sheriffs.

The Benton County Sheriff's Department requested DOE RL to sign a "Commission Card Agreement" as a condition for the receipt of commissions by the members of the Hanford Patrol. The agreement states that DOE and the Federal Government will "hold harmless" Benton County and any of its officers, employees, or agents from any liability for actions taken by the Hanford Patrol under the Deputy Sheriff commissions. Under this agreement, it appears that the Benton County Sheriff might be indemnified by the Federal Government for any actions he might direct of Hanford Patrol Deputy Sheriffs.

The RL Chief Counsel stated that RL did not coordinate with DOE Headquarters prior to entering into this "Commission Card Agreement." A senior DOE procurement official stated that, in his view, this agreement is not a contract, and thus, not covered by DEAR requirements for Headquarters approval of the indemnification provisions. The RL Chief Counsel stated that the RL Manager's position description gave him inherent authority to enter into the agreement.

#### Responsibilities and Organization

The RL Safeguards and Security Division plans, manages, and administers the Hanford safeguards and security program which



includes: (1) physical, industrial, technical, and personnel security; (2) source and special nuclear materials (SNM) control and accountability; (3) operational security; (4) classified document and material control; (5) classification; and (6) law enforcement for the site. The Division also provides oversight of RL program divisions, offices, and RL contractors in all the above functions.

Within RL S&S, six of the 16 functions assigned to the Operations Security Branch (OSB) are relevant to this inspection. The OSB is responsible for: (1) providing oversight of contractor security systems and programs; (2) providing programmatic direction and budget guidance for the operation of the Hanford Patrol including oversight of the law enforcement functions delegated to the patrol operation; (3) maintaining programmatic oversight of the Technical Surveillance Countermeasures Program; (4) administering RL intelligence functions; (5) coordinating Hanford's criminal investigation program involving the Hanford Patrol, IG, and the FBI; and (6) providing executive protection upon request from DOE Headquarters.

The Westinghouse Hanford Company (WHC) S&S is chartered to ensure that appropriate protection is provided to government property entrusted to WHC and that SNM is properly safeguarded and accounted for. The Hanford Patrol protective force is staffed, equipped, managed, and operated by WHC to provide law enforcement and site security support for the entire Hanford site. WHC is also responsible for the enforcement of applicable Federal laws identified in 10 CFR 1047, State and local laws through criminal investigations, traffic control, access control, property inspections, and security response and reaction. The issue of law enforcement authority has been discussed previously.

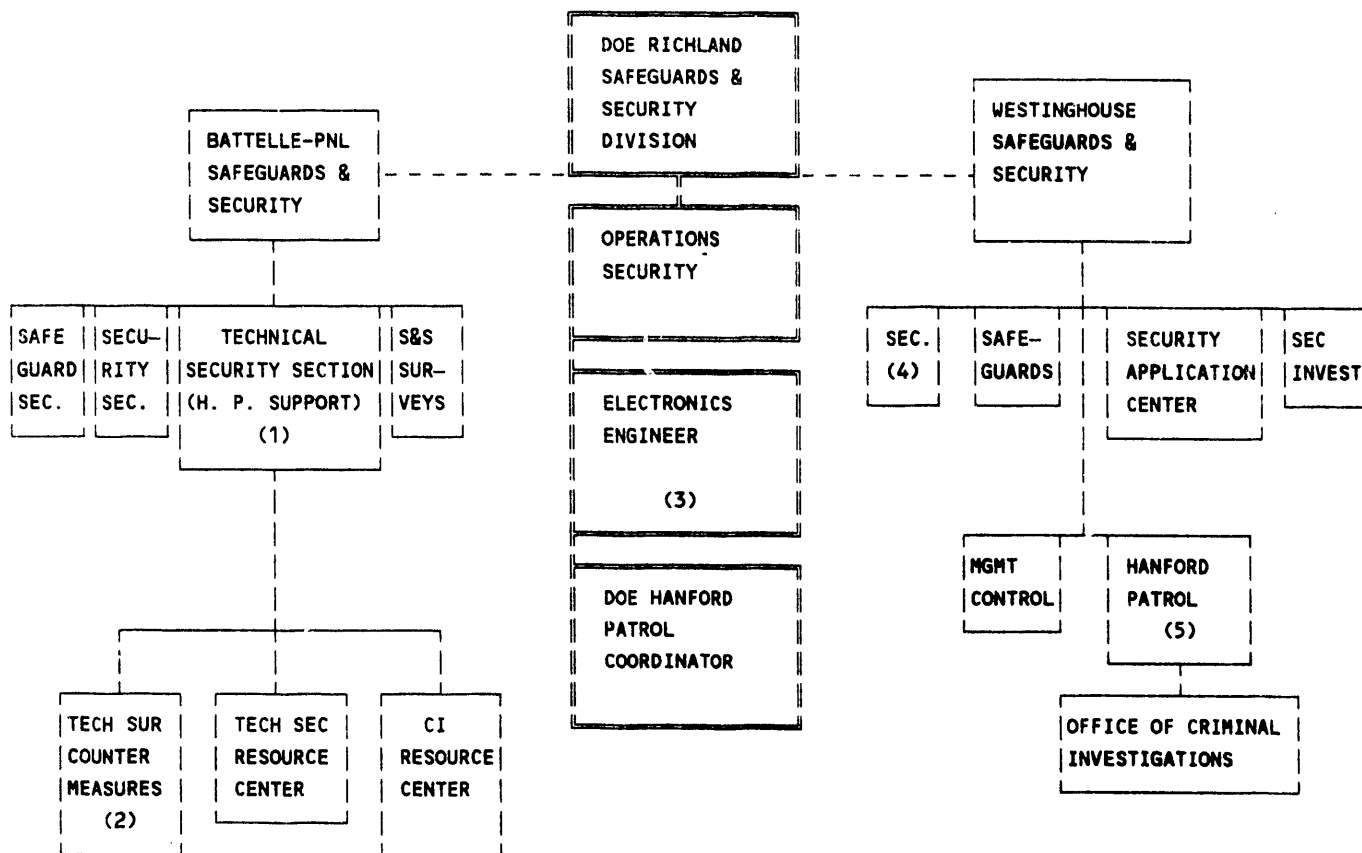
The Pacific Northwest Laboratory (PNL) S&S organizational structure reflects the four basic task areas of the S&S program. These four organizational elements are: (1) the Safeguards Section which is responsible for Nuclear Regulatory Commission and DOE requirements for managing all nuclear and SNM materials in PNL's custody; (2) the Security Section which focuses on developing, implementing, and operating cost-effective programs and systems for protecting PNL security interests; (3) Safeguards and Security Surveys, which ensure that the PNL security program is effective; and (4) the Technical Security Section (TSS) which is comprised of four program elements. Each of the four elements perform the following respective tasks:

- o Hanford Patrol Support, included in the Technical Security Section on the organization chart shown in Figure 1 provides technical support including assistance in developing and evaluating strategy and tactics, acquisition and maintenance of sophisticated electronic

investigative equipment, developing and maintaining emergency response kits, and installation and operation of closed circuit televisions (CCTV) surveillance systems providing technical support for criminal investigations.

- o Technical Surveillance Countermeasures (TSCM) provides Hanford site wide services including surveys, inspections, briefings, educational presentations, consultant services, and related activities directed by DOE RL.
- o DOE's Technical Security Resource Center (TSRC) provides training to all DOE TSCM personnel in support of the DOE Headquarters TSCM Program. The TSRC was organized in October 1987 to provide standardized TSCM training to DOE contractor TSCM teams; timely dissemination of ideas and information; and TSCM research and development. The program consists of a TSCM basic course, TSCM advanced courses, and specialized training courses. The TSRC is currently staffed by four instructors and one secretary. The DOE TSCM program manager at DOE Headquarters S&S has direct oversight of the program and its funding. The program is designed to familiarize students with readily available surveillance devices currently available to the general public. The course is also designed to help students recognize and detect more complex devices which may be used by adversaries. The course is not designed to teach the student how to build a surveillance device, or system, or how to install such a device or system. However, some of the instruction on how to counteract devices, could be used to construct and install devices.
- o The Counterintelligence Resource Center ensures competent and consistent implementation of the DOE Counterintelligence Program DOE wide and to achieve parity with the programs of other member agencies of the U.S. Intelligence Community.

**Figure 1.  
RL SAFEGUARDS AND SECURITY  
ORGANIZATIONAL CHART AND  
SELECTED ASSOCIATED EQUIPMENT**



**Equipment Sets.**

- |  |  |  |
|--|--|--|
| 1. Hanford Patrol OCI Support equipment. | 3. Technical Listening Equipment (TLE).<br>(physically located at PNL) | 4. Overt physical security surveillance equipment. |
| 2. TSCM equipment.                       | a. Protective force equipment.<br>b. TSRC training equipment.          | 5. Hanford Patrol equipment.                       |

The equipment is in the custody of the respective office.  
Examples of the equipment for each office are found on the next three pages.

## Surveillance Equipment

The five sets of equipment which were identified on the preceding page are discussed below.

### 1. Hanford Patrol OCI Support Equipment

Hanford Patrol support equipment consists of video recording devices and special lenses to facilitate covert video surveillance. The purpose of this equipment is to support Hanford Patrol's Office of Criminal Investigations. Custody and control of this equipment is with PNL's Technical Security Section (TSS). The Manager, PNL S&S, stated that the TSS will only install surveillance equipment in support of Hanford Patrol's Office of Criminal Investigations upon written request and approval by the Director, RL S&S. This request is then made a part of the Technical Security Section case file.

The technical support equipment consists of CCTVs, various lenses (e.g., wide angle, pin hole), time lapse recorders, CCTV monitors, vehicle disabling equipment, video microwave transmitter, video microwave receiver, x-ray equipment, and explosive detectors. Some of this equipment was used for covert video surveillances as discussed later in this report.

### 2. TSCM Equipment

TSCM equipment consists of electronic equipment which is used in support of RL's TSCM activity. The TSCM Branch has certain equipment which is capable of covert surveillance. This equipment is necessary to protect the Department from adversaries who may be engaged in covert audio surveillance. The intended use of the equipment is thus to prevent unauthorized covert surveillance even through the TSCM process may involve listening-in or overhearing conversations in order to perform their required mission. The TSCM function is performed pursuant to Executive Order 12333, Director, Central Intelligence Directive 1/22, and DOE Order 5636.3A.

### 3. Richland's Technical Listening Equipment

Custody and control of DOE RL's technical listening equipment is the responsibility of the RL Equipment Control Officer.

Technical Security Administrative Procedures (TSAP), dated February 8, 1991, provided a complete inventory of TLE which was to be maintained by the RL Equipment Control Officer. This classified document identifies 37 pieces of equipment.

RL S&S officials and the DOE TSCM Program Manager stated that they believed that acquisition of off-the-shelf equipment that is

then modified is not in contravention of the DEAR. Given the FAR definition of acquisition, we believe that the use of contractor time and materials to modify equipment is acquisition of equipment that is primarily designed for surreptitious interception of communications. This view is supported by a memo of June 14, 1991, from the Director, DOE S&S. The memo states that any equipment which has been modified or repackaged specifically for use in electronic eavesdropping automatically qualifies as an "electronic surveillance device".

In an interview with the Manager of the TSS Division and the TSRC supervisor, who has approximately 20 years of experience in the TSCM field, both stated that throw phones to be used by the Hanford Patrol's Crisis Negotiation Team were primarily designed and intended for eavesdropping. The TSRC supervisor also stated that the equipment listed below, which was destroyed by the RL Equipment Control Officer on April 8, 1991, was also primarily designed for eavesdropping. However, he further stated that the intended use for the equipment was as training aids.

- o Receptacle box with Radio Shack mister microphone device.
- o AM/FM Radio, Radio Shack, with carrier current device.
- o Telephone AT&T model MM68.
- o Telephone Model 80 with R/C bypass.

a. Protective force equipment.

This is equipment for use in certain operational situations. In an interview with the RL Manager on July 3, 1991, he stated that he believes that the Crisis Negotiation Team throw phones were clearly intended for eavesdropping.

b. TSRC training equipment.

This equipment is intended for use in training at the TSRC. Much of this equipment was off-the-shelf equipment which has been modified to make it capable of being used for covert surveillance. In our view, much of this equipment consists of devices primarily designed for covert surveillance.

For classroom practical exercises, telephones were modified so students can inspect and determine what type of attack was used against the telephones. All modified telephones are configured prior to instruction and the actual conduct of practical exercises. The modified telephones are locked in a hall locker in the instructor's lab. The telephones used during the course of instruction by the TSRC will work properly after the modifications have been placed, however, the telephones are

conspicuously marked "Training" on the handset, case, and base plate. The telephones used by the TSRC are not compatible and will not operate with any telephone system used at RL or on the RL Hanford site.

It should be noted that during the site inspection we were made aware of three microphones that were concealed in three of the TSRC training rooms (exercise rooms #1 and #2 and the TSRC library). The microphones were hardwired to the instructors lab where they would have to be connected to an amplification device and batteries prior to being activated. These rooms are unoccupied except during training sessions. We were told that during training sessions all students are advised of the monitoring capability and each student signs a "CONSENT AGREEMENT FOR TECHNICAL SURVEILLANCE MONITORING" thereby freely giving his/her consent to this surveillance.

#### 4. Overt Physical Security Surveillance Equipment

Overt physical security equipment is procured, installed, and maintained by WHC. This equipment consists of approximately 400 closed circuit televisions, monitors, and related equipment to operate and maintain the current security system at the RL site.

#### 5. Hanford Patrol Equipment

This equipment is controlled and used by the Hanford Patrol. The equipment is not the type of covert equipment that is the subject of this report. The equipment consists of night vision goggles, starlight scopes, M-16 scopes, binoculars, camcorders, and cameras.

#### DOE'S Technical Listening Equipment

The December 3, 1987, DOE S&S memorandum to all field Safeguards and Security Divisions concerning TLE required all addresses to provide DOE S&S, Technical Security Branch, a report of TLE held by the respective offices by December 18, 1987. The memo was sent to DOE's eight Operation Offices and the Pittsburgh and Schenectady Naval Reactors Offices. The file contained responses for all addresses with the exception of the Oak Ridge, San Francisco, and Nevada Operations Offices. The following pieces of TLE were reported by the Office indicated:

Albuquerque (AL) Ops	- 0	Idaho Ops	- 16
AL Transportation Sec. Div.	- 2	Chicago Ops	- 2
AL Sandia National Lab.	- 3	Richland Ops	- 11
Dayton Area Office	- 0	Savannah River Ops	- 9
Amarillo Area Office	- 3	Rocky Flats	- 3
Los Alamos	- 9	Kansas City	- 13

### C. SURVEILLANCE ACTIVITY

We requested RL S&S, Hanford Patrol, and PNL S&S officials to provide their files on covert surveillance activities conducted or authorized by their respective organization. These officials identified 14 cases of covert surveillance. Four of these cases were identified subsequent to our initial on-site work. All 14 cases involved covert video surveillance; none involved audio recording.

Ten of these 14 cases were on-site covert video surveillances. Eight of these 10 cases were conducted by PNL in support of the Hanford Patrol OCI; one was an on-site covert video surveillance conducted by PNL at the request of RL S&S, and the other was conducted by Rockwell Security. Of the four off-site covert video surveillances, three were in support of local law enforcement agencies, and one was in support of executive protection for the Secretary of Energy.

The following summarizes and provides a brief description of the 14 surveillances identified by RL and the RL contractors:

#### SUMMARY OF COVERT VIDEO SURVEILLANCES IDENTIFIED AT DOE FIELD OFFICE, RICHLAND

<u>OCI/PNL Case No.</u>	<u>Description</u>
<b>On-Site Covert Video Surveillances</b>	
1. OCI - 85-185-RHO-0 PNL - 85 PAT 333-02	Surveillance of a PBX room to determine if a phone line was being tampered with.
2. OCI - 86 163-RHO-TP	Theft of personal monies, room D105, building 2751, 200 east area.
3. OCI - 88 057-WHC-TP PNL - 88 PAT 333-04	Thefts of personal monies from lockers in various changing rooms located at the 100N area.
4. PNL - 89 DOE 65-01	Installation of technical investigative equipment, manager's conference room Federal building.
5. OCI - 90 021-WHC-TP PNL - 90 WHC 65-008	Theft of personal monies from the men's locker/change room 308 building.

- |    |  |   |
|----|--|---|
| 6. | OCI - 90 009-PNL-TG<br>PNL - 90 WHC 65-006 | Theft of government property from the 300 area. |
|----|--|---|

**OCI/PNL Case No.**

**Description**

**Off-Site Covert Video Surveillances**

- |     |   |   |
|-----|---|---|
| 7.  | PNL - 89 WSP 65-003<br>Washington State Patrol        | Consisted of providing technical investigative equipment and technical assistance.  |
| 8.  | PNL - 90 WSP 65-002<br>DOJ/INS & Pasco P.D.           | Consisted of the installation of technical investigative equipment and training of investigative personnel in its proper use and operation. |
| 9.  | PNL - 90 WSP 65-005<br>Tri-City Metro Drug Task Force | Consisted of the installation of technical investigative equipment and training of investigative personnel.                                 |
| 10. | PNL - 91 DOE 65-001                                   | Executive protection Secretary of Energy, at a local hotel site.  |

**On-Site Covert Video Surveillances [cases provided subsequent to our initial request]**

- |     |   |   |
|-----|---|---|
| 11. | OCI - 87 003-DOE-TP<br>PNL - 87 333-11                    | Theft of personal property from the RL Federal building.                        |
| 12. | OCI - 86 087-DOE-TP<br>PNL - 86 333-07                    | Theft of personal property from the RL Federal building.                        |
| 13. | OCI - 83 057-DOE-TP                                       | Theft of personal monies from a desk within the RL Federal building.            |
| 14. | Rockwell 82-008-RHO-TG<br>(Case run by Rockwell Security) | Thefts of government property and personal monies from the RL Federal building. |

Additionally, we identified a covert video surveillance conducted in January 1985 by Office of Inspector General investigators at RL in conjunction with a time and attendance investigation. The equipment was obtained from PNL. The equipment was set up by the Office of Inspector General investigators in a hallway adjacent to the subject's office. Office of Inspector General investigators coordinated with an



Assistant United States Attorney concerning this use of covert surveillance equipment.

Of the 14 covert video surveillances identified by RL and RL contractors, two involved circumstances related to the right of an expectation of privacy (i.e., OCI 88 057-WHC-TP and OCI 90 021-WHC-TP). Both cases involved the installation of covert video surveillance equipment in a men's change/locker room. In both cases, the investigation involved the theft of personal monies and was based on the enforcement of state law.

In commenting on this report, RL officials stated that these two covert video surveillances were conducted under the laws of the State of Washington after consultation with the Benton County Prosecutor's Office. These officials stated that Washington State law does not require a court order in these circumstances.

In reviewing the initial case files provided us, we did not find documentation indicating consultation with the Benton County Prosecutor's Office concerning the use of covert video surveillance where an expectation of privacy may have been perceived. RL officials have subsequently provided us with the following information regarding these cases:

Case file #88 057-WHC-TP

- o An undated memorandum for record from a Benton County Deputy Prosecutor, stating that she was consulted by either an OCI investigator or a RL S&S official regarding this case. She further stated that she concurred with the use of video surveillance for this investigation.
- o A memorandum for record, dated July 9, 1991, prepared by an OCI investigator, stating that in reviewing the file before providing us with a copy of the file, the case file had contained documentation of OCI consultation with the Benton County Prosecutor's Office and WHC's legal staff.

Case file #90 021-WHC-TP

- o RL officials pointed out that the case file contains an OCI investigator's handwritten notes which lists three names and states "No problems with installation." We have been informed by RL officials that two of the names listed are Benton County Prosecutors; however this is not reflected in the notes in the file.

- o RL officials also provided us with notes, dated June 19, 1990, from the RL patrol coordinator, which states ". . . locker room camera by OCI/TSCM BC Prosecutor advised states OCI on solid ground . . ."

Officials of the Benton County Prosecutors Office stated to us that they recalled that Hanford Patrol officials had coordinated with them on both of these cases.

If the covert video surveillance had been conducted in these two cases under Federal authority, we were informed by the Special Counsel to the Director, Office of Enforcement Operations, Criminal Division, DOJ, that absent express or implied consent, if there is an expectation of privacy, a court order is necessary. The court order would be obtained under the Federal Rules of Criminal Procedures 41 (Rule 41), to seize property or persons. The Special Counsel advised us that video surveillance is also subject to the requirements of Rule 41. He further stated that if the FBI had conducted similar surveillances in a men's locker room, the FBI would have been advised to obtain a court order before conducting the surveillances if there was an expectation of privacy.

#### Pen Registers

In addition to the 14 video surveillance cases mentioned above, "Pen Registers" were also used on two occasions during the investigations of sexually harassing telephone calls. A "Pen Register" logs the phone number of all incoming calls to a designated phone. GTE Northwest Incorporated assisted in the investigations and installed and monitored the "Pen Registers". In both cases, the file contained written authorization from the user of the phone to install a Pen Register.

#### Recording of Calls from Members of the Press

We interviewed key RL and contractor officials in order to determine if any phone calls from the media were recorded without the knowledge of all parties. The RL officials that we interviewed said that media calls are referred to the RL Office of Communications and that they did not record these calls. However, one official said that several years ago he recorded a telephonic media interview, with the permission of the reporter, to ensure accuracy.

RL officials commented that under Washington State law the tape recording of press conferences and media interviews, with the consent of all parties, is permitted.

An RL Public Affairs Specialist stated that press conferences are sometimes recorded by an RL contractor. This contractor provides

both audio and video recordings of press conferences for RL. Occasionally, some reporters at these press conferences participate by telephone and are not present at the press conference. According to the Manager, Program Communications and Media Relations, Westinghouse Hanford Company, these reporters are notified that the conference is being recorded. Recorded tapes are provided to the Office of Communications and news media when requested.

The RL Public Affairs Specialist stated that he is routinely recorded by news media and copies are provided to him upon request.

Westinghouse Hanford Company replaced Rockwell Hanford Operations as a management and operating contractor in June 1987. The Manager, Program Communications and Media Relations, Westinghouse Hanford Company stated that "At Rockwell we taped as SOP media telephone calls." He also told us that reporters were notified of the recordings.

He further stated that according to Westinghouse Hanford Company policy all media calls are referred to him or his staff. He also told us that both press conferences and media interviews are recorded and stated that "When the media is recorded they are notified, further, this is standard operating procedure. Tapes of recordings are kept for note taking and for a few weeks and then taped over."

Westinghouse officials stated that the same contractor that provides the service for recording press conferences for RL also provides this service for press conferences held by Westinghouse Hanford Company.

We learned of one example, around August 1986 when Rockwell was the contractor, where a reporter was not told immediately at the beginning of a telephonic interview that the interview was being recorded. Three former Rockwell employees separately described the August 1986 interview to our inspectors. These employees stated that during the introduction of all parties involved in the interview, but before the reporter could be told of the recording, the reporter interrupted with a question. After addressing the question, the reporter was informed that the interview was being recorded. The reporter agreed to continue with the interview.

The then Vice President and General Manager of Rockwell Hanford Operations told us that around September of 1986 he recalled a phone conversation with a reporter from a telephone in the RL Manager's office that he believes was recorded. He recalled hearing a noise like a "beep" on the line and asked the Manager and Deputy Manager, who were present in the room, if the call was

being recorded. Someone, he could not recall who, replied that the call was being recorded. The former RL Manager recalled the phone conversation taking place in his office but said that calls from his office have never been recorded. The Deputy Manager stated that he could not recall the events described.

The Director, Public Relations and Communications, Pacific Northwest Laboratory, stated that he had been told that during the 1984-1985 time frame the news media, when calling into the office, were asked for permission to record their conversations. He stated that the practice was stopped in 1985.

In none of the interviews we conducted did anyone state that copies of recordings were available. The Manager, Program Communication and Media Relations, Westinghouse Hanford Company, stated that, typically, the recordings were retained for a short period of time until the news stories were published. For example, he stated that the recordings made of a press conference held by Westinghouse Hanford Company in December of 1990 no longer existed.

#### D. SURVEILLANCE MANAGEMENT CONTROLS

The Chief, Physical Security Division, S&S, DOE, advised us that there are no DOE policy guidance or procedures for the conduct of covert surveillance by DOE protective forces. We further learned from DOE RL S&S that they currently do not have any policy guidance, procedures, or established criteria for the conduct of covert surveillance.

##### Approval of covert video surveillance

In our interviews with RL and RL contractor officials both described the approval process for covert surveillances differently. RL S&S officials did not provide any written policies or procedures on the conduct or approval process for covert surveillances.

The Director, RL S&S, and the DOE RL Patrol Coordinator advised that written approval from either the Director, RL S&S, or the Chief, Operations Security Branch, RL S&S, was always required to conduct covert video surveillances.

We reviewed the files concerning the 14 covert video surveillances identified earlier and found the following:

- o No unique records on covert video surveillance activities are maintained by RL S&S, although in some case they had copies of the Hanford Patrol OCI files.

- o Eight cases of covert video surveillance applied to the Hanford Patrol OCI. Hanford Patrol OCI officials stated OCI would submit a formal request for technical investigative support (video surveillance equipment) to PNL through DOE RL S&S. In only one case, case #5, was there a written approval in the OCI file from the Director, RL S&S. In case #1, the OCI report states that verbal approval was given to conduct a surveillance. In cases #2, #6, & #11, there was no record of a request or approval in the OCI file. In case #3, the approval in the OCI file was signed by the Equipment Control Officer who was not authorized, according to RL procedure, to approve covert video surveillances. In case #12, the file provided to us did not indicate any information concerning the surveillance activity. However, the corresponding PNL case file indicated that the covert surveillance was approved by the then RL Patrol Coordinator. In case #13, the file indicated that the covert surveillance was approved by the then supervisor of the RL Physical Security Section.
- o Eleven cases of covert video surveillance applied to PNL. The Director, PNL S&S, stated that PNL procedures required written authorization from the Director, RL S&S, prior to the installation of surveillance equipment and that a copy of the request is to be filed with the PNL investigative report. In only one case, case #6, was there written approval in the PNL file from the Director, RL S&S. In case #1, the approval in the PNL file was signed by the Equipment Control Officer. In case #3, there was no record of a request or approval in the PNL file. In case #4, there was a handwritten note in the PNL file indicating that the Director, RL S&S had directed the covert video surveillance; however, the note was signed by the Equipment Control Officer. In cases #5, #7, #9, #10, #11, and #12, the files indicated that there was approval from RL S&S but the PNL files for these cases do not contain written approval or otherwise document who actually approved the covert video surveillance. In case #8, the written request by OCI in the PNL file was not signed by RL S&S. Subsequently, a signed copy was provided to us by RL officials.

It should be noted that reports in the PNL files do state that DOE RL S&S personnel were consulted prior to the conduct of any technical surveillance assistance afforded to Hanford Patrol's OCI.

Case #14 was a covert video surveillance conducted by Rockwell Hanford Patrol prior to the establishment of the Hanford Patrol's OCI. The case file revealed no written

request for the conduct of covert video surveillance. However, the investigative report contained a statement that there was approval for the surveillance through coordination with the Director, RL S&S.

Another inconsistency in statements concerned the authorization and documentation of approval of surveillance activity. The Director, RL S&S stated that prior to the conduct of any surveillance activity the RL Chief Counsel was contacted to obtain his approval and to discuss any legal issues that may be appropriate to the respective investigation. However, during his initial interview the RL Chief Counsel stated that he could not recall discussing, either with the former or current Director, RL S&S, anything regarding authorization to conduct surveillances. During a subsequent interview, the RL Chief Counsel recalled two instances, although he could not recall the details, where he was consulted by RL S&S officials involving installation of video cameras for surveillances.

In commenting on this report, the current Director, RL S&S stated that he has given approval for all covert video surveillances conducted while he has been Director, RL S&S. He further stated that his predecessor also was informed of all covert video surveillances conducted at RL and approval was given by him.

#### E. PROCUREMENT AND CONTROL OF SURVEILLANCE EQUIPMENT

The policies and procedures for procurement and control of surveillance equipment was discussed with various RL and contractor officials.

##### Designation as a sensitive item

The RL Industrial Property Management Specialist stated that all RL contractors, including PNL and WHC, are required to use the RL Automated Property Management Program for certain items. These items include sensitive items or capital equipment which cost \$5,000, or more, and have a service life of two years, or more.

"Sensitive items" are defined in 41 CFR 109-1.5101 as ". . . those items of property, regardless of value, which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, (emphasis added) for example: firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, and portable power tools." 41 CFR 109-1.5106-4 requires that: ". . . Determination of specific sensitive items shall be a matter for management judgment at individual locations, taking into consideration the dollar value of the items to be controlled and costs of administration."

The RL Industrial Property Management Specialist stated that an inventory of RL S&S's equipment produced by the Automated Property Management Program as of February 8, 1991, included none of the 37 items of TLE the RL Equipment Control Officer had identified on that date. The RL Industrial Property Management Specialist explained that the TLE was not included in the Automated Property Management Program because these items had not been designated by RL contract management as sensitive equipment. The RL Industrial Property Management Specialist said that RL relies on the RL contractors to designate items as sensitive.

We believe that these items should be designated as sensitive equipment for two reasons. First, the equipment meets the criteria established by 41 CFR. Second, by the very nature of the equipment's capability the equipment should be controlled.

### Procurement

Procurement thresholds apply to both WHC and RL depending upon the item being procured, the type of procurement, and the estimated dollar value of the procurement action. For example, WHC must obtain approval from RL for procurement involving motor vehicles, competitive procurement actions of \$1,000,000 or more, or sole-source procurement actions of \$250,000 or more. PNL must obtain approval from RL for procurement involving motor vehicles, competitive procurement actions of \$1,000,000 or more, or sole-source procurement actions of \$25,000 or more.

All 37 items of TLE reported in the possession at RL as of February 8, 1991, were either purchased or fabricated by PNL. At the time of our inspection, there was no requirement for PNL to notify or request approval from RL management in order to purchase or fabricate TLE or to notify RL that TLE had been purchased or fabricated.

The RL Equipment Control Officer (ECO) stated that he becomes aware of TLE purchased by PNL only when he conducts an inventory of the equipment. For example, PNL purchased an item of TLE on February 4, 1991. The RL ECO was appointed two days later on February 6, 1991. When the ECO was interviewed on May 15, 1991, the ECO stated that he had not been notified before his inventory that PNL had purchased the specific piece of TLE. The ECO stated he usually visited PNL at least weekly and conducted an inventory of TLE every 30 days.

### Property Control

RL and PNL are not complying with specific property control requirements for the control of TLE by a Federal Officer, requirements to perform periodic inventories, proper maintenance

of the equipment control log, and destruction of TLE.

#### Control by a Federal Officer

RL is not complying with the requirement for TLE to be under the control of a Federal Officer. In a memorandum dated December 3, 1987, DOE S&S required that a Federal Officer must maintain the possession and control of TLE. The RL ECO was designated as the Federal Officer responsible for maintaining possession and control of RL TLE (covert audio surveillance equipment). In reviewing the records at RL, we found four examples where the RL ECO had not maintained possession and control of the equipment.

- o RL had not appointed an ECO during the period March 1990 through February 1991. In commenting on this report, RL stated that although an ECO was not appointed during this period, the alternate ECO "assumed the role" until a new ECO was named. However, they "concede that the duties of the role were not adequately carried out."
- o As noted previously, in February 1991, equipment had been acquired without the knowledge of the ECO.
- o The ECO transfers the equipment to PNL during classroom training and practical exercises. These transfers can be for as long as three weeks.
- o The ECO transfers the equipment to RL contractors during maintenance and use by the protective force.

#### Periodic inventories

RL did not comply with the requirement to conduct periodic inventories. The Director, RL S&S, established the requirement for the ECO to perform an inventory "at least once a month" in a memorandum dated December 11, 1987, to DOE S&S. This inventory requirement was not being followed at RL. Subsequent to an inventory in November 1987, only two inventories have been conducted. The first inventory was in March 1990 and the second was February 8, 1991. The later was the Friday before we arrived at RL to perform our initial on-site inspection work.

#### Equipment control log

RL is not complying with the requirement to maintain an equipment control log for TLE. This requirement was initially established in RL's Technical Security Administrative Procedures, dated March 16, 1990, which requires TLE to be logged in and out by the Federal Officer (i.e., the ECO). TLE under the control of RL is stored in secured safes at PNL while the equipment is not being used. When the TLE is to be used, the ECO is notified and a



control log is used to record the transfer of the item(s) of TLE to the user for a specific time and purpose.

TLE sign out procedures were not being consistently followed as the following three examples demonstrate:

- o On March 20, 1990, two items of surveillance equipment were signed out for an exercise. The log shows that the same equipment was checked in on March 21, 1990.
- o On October 12, 1990, nine items of surveillance equipment were signed out for a training class. The log does not show when the items were returned to the control of the ECO.
- o Hanford Patrol officials stated that other exercises were conducted in November 1990 and numerous TSRC training courses were presented throughout 1990. However, there is no record in the control log that the equipment was signed out.

On November 25, 1987, RL had reported 11 items of TLE in their inventory. By February 8, 1991, the number of items reported at RL had increased to 37 items. In a Memorandum for Record dated April 2, 1991, the Equipment Control Officer stated that 15 items were formally transferred from his accountability to PNL's Technical Security Services because "these items do not meet the definition of eavesdropping or wiretapping devices," as defined in the rescinded MOA between RL S&S and the DOE TSCM Program Manager.

#### Destruction of equipment

In a Memorandum for Record dated April 8, 1991, the Equipment Control Officer listed seven items of TLE as having been destroyed on April 8, 1991, because the ". . . sensitive equipment . . . no longer serves any purpose as a training device." On May 3, 1991, in a meeting held with DOE S&S officials, we informed them that RL had destroyed some TLE. The officials were unaware that RL had destroyed the equipment. The Chief, Technical and Operations Security Branch, Office of Safeguards and Security, DOE, stated that RL was not authorized to destroy TLE. When asked what DOE's policy was for destroying TLE, the DOE S&S officials said that DOE does not have a destruction policy for TLE.

## OBSERVATIONS AND CONCLUSIONS

The policies contained in DEAR 908.7114 and DOE Order 5636.1 preclude DOE and DOE contractors from acquiring, installing, or using wiretapping and/or eavesdropping devices in any building, installation, or real property owned or leased by the U. S. Government for the use of DOE. However, we found that a RL contractor and a former RL contractor have acquired eavesdropping equipment. Further, we found that other DOE facilities possessed this type of equipment. Additionally, although not prohibited or controlled, we found that a RL contractor and a former RL contractor had acquired equipment for covert video surveillances.

In 1980, DOE officials pointed out the need to revise DOE Order 5636.1 to correspond to revised procedures for consensual monitoring issued by the Department of Justice in that year. In 1984 the then Secretary of Energy told Chairman Brooks, House Committee on Government Operations, that DOE Order 5636.1 would be revised to implement GSA regulations on listening-in and recording of telephone conversations. DOE Order 5636.1 has not been updated since it was issued in July 1978.

RL had not complied with the December 3, 1987, DOE S&S memorandum requiring that the possession and control of TLE be maintained by a Federal Officer. We found that possession of TLE during classroom and practical exercises by the TSRC and Hanford Patrol is given to contractor personnel. Furthermore, PNL personnel have purchased surveillance equipment without the knowledge of RL.

RL had not complied with its established policy requiring TLE to be inventoried every 30 days. Documentation obtained on-site indicates that inventories were only conducted in November 1987, March 1990, and again in February 1991, the Friday prior to the start of our on-site inspection work.

RL does not require the management and operating contractors to obtain approval for procurement of eavesdropping and wiretapping equipment or provide notification before, or after, the equipment is purchased.

DOE had not established any guidelines for the destruction or disposal of covert surveillance equipment.

Neither DOE Headquarters nor RL had established any guidelines, standards, or procedures covering the conduct of covert surveillance in support of investigative work.

DOE had not clearly defined technical listening equipment. We found varying interpretations of what equipment was considered technical listening equipment i.e., covert audio surveillance equipment.

DOE had failed to comply with GSA regulations requiring an agency head determination on the use of listening-in and recording devices and the re-evaluation of each agency's "beep tone" telephone recorder program at least every two years.

## RECOMMENDATIONS

We recommend that the Acting Director, Office of Security Affairs:

1. Review and update all affected orders concerning the acquisition, possession, control, use, and disposal of covert surveillance equipment.
2. Request that the Procurement Executive take necessary action regarding DEAR 908.7114 to provide the authority to acquire any necessary equipment that is now prohibited.
3. Establish procedures for the review and approval of local policies and procedures concerning the acquisition, possession, control, use, and disposal of appropriate equipment in support of protective forces, TSCM, and TSRC programs.
4. Establish procedures for the review and approval of Departmental and local policies and procedures concerning the conduct of covert surveillances.
5. Conduct a 100 percent inventory within DOE of equipment primarily designed, or intended, for covert surveillance.

We recommend that the Director, Office of Information Resources Management Policy, Plans and Oversight:

1. Obtain an agency head determination on the use of listening-in and recording devices at DOE facilities.
2. Establish procedures to ensure a re-evaluation of the DOE "beep tone" telephone recorder program at least every two years.

We recommend that the Manager, DOE Field Office, Richland:

1. Ensure equipment primarily designed or intended for covert surveillance is designated as sensitive equipment.
2. Effectively manage the purchase, control, and use of covert surveillance equipment.
3. Ensure that proper approvals are obtained and documented prior to the conduct of covert surveillance activities.

## MANAGEMENT COMMENTS

Our tentative findings were briefed to the Under Secretary on May 17, 1991. Based upon this briefing, the Acting Director, Office of Security Affairs, submitted to the Under Secretary, on May 31, 1991, a proposed Action Plan. The Under Secretary approved the Action Plan on June 7, 1991. The Action Plan proposed the following:

1. Develop procedures for the TSRC program concerning the control and use of all electronic TSCM training devices used in the training of TSCM Specialists.
2. Develop procedures for the utilization of TSCM specialists to conduct electronic surveillance activities in support of protective forces in a hostage negotiation situation.
3. Develop procedures concerning the use of electronic surveillance equipment in support of protective forces in a hostage negotiation situation.
4. Modify the DEAR to remove the prohibition against the procurement of eavesdropping devices.
5. Publish policies concerning listening-in and recording of telephone conversation.
6. Publish a new TSCM Procedural Guide which contains a strict prohibition against the manufacture or production of electronic surveillance devices, or the alteration of any electronic equipment to obtain an item that could be construed as an electronic surveillance device.

The Action Plan further provides for immediate interim guidance through a series of memorandums, DOE orders, and procedures manuals.

On June 28, 1991, the Acting Director, Office of Security Affairs, in commenting on a draft of this report concurred with the conclusions and recommendations made in the report. He also noted that the Office of Security Affairs is currently in the process of implementing the items contained in the Action Plan.

The Director of Administration and Human Resource Management stated that they will provide a directive which implements the Federal Information Resources Management Regulation 41 CFR 201-21.603, Listening-In or Recording Telephone Conversations.

The Manager, DOE Field Office, Richland stated that he believes that RL and its contractors have acted under good faith

interpretations of the meaning and intent of DOE Order 5636.1 and DEAR 908.7114 in acquiring the equipment which is the subject of the report. However, he also stated that "noncompliances have occurred when measured by the literal content of the orders and regulations." The Manager also stated "that the follow-on actions from this inspection will result in much needed departmental policies and procedures to address this sensitive yet complex area."

Additional specific comments by the Manager, DOE Field Office, Richland have been reflected, as appropriate, in the body of the report.

The Deputy Director, Office of Procurement, Assistance and Program Management stated that it seems clear that Richland and some of its contractors had acquired and fabricated wiretapping and eavesdropping equipment in a manner that was inconsistent with Departmental orders and regulations; and that "It appears that the cognizant oversight groups at RL failed to detect that surveillance equipment had been illegally acquired or manufactured."

The Deputy Director also stated that "While the actions at RL and among the Hanford contractors are relatively recent, the Department's policy toward the acquisition and use of surveillance equipment has been consistent over the years. There has been an absolute prohibition contained in DEAR 908.7114. The actions taken by the parties identified in the subject report were in contravention with Departmental policy at the time of the action. While the reasons may prove to be valid, there is no question that the actions were contrary to Departmental policy."

*Office of Inspector General*

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