

DOCUMENT RESUME

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Lawsuits against the Government Relating to a Bill to Amend the Privacy Act of 1974. GGD-77-21; B-130441. May 6, 1977. Released May 17, 1977. 62 pp.

Report to Rep. Richardson Preyer, Chairman, House Committee on Government Operations: Government Information and Individual Rights Subcommittee; by Elmer B. Staats, Comptroller General.

Issue Area: Law Enforcement and Crime Prevention (500).

Contact: General Government Div.

Budget Function: Law Enforcement and Justice: Federal Law Enforcement and Prosecution (751).

Organization Concerned: Department of Justice.

Congressional Relevance: House Committee on Government Operations: Government Information and Individual Rights Subcommittee.

Authority: Federal Tort Claims Act. Privacy Act of 1974. Freedom of Information Act. 5 U.S.C. 552a (12) (A)-(D). 28 U.S.C. 517. H.R. 12039 (94th Cong.).

As of June 1, 1976, 143 lawsuits were pending against the Government or its employees for activities, such as trespass without consent, listed in the proposed House bill 12039, which would have amended the Privacy Act of 1974.

Findings/Conclusions: This bill, which did not pass the 94th Congress, would have required that persons be informed that they were subjects of these programs or activities and advised of, among other matters, their rights under the Freedom of Information and Privacy Acts. Of the 143 pending lawsuits, 87 charged interception of oral or written communication without a search warrant or consent; 98 involved search, physical intrusion, or trespass without a search warrant or consent; and 13 involved a subject of a file or index in connection with operations of CHAOS, COINTELPRO, or the Special Service Staff. The potential liability of the United States with respect to these lawsuits cannot be assessed, especially with regard to liability arising out of or relating to activities listed in the bill. Private attorneys from 20 law firms were retained by the Department of Justice to represent 52 defendants in eight lawsuits. Cost data are not available on the use of Department of Justice defense attorneys. The Department neither recoups attorneys' fees for representing defendants who have judgments passed against them nor recovers monetary damages from defendants if the Government is found liable. (Author/SC)

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02253



*REPORT OF THE  
COMPTROLLER GENERAL  
OF THE UNITED STATES*

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**Lawsuits Against The Government  
Relating To A Bill To Amend The  
Privacy Act Of 1974**

Department of Justice

As of June 1, 1976, 143 lawsuits were pending against the Government or its employees for activities, such as trespass without consent, listed in House bill 12039. The bill, which would have amended the Privacy Act of 1974, did not pass the Ninety-fourth Congress.

The amount of money the Government could be liable for due to activities covered by the bill cannot be assessed because some lawsuits contained allegations unrelated to matters in the bill.

Private attorneys from 20 law firms were retained by the Department of Justice to represent 52 defendants in 8 lawsuits.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-130441

The Honorable Richardson Preyer  
Chairman, Subcommittee on Government  
Information and Individual Rights  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

By letter dated April 7, 1976, former Chairman Bella S. Abzug requested that we provide information on certain lawsuits filed against the United States--an agency, any officer, or employee thereof. These lawsuits, a result of alleged wrongdoings, related to or arose from various programs or activities that would have been listed in subsection (12)(A)-(D) of section 552a of title 5 U.S.C.--hereafter referred to as subsection (12)(A)-(D)--if H.R. 12039, Ninety-fourth Congress, Second session, 1976, had been enacted into law. The bill would have required that persons be informed that they were subjects of these programs or activities and advised of, among other matters, their rights under the Freedom of Information and Privacy Acts. (See app. II.)

As requested by the Subcommittee, we obtained information on

- pending lawsuits that relate to the type of activities covered by the bill,
- statutory authority for hiring private attorneys and the selection process used, and
- defendants represented by private attorneys.

We did not review all lawsuits pending on June 1, 1976, in the Department of Justice; however, we took steps to identify lawsuits that alleged the kinds of activities listed in the bill. We reviewed records pertaining to these lawsuits and to private attorneys retained in connection with them. The results are summarized in the following pages and detailed in the appendixes to this letter.

When a civil lawsuit is filed against the United States, or an agency or officer thereof in his official capacity, the complaint, stating facts constituting a cause of action and containing a request for relief, is served on the U.S. attorney for the district where the lawsuit originates. A copy is also served upon the agency or employee named as a party and upon the Department of Justice, where it is assigned to the appropriate division and section.

Each Department of Justice division, under a decentralized records management system, summarizes the complaints on docket cards and classifies them by subject matter and statutory reference. Consequently, lawsuits involving activities outlined in subsection (12)(A)-(D) are not easily identifiable and could fall under many classification numbers. A Department official told us that activities such as those outlined in subsection (12)(A)-(D) are considered unusual and not frequent enough to warrant a separate classification number. Therefore, we limited our review to complaints handled in divisions and sections within the Department that would ordinarily handle litigation concerning activities identified in the bill and to classification numbers which would most likely contain applicable complaints. The divisions and sections to which we limited our review were: (1) Criminal Division--Special Litigation Section; (2) Civil Division--General and Special Litigation, Information and Privacy, and Torts Sections; and (3) Tax Division.

#### LAWSUITS PENDING JUNE 1, 1976

As of June 1, 1976, there were 60,372 lawsuits pending in the divisions or sections to which we limited our review. From these, we identified 143 lawsuits (see app. III) that appeared to allege activities listed in subsection (12)(A)-(D). The analysis of these cases is based solely on the allegations in the complaints reviewed. These cases are summarized in the following table.

<u>Cause of action</u>	<u>Number of allegations in lawsuits (note a)</u>
Interception of oral or written communication without search warrant or consent	87
Search, physical intrusion, or trespass without search warrant or consent	98
Subject of file or index in connection with operations of CHAOS, COINTELPRO, Special Service Staff (note b)	13

a/More than one action was alleged in a number of complaints.

b/Operation CHAOS was established in the Central Intelligence Agency in 1967 to collect, coordinate, and evaluate information on the extent of foreign influence on American dissidents. It was terminated on March 15, 1974. COINTELPRO is a generic term describing seven separate "counterintelligence" programs that had been implemented by the Federal Bureau of Investigation at different times from 1956 to 1971. Five of these programs were directed at the disruption, exposure, or neutralization of particular domestic-based groups and individuals. The other two were to encourage and stimulate a variety of counterintelligence efforts against hostile foreign intelligence sources, foreign Communist organizations, and individuals connected with them. The Special Service Staff was established by the Internal Revenue Service in 1969 to gather information about so-called "extremist" organizations and individuals to see if they were meeting their tax responsibilities. It was disbanded in 1973.

We have enclosed examples of several lawsuits to provide a better understanding of those filed. (See app. IV.) We did not evaluate the merits nor verify the allegations in any of the lawsuits listed.

#### LIABILITY OF LAWSUITS NOT ESTIMABLE

The potential liability of the United States with respect to these lawsuits cannot be assessed, especially with regard to liability arising out of or relating to activities listed in subsection (12)(A)-(D). The monetary damages listed for lawsuits in appendix III show the potential liability in each lawsuit, not just the liability applicable to the activities listed in subsection (12)(A)-(D).

Many lawsuits alleged more than one cause of action. Some of the actions were unrelated to the activities listed in subsection (12)(A)-(D), and a respective apportioning cannot be made for damages sought.

The Deputy Assistant Attorney General for the Civil Division stated two general principles concerning who may ultimately be liable in these actions if a monetary judgment is entered:

- The United States is not liable for any monetary judgment entered against a present or former employee in his individual capacity, and there is no general statutory provision for Government payment of, or indemnification for, such judgments.
- The United States would be liable for a monetary judgment only if it were entered pursuant to a Federal statute waiving the Government's sovereign immunity. Generally such statutes provide for suits against the United States eo nomine, 1/ as in the Federal Tort Claims Act, but may permit monetary relief in suits against a Federal employee in his official capacity, such as in title VII of the 1964 Civil Rights Act.

Although this official stressed that each lawsuit must, however, be assessed individually, that in the event the suit for monetary damages is not properly grounded upon a statutory basis allowing such suits, or the plaintiff has named the wrong party, Department attorneys will generally move to dismiss the action as an unconsented suit, or the court may permit the amendment of the complaint to name the proper party-defendant.

Furthermore, officials of the Civil Division stated that the Attorney General has broad inherent authority to compromise litigation entrusted to his responsibility that is against the United States or its employees in their official capacities. Within certain limits, this authority may be delegated to his designee. The basis for compromising a particular claim is primarily dependent on the litigative risk involved (the chances of winning or losing the case) but that factor is considered together with a host of other considerations, such as

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1/Under that name.

the offer of settlement made and/or the stage of the proceedings. However, the Deputy Assistant Attorney General for the Civil Division stated that when an employee is sued individually for monetary damages, the ability to compromise the litigation is restricted, as any monetary settlement must be satisfied by the individual defendant, and not by the United States.

Department officials told us that the chances of a plaintiff's prevailing could not be disclosed. The officials believed that such an assessment would expose the strengths and weaknesses of the parties' position. Furthermore, it was the Department's position that opinions expressed could be expected to have prejudicial impact on the United States and on Government employees who are defendants in the suits.

COST DATA NOT AVAILABLE ON  
USE OF DEPARTMENT OF JUSTICE  
DEFENSE ATTORNEYS

We could not determine the Department's costs for those lawsuits defended by Department attorneys. An official told us that the total cost depends on the length and scope of the judicial proceeding required to resolve the dispute. This official said many suits identified by us were in their earliest stages; therefore, it was impossible to estimate whether or not they would be disposed of on various motions, such as a motion to dismiss, or whether a full trial on the merits of the lawsuit would be required.

This official also stated that Department attorneys' costs would be imprecise because the Department does not allocate overhead costs. Of the divisions reviewed, only the Criminal Division maintains records relating to the number of hours spent by each attorney on a particular lawsuit, but even there the time spent by section chiefs and above is not recorded.

The Deputy Assistant Attorney General for the Civil Division said that the Department neither recoups attorneys' fees for representing defendants who have judgments passed against them nor recovers monetary damages from defendants if the Government is found liable.

BASIS FOR RETAINING PRIVATE AT.      YS

Section 517 of title 28 U.S.C. allows the Attorney General to represent the "interests of the United States." In view of Department of Justice officials, it is in the interests of the United States to assure those who

accept Government employment that the cost of defending litigation arising out of the performance of official responsibilities will not be a burden of Government service. Traditionally, Department of Justice attorneys have represented Government officials in civil suits brought against them as a result of their performing Government duties.

The Department, in commenting on our report, said that when a Federal employee is sued in his official capacity, the Department will represent him as a public officer because the suit concerns the control of Government conduct; it is the office, and not the individual employee, which is being represented. Section 516 of title 28 U.S.C. reserves to the Department, except where otherwise authorized by law, the conduct of litigation in which the United States, its agencies, or officers (in official capacities as officers) are parties.

If a defendant is sued in his individual capacity for acts arising out of his employment and if he wants Department representation, he must request it. The Assistant Attorney General, who headed the Office of Legal Counsel at the time of our review, told us that most defendants being sued in their individual capacity request Department representation, and most of the time the Department agrees to represent them. He said the Government would have difficulty hiring employees if they were held responsible for their own defense for actions against themselves personally arising out of their employment.

This official further stated that the Attorney General does not have express authority to contract with private attorneys. The Attorney General does this contracting on the basis of legal opinions rendered by the Department's Office of Legal Counsel.

The Department has found it necessary to hire private attorneys rather than use its attorneys. First, because of ongoing criminal investigations of defendants in several cases, it contracted with private attorneys for ethical considerations. If its attorneys represented defendants who were subject to later criminal prosecutions by the Department, this, according to the former head of the Office of Legal Counsel, would pose substantial conflicts of interest. The defendants, while under the Department's representation, could disclose something which, if later used against them would violate professional ethics. In addition, the Department would withdraw its representation if the defendants in the civil suits subsequently became defendants in related Federal criminal proceedings. By

contracting with private attorneys the Department could terminate the contract, but the defendants could continue to retain the same attorneys at their own expense. Thus, continuity of the defendants' representation would be maintained.

Second, the Department stated, in commenting on our report, that if conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many groups as necessary to resolve the conflict, and each group may be provided with separate representation. Some situations may make it advisable to provide private representation to all conflicting groups and to withhold Department of Justice attorneys so as not to prejudice particular defendants.

Criminal investigations were still being conducted by the Department in five of the eight lawsuits in which private counsel had been retained at the time we completed our review. The Deputy Assistant Attorney General for the Civil Division told us that no criminal charges had been filed against any of the individual defendants and that if charges were filed, Department of Justice representation--either direct or by retained private counsel--would cease, pursuant to the Attorney General's guidelines. (See app. VI.) Because of interdefendent conflicts, private attorneys are still retained in other suits where no criminal investigation is being conducted.

#### SELECTION OF PRIVATE ATTORNEYS

No standard procedure is used in the selection of private attorneys. We were told that selection was done on a case-by-case basis. An official in the Criminal Division told us that recommendations on various private attorneys were made from within the Department or the agencies where the defendants were employed. Selection of attorneys was then left to defendants in lawsuits handled by the Criminal Division.

An official in the Civil Division told us that in many cases the Department retained private attorneys who had already been hired by individuals before the Department decided to pay for private representation. The Department, in commenting on our report, said that it was economically beneficial to hire private attorneys already working on cases because they were knowledgeable of factual and legal aspects of the cases. (See app. VIII.) In

addition, an official in the Civil Division, stated that, to the extent possible, the Department seeks to respect defendants' choices as to which attorneys should represent them.

When it is necessary for the Department to select attorneys, Civil Division officials told us that attorneys of demonstrated competency in litigation skills are sought. The factors considered in their selection are:

- familiarity with defenses applicable to Government employees,
- manpower resources required for representing the defendant or group of defendants,
- location where the suit is being brought, and
- willingness to undertake representation at the Government's rate of compensation.

As mentioned earlier, the Attorney General does not have express authority to contract for private attorneys. The Department, in commenting on our report, said that the need to hire private attorneys, as in cases listed on page 9, was not so frequent in the past. (See app. VIII.) Therefore, established contracting procedures were determined to be inappropriate. Private attorneys hired in these cases were only sent letters confirming their retention.

In order to avoid ethical impropriety, the Department emphasized in these letters that, while the Department assumed the responsibility for payment, the attorney's responsibility is solely to his individual client and not to the Department. (See app. V.) On January 19, 1977, the Attorney General issued an order concerning the limits within which the Department may provide for representation of Federal employees. (See app. VI.) The Attorney General's representation guidelines state that the Department will not provide or pay for representation where the position taken would oppose positions maintained by the United States itself.

When hiring private attorneys, the Department is willing to pay the standard fee charged by the firm, up to \$75 per hour. No formal procedures were followed to arrive at a standard hourly fee, nor were any ceiling restrictions placed on time or cost in retaining private attorneys. We were told that the \$75 hourly fee evolved

from within the Civil Division after examination was made of fees charged by different law firms and after the Department's evaluation of the work that would be involved in these cases. The Department is currently studying different procurement options.

APPROVED PRIVATE ATTORNEY LISTS  
ARE NOT MAINTAINED

Officials at the Departments of Justice and the Treasury and the Central Intelligence Agency told us that they do not maintain a list of approved private attorneys, and our review did not indicate such lists were maintained.

LAWSUITS FOR WHICH DEFENDANTS WERE  
REPRESENTED BY PRIVATE ATTORNEYS

In connection with the lawsuits identified, attorneys from 20 law firms have been retained by the Department for 52 defendants. These defendants were named in the following eight lawsuits.

Jane Fonda v. Richard Nixon, et al.  
Morton Halperin, et al. v. Henry Kissinger, et al.  
Bertram Zweibon, et al. v. John N. Mitchell, et al.  
Socialist Workers Party, et al. v. Attorney General, et al.  
Berlin Democratic Club, et al. v. Donald Rumsfeld, et al.  
Grove Press, et al. v. CIA, et al.  
Stephanie Ripperman, et al. v. John McCone, et al.  
(Doe v. McCone)  
Rodney Driver v. Richard Helms, et al.

Additional details on the suits are provided in appendix VII.

As of September 21, 1976, costs for private attorneys' services in all but one lawsuit were about \$440,000. Although private attorneys were retained in the Fonda case, no costs were incurred as of February 1977. An official stated that it is impossible to estimate accurately the potential costs which the Department might incur in these cases. Such costs will depend upon the size and scope of discovery, the research time needed for preparation, the necessity of trial, and the possibility of future appellate proceedings.

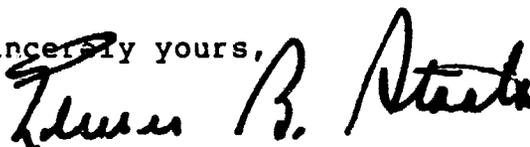
Private attorneys are not required to submit bills for their services on any regular basis, but do so according to the practices of their law firms. Bills submitted are reviewed by Division officials in reference to the reasonableness of the work performed.

In February 1977, the Department requested a supplemental appropriation in the amount of \$4,878,000 to provide legal representation in matters requiring private counsel. The Deputy Assistant Attorney General in the Civil Division said the figure was based on the Department's best estimate because it is impossible to predict with any certainty what stage proceedings will advance to, how long they will last, and a host of other unpredictable factors.

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As agreed with the Subcommittee, the Departments of Justice and the Treasury and the Central Intelligence Agency were given an opportunity to comment on this report. (See apps. VIII, IX, and X.) Their comments have been included in applicable sections of this report. We trust that the information contained in the report will be helpful to you.

Sincerely yours,



Comptroller General  
of the United States

BELLA S. ABRAHAM, N.Y., CHAIRWOMAN  
 ED . . . RYAN, CALIF.  
 JOHN CONN. ED'S, JR., MICH.  
 TORRENT M. MACDONALD, MASS.  
 JOHN E. POSE, CALIF.  
 MICHAEL HARRINGTON, MASS.  
 ANDREW MARSH, N.J.  
 ANTHONY MOFFETT, CONN.

SAM STEVENS, ARIZ.  
 CLARENCE J. BROWN, OHIO  
 PAUL H. McCLOSKEY, JR., CALIF.  
 225-3741

NINETY-FOUR

**Congress of the United States**  
**House of Representatives**

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS  
 SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C

WASHINGTON, D.C. 20515

D-1304c1

April 7, 1976

Honorable Elmer B. Staats  
 Comptroller General of the United States  
 General Accounting Office  
 441 G Street, Northwest  
 Washington, D.C. 20548

Dear Mr. Comptroller General:

This Subcommittee has oversight jurisdiction of the Department of Justice and is especially concerned with efficiency and economy in government. In connection with our work in these areas, we have been interested in determining the number, nature and potential cost to the United States of certain lawsuits brought against the government as a result of alleged wrongdoing arising out of various intelligence programs. Some of the programs to which I have reference are set forth in new subsection (12)(A)-(D) of a bill, H.R. 12039, which I recently introduced. A copy of the bill is enclosed for your convenience.

The Subcommittee now requests the GAO to conduct an audit to determine the following:

1) A list of all cases presently pending against the United States, an agency thereof, or any officer or employee thereof, relating to, arising out of, or alleging damages due to the operations of the programs or activities listed in the new subsection (12)(A)-(D) of H.R. 12039. This should include the names of all parties, dates filed, court in which pending, nature of claims, statutes under which relief sought, amount of monetary relief sought, and status of each case. We are also interested in an assessment of the chances of the plaintiff prevailing and the potential liability of the United States in such cases. Also, we want to know what efforts are or have been made to settle such cases.

2) A list of the defendants represented by the Department of Justice, and those represented by private attorneys. Please also supply an assessment of the costs of each of these categories of defense to

Honorable Elmer B. Staats  
April 7, 1976

the government. Also, please determine under what statutory authority outside counsel is retained; the details of such arrangements and the selection of counsel; and the potential cost to the government of hiring outside counsel for these cases.

I would request further that the GAO examine the list of "approved" private lawyers maintained by any federal agency, including the "Private Attorney Panel" described in the Central Intelligence Agency's Privacy Act filing in the August 28, 1975 Federal Register, which is attached. I would ask that the procedures for selecting and approving such attorneys be examined, including the potential for conflict of interest in representing agency employees or clients, and/or favoritism in the awarding of government contracts, services, appointments or other benefits.

If there are any questions concerning this request, or specifics concerning the type of action against the government with which the Subcommittee is concerned, please have your staff contact Timothy Ingram, Staff Director of the Subcommittee.

Sincerely,



BELLA S. ABZUG  
Chairwoman

Enclosures

94<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 12039

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1976

Ms. ANZRO introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To amend the Privacy Act of 1974.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That section 552a of title 5, United States Code, is  
4 amended—

5           (1) by striking out subsection (d) (2) (B) (i)  
6 and inserting in lieu thereof the following:

7           “(i) correct, expunge, update, or supplement  
8 any portion thereof which the individual believes is  
9 not accurate, relevant, legally maintained, timely, or  
10 complete; or”;

11           (2) by striking out “and” at the end of paragraph  
12 (10) of subsection (e), by striking out the period at

1 the end of paragraph (11) of such subsection and insert-  
2 ing in lieu thereof “; and”, and by inserting immediately  
3 thereafter the following new paragraph:

4 “(12) inform each person who was—

5 “(A) the sender or receiver of any written  
6 communication, or communication by wire, cable,  
7 radio, or other means which was intercepted, re-  
8 corded, or otherwise examined; by such agency, or  
9 any officer or employee thereof, without a search  
10 warrant, or without the consent of both the sender  
11 and receiver; or the occupant, resident, or owner of  
12 any premises or vehicle which was the subject of  
13 any search, physical intrusion, or other trespass, by  
14 such agency, or any officer or employee thereof,  
15 without a search warrant, or without the consent of  
16 such person;

17 “(B) the subject of a file or named in an index  
18 created, maintained, or disseminated by such  
19 agency, or any officer or employee thereof, in con-  
20 nection with an operation or program known as  
21 CHAOS, which operation or program is described  
22 in the report, dated June 1975, to the President  
23 by the Commission on CIA Activities Within the  
24 United States;

25 “(C) the subject of a file or named in an index.

1 created, maintained, or disseminated by such agency.  
2 or any officer or employee thereof, in connection  
3 with an operation or program known as "Counter-  
4 intelligence Program" or "COINTELPRO". which  
5 operation or program is described in the Statement  
6 of Hon. William B. Saxbe, and the hearings of  
7 Subcommittee of the House Judiciary Committee  
8 on November 20, 1974;

9 "(D) the subject of a file or named in an index  
10 created, maintained, or disseminated by such agency,  
11 or any officer or employee thereof, in connection  
12 with an operation or program of the Internal Rev-  
13 enue Service known as "The Special Service Staff",  
14 which operation or program is described in the  
15 Joint Committee on Internal Revenue Taxation  
16 Committee Print entitled "Investigation of the Spe-  
17 cial Service Staff of the Internal Revenue Service"  
18 dated June 5, 1975;

19 that he, she, or it is or was such a person, provide each  
20 such person with a clear and concise statement of such  
21 person's rights under this section and section 552 of this  
22 title, and provide each such person with the option of  
23 requiring that agency to destroy each copy of such file  
24 or index in its possession."

## 4

1           (3) by striking out “(e) (6), (7), (9), (10),  
2           and (11)” in subsection (j) and inserting in lieu  
3           thereof “(e) (6), (7), (9), (10), (11), and (12)”;  
4           (4) by striking out paragraph (1) of such subsec-  
5           tion; and  
6           (5) by striking out paragraph (5) of subsection  
7           (k) and redesignating the following paragraphs  
8           accordingly.

LAWSUITS PENDING JUNE 1, 1976,  
IDENTIFIED IN CONNECTION WITH  
ACTIVITIES LISTED IN H. R. 12039

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u>		<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
					<u>Oral</u>	<u>Written</u>						
95-48-237 (note b)	Seymour Pollack v. United States of America, et al.	Dist. of New Jersey	3/22/76	76-522	X	X	X	-	X	-	\$50 Million	FBI, DOJ, IRS
146-1-51-2639	Khushro Gandhi, et al. v. The Police Dept. of the City of Detroit, et al.	Dist. of Michigan, Southern Division	7/74	4-72019	X	-	X	-	-	-	\$480,000	FBI, DOJ
32-16-353	Richard L. Bast v. Clarence Kelly (sic), et al.	Dist. of Columbia	1/7/75	75-0021	-	-	X	-	-	-	\$501,000	U.S. Attorney, FBI, State Dept., CIA DOJ, DOD, U.S. Treasury, Dept. of Commerce
145-1-271 (notes b and c)	Morton and Ina Halperin v. Henry Kissinger, et al.	Dist. of Columbia	6/73	1187-73	X	-	-	-	-	-	\$924,000	White House, State Dept.
145-1-357	Tad and Marianne Szule v. John Ehrlichman, et al.	Dist. of Columbia	7/15/74	74-1055	X	-	X	-	-	-	\$100/day for each defendant plus punitive (note d)	FBI, DOJ, White House
146-1-16-4595	Institute for Policy Studies, et al. v. John Mitchell, et al.	Dist. of Columbia	2/20/74	74-316	X	-	X	-	-	-	\$100/day for each defendant plus punitive (note d)	DOJ, White House, FBI
145-12-1922	John Sinclair, et al. v. Richard Kleindienst, et al.	Dist. of Columbia	3/29/73	610-73	X	-	-	-	-	-	\$100/day to each plaintiff for each violation of Title 18 USC Sec. 2510 (note d)	DOJ, FBI, White House
95-37-252	Alfred Giovan v. Clarence Kelly (sic), et al.	Dist. of Michigan, Southern Division	3/17/76	670-567	X	-	-	-	-	-	\$50,000	FBI
177-11-15	Doron Weinberg, et al. v. John Mitchell, et al.	N. Dist. of California	4/25/75	75-0817	X	-	-	-	-	-	\$100/day/plaintiff plus \$150,000 (note d)	DOJ, FBI
39-51-3570	Judith Clavir, et al. v. Edward Levi, et al.	S. Dist. of New York	3/ 5/76	76CIV1071	X	X	-	-	-	-	\$400,000	DOJ, FBI

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u>		<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
					<u>Oral</u>	<u>Written</u>						
145-12-2323	Alfred "Skip" Robinson, et al. v. Bob Enaley, et al.	N. Dist. of Miss., Western Division	2/28/75	7523-S	X	-	-	-	-	-	Not Specified	DOJ, FBI
177-52-8	Herman Adlerstein v. Clarence Kelley, et al.	E. Dist. of New York	10/ 7/75	75C-1666	X	X	-	-	-	-	\$12,500,000	DOJ, CIA, FBI
145-12-2638	Orlando Nunez de Villavicencio y Del Toro, et al. v. USA, et al.	Dist. of Columbia	11/ 7/75	75-1863	X	X	X	-	-	-	\$100/day plus \$6,200,000 (note d)	DOJ
146-1-19676 (note b)	Richard Dhoruba Moore v. Edward Levi, et al.	S. Dist. of New York	12/15/75	75-6203	X	X	X	-	-	COINTELPRO	\$750,000	DOJ, FBI, White House, CIA, State Dept., Secret Service
95-51-471	Peter Corso v. USA, et al.	S. Dist. of New York	1/14/76	76-176	X	-	-	-	-	-	\$51,400	U.S. Attorney, Federal Joint Strike Force Against Organized Crime Southern Dist. of N.Y.
145-12-2523	American Civil Liberties Union, et al. v. City of Chicago, et al.	N. Dist. of Illinois, Eastern Division	10/ 3/75	75C3295	-	-	X	-	-	-	Not Specified	Agencies of U.S.A.
146-61-465	Roger Henry Lippman v. John Mitchell, et al.	W. Dist. of Washington	7/ 5/74	76-1522	X	-	X	-	-	-	\$200/day/defendant plus \$700,000 (note d)	DOJ, FBI, White House
145-11-71	David Dellinger, et al. v. John Mitchell, et al.	Dist. of Columbia	6/26/69	1768-69	X	-	-	-	-	-	\$100/day (note d)	DOJ, FBI
157-23-1405	Socialist Workers Party et al. v. James Rochford, et al.	N. Dist. of Illinois, Eastern Division	10/ 8/75	75C3361	X	-	X	-	-	-	\$7,928,500	FBI, CIA
145- 1-353	William and Antonia Lake v. John Ehrlichman, et al.	Dist. of Columbia	1/74	74-887	X	-	-	-	-	-	\$100/day/plaintiff and \$1/plaintiff punitive damages from personal funds of defendants (note d)	FBI, White House, DOJ
145-12-1819	Daniel Ellsberg, et al. v. John Mitchell, et al.	Dist. of Columbia	9/19/72	1879-72	X	-	-	-	-	-	\$100/day/plaintiff and \$100,000 (note d)	FBI, IRS, DOJ

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u>		<u>Search premises/vehicle</u>	<u>Intrusion premises/vehicle</u>	<u>Trespass premises/vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
					<u>Oral</u>	<u>Written</u>						
145-12-2351	Terrence Kayo Hallinan v. John Mitchell, et al.	N. Dist. of California	8/5/75	C-75-0358	X	-	-	-	-	-	\$100/day plus \$20,000 (note d)	DOJ
145-15-627 (note c)	Berlin Democratic Club, et al. v. James Schlesinger, et al.	Dist. of Columbia	8/74	310-74	X	X	-	-	-	-	\$1,595,000	DOD
145-12-1606 (note c)	Bertram Zwiebon, et al. v. John Mitchell, et al.	Dist. of Columbia	10/7/71	2025-71	X	-	-	-	-	-	\$100/day plus \$722,800 (note d)	DOJ, FBI
145- 1-323 (notes b and c)	Jane Fonda v. Richard Nixon (L. Patrick Gray), et al.	Central Dist. of California	10/18/72	73-2442	X	X	X	-	-	-	\$19,800,000	White House, FBI, CIA, DOJ, DOD, U.S. Treasury, Postal Service
145-12-1978 (note c)	Socialist Workers Party, et al. v. Attorney General of the U.S.	Dist. of New York	7/18/73	73-3160	X	X	X	-	-	CHAOS COINTELPRO	\$37,300,000	Postal Service, DOD, FBI, DOJ, CIA, U.S. Treasury
146-1-62-4923	United States Labor Party, et al. v. City of Reading	Dist. of Pennsylvania	9/24/75	75-2704	-	-	-	-	-	COINTELPRO	\$4,200,000	FBI, U.S. Treasury
145-12-2122	Katherine Burkhart, et al. v. William Saxbe, et al.	E. Dist. of Pennsylvania	4/1/74	74-826	X	-	-	-	-	-	\$100/day/defendant plus \$225,000 (note d)	FBI, DOD, DOJ
145-12-1827	Keith Forsyth v. Richard Kleindienst, et. al.	Dist. of Pennsylvania	9/27/72	72-1920	X	-	-	-	-	-	\$100/day plus \$75,000 (note d)	DOJ, FBI
51-52-406	William Cahn v. Edward Levi, et al.	Dist. of New York	3/16/76	76-C-512	X	-	-	-	-	-	\$4 Million	DOJ
95-46-87	Roy Garner v. Clarence Kelley	Dist. of California	11/2/75	75-767	X	-	-	-	-	-	Not Specified	FBI
145-12-2133	Douglas Phelps v. William Saxbe, et al.	Dist. of Massachusetts	5/1/74	74-1540-M	X	-	X	-	-	-	\$100,000	DOJ, FBI

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					<u>Oral</u>	<u>Written</u>						
146-1-37-4733	Abdeen Jabara v. Clarence Kelley, et al.	E. Dist. of Michigan, Southern Division	10/19/72	39065	X	-	-	-	-	COINTELPRO	\$100/day/defendant (note d)	FBI, DOJ
145-12-1790	Civil Liberties Legal Defense Fund, Inc., et al. v. Richard Kleindienst, et al.	Dist. of Massachusetts	8/11/72	72-2518-C	X	-	-	-	-	-	\$300/day/plaintiff and \$150,000 (note d)	FBI, DOJ, IRS
145-12-1513	Joanne Kinoy, et al. v. John Mitchell, et al.	S. Dist. of New York	3/16/71	70-C-5698	X	-	X	-	-	-	\$60,000	DOJ, FBI, White House
145-1-392	Peter Bohmer, Paula Tharp v. Richard Nixon	S. Dist. of California	1/ 6/75	75-4-T	X	X	X	-	-	COINTELPRO	\$5,300,000	White House, FBI, Postal Service, Secret Service
145-12-1612	Muhammad Kenyatta, et al. v. Clarence Kelley, et al.	E. Dist. of Pennsylvania	11/17/75	71-2595	X	-	-	-	-	COINTELPRO	\$100/day/plaintiff and \$485,000 (note d)	FBI
95-16-3837	Mary Chandler, Adele Halkin, et al. v. Richard Heims, et al.	Dist. of Columbia	12/ 2/75	75-1773	X	X	-	-	-	CHAOS	\$100/day/plaintiff and \$50,000 punitive each plaintiff (note d)	FBI, DOJ, CIA
95-46-88	Maurice Dodson v. Edward Levi, et al.	Dist. of Nevada	4, 23/76	76-69	X	-	X	-	-	-	\$20,000	DOJ, FBI
95-86-90	Paul Zagorski v. J. Gerard Hogan, et al.	W. Dist. of Wisconsin	5/25/76	76-C-328	X	-	-	-	-	-	\$251,000 and \$100/day (note d)	FBI, DOJ
95-11-372	Jane Gurley v. Clarence Kelley, et al.	N. Dist. of California	5/24/76	C76-1013	X	X	-	-	-	COINTELPRO	\$5 Million	FBI, DOJ
95-37-233	Leroy Frank Collier v. Ralph Guy, Jr., et al.	E. Dist. of Michigan, Southern Division	6/19/74	4-71921	X	-	X	-	-	-	\$100/day/plaintiff (note d)	FBI, DOJ

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					<u>Oral</u>	<u>Written</u>						
145-12-2029	Marvin Cole v. Elliot Richardson, et al.	Central Dist. of California	10/3/73	73/2322	X	-	-	-	-	-	\$13,500,000	FBI, DOJ, IRS
95-16-4030	Hedrick and Ann Smith v. Richard Nixon, Henry Kissinger, et al.	Dist. of Columbia	5/10/76	76-0796	X	-	-	-	-	-	Not Specified	FBI, NSC, White House
145-12-1979	Lori Paton v. J. Wallace LaPrade, et al.	Dist. of New Jersey	7/73	1091-73	-	X	-	-	-	-	\$65,000	FBI
95-67-95	J. Howard Wrighten, III v. J. Edgar Hoover, et al.	Dist. of South Carolina, Charleston Division	4/16/76	76-587	X	-	-	-	-	-	\$1 Million	FBI, DOJ
95-11E-47	David Eckberg v. U.S.Apt al.	E. Dist. of California	2/76	76-53	X	X	-	-	-	-	\$500 Million	White House, CIA, DOD
54-8-350	Gary Breen, et al. v. Lee Volle, et al.	Dist. of Arizona	2/11/76	76-105	-	-	X	-	-	-	\$500,000	U.S. Customs
157-62-997	Sister Elizabeth McAlister, et al. v. Richard Kleindienst, et al.	Dist. of Pennsylvania	10/11/72	72-1977	X	-	-	-	-	-	\$100/day plus \$50,000 punitive (note d)	DOJ, FBI
145-12-2674	Billy Gene Parrott, Sr. v. Department of Justice, FBI, et al.	N. Dist. of Georgia	1/28/76	C76-165A	-	-	X	-	-	-	\$15,000	FBI, DOJ
145-12-2719	Jack L. Schwartz v. David Price, Norman Ziggori, et al.	State of South Dakota, 7th Judicial Circuit	3/22/76	CA76-265	-	-	X	-	X	-	\$60,700	FBI
145-12-2234	Salvador John Estrada v. Arthur Diaz, et al.	E. Dist. of California	8/13/74	S-74-397	-	-	X	-	-	-	\$40,000	Postal Service

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145-3-1607	Cecil Minges, et al. v. Edgar Snodgrass, et al.	N. Dist. of Texas, Dallas Division	3/25/73	CA3-76-0433G	X -	X	-	-	-	\$50 million	U.S. Customs
145-12-2508	Billie Shelton, et al. v. U.S.A., et al.	E. Dist. of Louisiana, New Orleans Division	9/10/75	75-2853	-	X	-	X	-	\$500,000	DEA
145-12-2652	Dr. Thomas Woodson v. Rolf A. Catharius, et ux., et al.	W. Dist. of Washington at Seattle	12/24/75	C75-899V	- -	X	-	-	-	\$10,000	BNDD (currently DEA)
145-12-2718	Robert D. Sparrow v. Roland Anderson, et al.	Dist. of Utah, Central Division	(e)	C-76-58	- -	X	-	-	-	\$1,001,000,000	FBI
145-5-4025 (note b)	Colonel Lloyd Sager v. Benjamin Bailar	Dist. of Columbia	11/6/75	75-1849	- X	-	-	-	-	1 million	Postal Service
145-5-3841	Edward Fallis v. Elliot Richardson	N. Dist. of Georgia, Atlanta Division	(e)	74-1269A	- X	-	-	-	-	\$15,000	Postal Service, BOP
78-19-36	D & H Salvage Trucking v. U.S.A.	N. Dist. of Georgia, Atlanta Division	2/26/76	C76-389A	- -	X	-	-	-	Injunctive relief	FBI
145-12-2306	James F. Regan v. U.S.A., et al.	E. Dist. of New York	1/31/75	75C-139	- -	X	-	-	-	\$1 million	FBI
145-12-1627	Marcello Carmen Procino v. Thomas Cornelissen, et al.	Dist. of New Jersey	10/26/71	1565-71	- -	X	-	-	-	\$20,000	FBI
145-12-1519	Jesse Pugh v. Donald Klinger	S. Dist. of New York	1/22/71	71CIV313	- -	X	-	-	-	\$105,000	FBI

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					<u>Oral</u>	<u>Written</u>						
145-12-2675	Amil Dinsio, et al. v. Paul Chamberlin, et al.	Central Dist. of California	12/16/75	CV75-4184RPG	-	-	X	-	-	-	\$14 million	FBI
145-12-2229	Hans Vorhauer, et ux. v. U.S.A.	E. Dist. of Pennsylvania	(e)	(e)	-	-	X	-	-	-	Not specified	FBI
145-12-2253	Arthur Ferguson, et al. v. U.S.A., et al.	E. Dist. of New York	8/9/74	74C-1171	-	-	X	-	-	-	\$5,000	USA, Unknown Federal agents
136-37-241	Edward Lucas v. Ronald H. Heiden, et al.	E. Dist. of Michigan, Southern Division--Flint	(e)	76-40025	X	-	-	-	-	-	\$1 million	Dept. of Agriculture
145-12-2522	Brian Meredith Underwood v. Jack Salter, et al.	S. Dist. of Texas, Houston Division	(e)	75-14-1400	-	-	X	-	-	-	\$2210	DEA
145-3-1619	Dan H. Brown II v. Ronald Germain, et al.	Dist. of Columbia	(e)	76-0631	-	-	-	X	-	-	\$5 million	Secret Service
157-16-4473 (note c)	Rodney Driver, and all others similarly situated v. Richard Helms, et al.	Dist. of Rhode Island	(e)	CA750-244	-	X	-	-	-	CHAOS	\$120,000	CIA, FBI, Postal Service, DOJ
145-12-2631	Kipperman, Shawn, Kerer, v. Patrick Clark, et al.	N. Dist. of California	3/11/76	C-76-38-CBR	-	-	-	-	X	-	Not specified	DEA
145-5-4206	Nancy Whitnack v. Benjamin Franklin Bailar	W. Dist. of Washington	5/19/76	C76-369	X	X	X	-	-	-	\$25,000	Postal Service, U.S. Treasury

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145-7-496	Gerald Cain, Grassy Lake Hunting Club v. Ralph David Purinton, et al.	First Judicial Circuit, Union County, Ill.	11/12/74	74-L-19	-	-	-	-	X	-	\$65,000	U.S. Game Management (DOI)
145-1-427 (note c)	Stephanie Kipperman v. John McCone, Richard Helms, et al.	N. Dist. of California	6/13/76	C75-1211	-	X	-	-	-	-	\$10,000 to plaintiff and each person similarly situated	CIA, DOJ, Postal Service
145-12-2790	Don C. Beacham v. Larry Doss, et al.	E. Dist. of Pennsylvania	4/6/76	76-0894	-	-	X	-	-	-	\$40,000	FBI
113-51-324	Richard Bertoli v. Roderick Hills, et al.	S. Dist. of New York	(e)	76-1962	-	-	X	-	-	-	\$2,530,000	SEC
145-7-520	Jack Thompson, et al. v. Thomas S. Kleppe, et al.	Dist. of Hawaii	1/16/76	76-0012	-	-	X	-	-	-	\$200,000	DOI
78-74-81	Dan Brown v. U.S.A.	S. Dist. of Texas, Corpus Christi Division	5/15/75	75-C-56	-	-	X	-	X	-	\$100,000	DEA
145-12-2255	Sally E. Dunn v. R. Gillis, et al.	N. Dist. of California	11/9/74	(e)	-	-	X	-	-	-	\$650,000	DEA
145-28-2824	Jerome Stroder, et al. v. C. M. Kelley, et al.	N. Dist. of Illinois, Eastern Division	6/1/76	76-2012	X	-	-	-	-	-	\$4 million	FBI
145-12-2036	Margaret S. Rodriguez v. Donald E. Ritchey, et al.	Middle Dist. of Florida, Tampa Division	(e)	(e)	X	-	-	-	-	-	\$50,000	FBI
145-3-1564	J. H. DeVries, et al. v. Vernon D. Acree, et al.	Central Dist. of California	1/13/76	CV76-0143	-	X	-	-	-	-	Not specified	U.S. Treasury, U.S. Customs
35-16-623	Robert H. Davis v. Martin R. Hoffman and Herman Staiman	Dist. of Columbia	9/19/75	75-1357	X	-	-	X	-	-	Not specified	U.S. Army
145-12-2118	Robert T. Dale, et al. v. John Bartels, et al.	S. Dist. of New York	3/27/74	74CIV-1382	-	-	X	-	-	-	\$4,500,000	BND (currently DEA), IRS, Unknown Assistant U.S. Attorney

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					<u>Oral</u>	<u>Written</u>						
145-12-2250	Myriel Lean Johnson v. Romaine G. Thornton, et al.	S. Dist. of Iowa, Central Division	10/16/74	74-264-2	-	-	X	-	-	-	\$51,000	Not specified
145-1-407	Andres Castro, et al. v. USA, et al.	S. Dist. of Florida, Miami Division	(e)	75-515 CIV-PF	X	-	-	-	-	-	\$30 million	CIA
145-4-2468	Ellen Glusman v. Lt. Gen. Richard L. Seitz, et al.	E. Dist. of North Carolina, Fayetteville Division	1974	74-22-CIV-3	-	-	X	-	-	-	Not specified	U.S. Army
157-25-122	Herbert Giglotto, et al. v. USA, et al.	S. Dist. of Illinois, Southern Division	5/24/73	S-CIV-73-105	-	-	X	-	-	-	\$1 million	Office of Drug Abuse Law Enforcement/ (currently DEA), DOJ
145-4-2529	State of North Carolina v. Bennie Hawkins	General Court of Justice, Dist. Court Division	12/11/74	Criminal No. 75-2-CV-3	-	-	-	-	X	-	Not specified	Not specified
145-5-3989	Roderick J. Wilson v. Richard O'Neill, et al.	S. Dist. of California	6/10/75	75-0303-T	-	X	-	-	-	-	\$20,928,600	Postal Service
145-2-155	Leonard Brown, Jr. v. Jerry Wilson, et al.	Superior Court of the Dist. of Columbia	2/16/72	1271-72	X	X	-	-	-	-	\$9,600,000	U.S. Air Force
145-12-2507	Nat. Caucus of Labor Committees and U.S. Labor Party v. Anthony Banks, et al.	Dist. of New Jersey	9/11/75	75-1536	-	-	-	-	-	-	\$100,000	FBI
145-4-2527	Mary Mitchell v. the State of N.C.	Dist. of N.C.	12/74	(e)	-	-	-	-	X	-	Not specified	Not specified
145-12-2124	Allard K. Lowenstein v. John Rooney, et al.	E. Dist. of New York	4/74	74C593	X	-	-	X	-	-	Not specified	FBI, IRS

## APPENDIX III

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u>		<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
					<u>Oral</u>	<u>Written</u>						
145-3-1626	James Shelton, et al. v. U.S. Customs Service	W. Dist. of Washington, Northern Division	4/15/76	C-76-275-6	-	-	X	-	-	-	\$15,870	U.S. Customs
55-82-255	Julie Seguin v. Raymond C. Hightower, et al.	Superior Court, State of Washington, County of King	2/24/76	808185	-	-	X	-	-	-	\$12,601	U.S. Customs
145-1-433 (notes b and c)	Grove Press, Inc. v. CIA	S. Dist. of New York	7/17/75	75-3493	X	X	-	-	-	CHAOS	Not specified	CIA
157-69-102	William G. Jefferson and Hazel Jefferson v. United States of America	Dist. of South Dakota, Western Division	(e)	76-5001	-	-	-	-	X	-	\$50,000	Army Corps of Engineers
157-76-56	Oscar Beltran, et al. v. Jesse Bautista, et al.	Dist. of El Paso County, Texas, 210th Judicial District	(e)	75-3928	-	-	-	-	X	-	\$520,000	DEA
157-51-2058	Alfred Lewis v. U.S.A., et al.	S. Dist. of New York	(e)	76CIV-917	-	-	X	-	-	-	\$22 Million	DOJ, U.S. Dist Court of New York
157-35-649 (note b)	Mary Kirby v. Detective Robert E. Murrey, Jr., et al.	Dist. of Maryland	(e)	73-1056-B	-	-	X	-	-	-	\$60,000	Office of Drug Abuse Law Enforcement (currently DEA)
157-S-228	Grace Johnson, et al. v. U.S.A., et al.	E. Dist. of Arkansas, Western Division	4/18/75	LR-75-C-117	-	-	-	X	-	-	\$100,000	FBI
157-18-738	Vivian Martinez v. U.S.A., et al.	S. Dist. of Florida, Miami Division	(e)	74-727-CIV-J	-	-	X	-	-	-	\$400,000	DEA, IRS

Docket Number	Lawsuit	Court filed	Date filed	Civil action number	Interception of communication		Search premises/ vehicle	Intrusion premises/ vehicle	Trespass premises/ vehicle	Subject of file or index	Monetary damages	Agency involved (note A)
					Oral	Written						
157-52-1817	William Broder v. Michael Cherron, et al.	E. Dist. of New York	(e)	(e)	X	X	-	-	-	-	\$685,000	Postal Service, N.Y. Federal District Court
157-30-84	Lewis Howard, et al. v. U.S.A.	E. Dist. of Kentucky	12/30/69	1860	-	-	-	-	X	-	\$1 Million	DOL
157-43-484	Regency Nursing Inn Pharmacy, INC. v. HUD	W. Dist. of Missouri	3/3/76	76CIV42-W-3	-	-	-	-	X	-	\$47,198	HUD
157-60-259	First State Bank and Trust v. Small Business Administration	W. Dist. of Oklahoma	(e)	74-1048-E	-	-	X	-	-	-	\$25,000	SBA
157-16-4268	Hal Barry Koren, et al. v. FBI, U.S.A., et al.	Dist. of Maryland	10/7/75	Y-75-1403	-	-	-	-	X	-	\$1 Million	FBI
157-11-1859	Chester Dickenson, et al, v. U.S.A., et al.	N. Dist. of California	(e)	C78-6654SW	-	-	-	X	X	-	\$2,050,000	U.S.A.
157-51-2055	Mark Reichenbaum v. Jeffrey R. Hall, et al.	S. Dist. of New York	(e)	76-CIV-2270	-	-	X	-	-	-	\$35,000	DEA
157-16-4388	Elizabeth Ann Norton v. John Turner, et al.	E. Dist. of Virginia	(e)	75-3-A	-	-	X	-	-	-	\$350,000	U.S.A., FBI
157-8-501	Lorenzo Alcantar, et al. v. U.S.A.	Dist. of Arizona	6/20/75	75-150	-	-	X	-	-	-	\$550,000	U.S.A., U.S. Customs
157-37-569	Willie Pearson v. Detroit Police Department, et al.	State of Michigan, Circuit Court for County of Wayne	(e)	(e)	-	-	X	-	-	-	\$150,000	FBI, DEA
157-73-403	Ernesto Perez, Sr., et al. v. David T. Vannett	N. Dist. of Texas, San Angelo Division	(e)	46-7-12	-	-	X	-	-	-	\$170,000	DOJ, INS

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u> <u>Oral Written</u>	<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
157-48-1039	Jack Gong and Anna Gong v. Virgil Miller, et al.	Dist. of New Jersey	8/5/74	74-1183	- -	X	-	-	-	\$200,000	DOJ,DEA
157-75-223	Juan Antonio Ledesma v. U.S.A., et al.	E. Dist. of Texas, Tyler Division	1/29/76	TY-76-48-CA	- -	-	-	X	-	\$5,947	INS
157-50-572	Larry Anaya, et al. v. U.S.A. et al.	N. Dist. of New York	12/15/75	75-CV-587	- -	X	-	-	-	\$1,700,000	FBI
157-54M-95	Jesse Samuel Weatherman, Jr., et al. v. U.S.A., et al.	Middle Dist. of North Carolina	9/16/75	C-78-387-W	- -	X	-	-	-	\$6 Million	U.S. Treasury
157-11-216	Gerald Martin Zelmonowitz, et al. v. U.S.A. et al.	N. Dist. of California	(e)	75-1940	X X	-	X	-	-	\$10 Million	IRS, FBI, DOJ, U.S. Marshall, U.S. Customs
157-16-2381	Fred B. Black, Jr. v. Sheraton Corp. of America, et al.	Dist. of Columbia	(e)	440-67	X -	-	-	X	-	\$6 Million	FBI
157-23-1259	Jose R. Millett, et al. v. Augustas D. Stanfield, et al.	N. Dist. of Illinois, Eastern Division	6/15/73	73CI553	- -	X	-	-	-	\$794,500	DEA
157-36-1568	Harold B. Thomas, et al. v. U.S.A., et al.	Dist. of Massachusetts	(e)	75-4284-M	- -	-	-	X	-	\$100,000	U.S.A.
157-37-492	Great American Dream Corp. v. U.S.A., et al.	E. Dist. of Michigan	6/6/73	40236	- -	X	-	-	-	\$250,000	U.S. Treasury, Secret Service, U.S.A.
157-37-607	Clifford and Madeline Dunning v. Kenneth Miller and Farmers Home Administration	Michigan, 2nd Judicial District	4/22/76	(e)	- -	-	X	-	-	Indemnity-Third Party Case	Farmers Home Administration (Department of Agriculture)
157-16-4324	Kenneth Bruce Krohn v. U.S.A., et al.	Dist. of Massachusetts	2/76	76-619-S	- -	X	-	-	-	\$1,685,000	FBI, DOJ, U.S. Attorneys

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u>		<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
					<u>Oral</u>	<u>Written</u>						
157-51-2043	Thomas P. Toomey v. Joseph Kelley	S. Dist. of New York	3/17/76	76CIV-1281 (cmm)	-	-	X	-	-	-	\$1,200,000	ATF, U.S. Treasury
145-7-500	Jack Thompson, et al. v. Thomas Kleppe, Secretary of Interior, et al.	Dist. of Hawaii	1/16/67	76-0012	-	-	X	-	-	-	\$40,000 to each plaintiff	Dept. of Interior, DOD, Commissioner of Trust Territory of Pacific Islands
157-48-945	Dale S. Cunningham v. Robert Waller and Agents, et al.	Dist. of New Jersey	8/28/73	1249-73	-	-	X	-	-	-	\$40,000	FBI
5-19-1254	Charles Cleon Anderson v. USA	N. Dist. of Georgia, Atlanta Division	10/7/74	C74-1988A	-	-	X	-	-	-	\$15,962	IRS
5-35-2014	Ruby Young v. U.S.A.	Dist. of Maryland	9/3/75	75-1223	X	-	-	-	-	-	\$270,090	IRS
5-66-599	Debra Dempsey, et al. v. Walter McQueeney, et al.	Dist. of Rhode Island	12/9/74	CA74-275	-	-	X	-	-	-	\$75,000	IRS
5-18-8877	Evelio Estrella v. Tomas Lopez, John Harrison, et al.	S. Dist. of Florida	5/13/75	75-792	-	-	X	-	X	-	\$1 Million	IRS
5-11E-361	James R. Coson v. Charles Kingman, et al.	E. Dist. of California	6/2/74	F74-72	-	X	-	-	-	-	\$1 Million	IRS
5-19-1284 (95-19-229)	W. Foster Sellers, et al. v. IRS, et al.	N. Dist. of Georgia, Atlanta	1/25/75	C75-82A	-	-	X	-	-	-	\$60,000	IRS
5-11-3359	Edward Lysek, et al. v. U.S.A., et al.	N. Dist. of California	6/13/74	C-74-1141AJZ	-	-	X	-	-	-	\$600,000 each Plaintiff	IRS
5-16-929	Jay A. Miller v. Donald Alexander, et al.	Dist. of Columbia	1/26/76	76-0154	-	-	-	-	-	SSS	Injunctive Relief, and unstated compensatory and punitive	IRS

<u>Docket Number</u>	<u>Lawsuit</u>	<u>Court filed</u>	<u>Date filed</u>	<u>Civil action number</u>	<u>Interception of communication</u> <u>Oral</u> <u>Written</u>		<u>Search premises/ vehicle</u>	<u>Intrusion premises/ vehicle</u>	<u>Trespass premises/ vehicle</u>	<u>Subject of file or index</u>	<u>Monetary damages</u>	<u>Agency involved (note a)</u>
5-37-3011	Philip Gale Wolfe, et al. v. U.S.A., et al.	N. Dist. of Texas, Dallas Division	6/3/74	CA3-74-505C	X	-	-	-	-	-	\$23,524 and interest	IRS
5-16-893 (note b)	Walter Teague, III, et al. v. Donald Alexander, et al.	Dist. of Columbia	3/25/75	75-0416	-	-	-	-	-	SSS	\$375,000 compensatory \$500,000 punitive	IRS
5-13-1992	Rentex Corporation, et al. v. David D. Messinger, et al.	Dist. of Colorado	12/5/73	C-5556	-	X	X	-	-	-	\$21,000	IRS
5-23-7448	Herbert H. Wemple, et al. v. James Q. Swanson, et al.	N. Dist. of Illinois, Eastern Division	12/11/74	74C-3580	-	-	X	-	-	-	\$2 Million	IRS
5-62-4273	Larry Dabrow v. Donald Alexander, et al.	E. Dist. of Pennsylvania	12/11/75	CA-75-3561	X	-	-	-	-	-	\$6 Million	IRS
5-27-826	Fay Anderson, et al. v. USA.	N. Dist. of Iowa, Western Division	9/17/75	C-75-4060	-	-	X	-	-	-	\$750,000	IRS
5-18-8709	Alan H. Rothstein v. USA.	S. Dist. of Florida	7/23/75	74-463-CIV-JB	X	-	-	-	-	-	\$10,000	IRS
5-35-1771	George J. Bluso v. USA.	Dist. of Maryland	5/15/73	73-487	-	-	X	-	-	-	\$535	IRS

a/See last page of Appendix III for abbreviations.

b/See Appendix IV for sample cases.

c/Private attorneys were hired by DOJ for defendants in this lawsuit.

d/Damages sought for each day that the plaintiff's rights were allegedly violated.

e/Information not available.

ABBREVIATIONS USED IN APPENDIX III

ATF - Bureau of Alcohol, Tabacco and Firearms  
BNDD - Bureau of Narcotics and Dangerous Drugs  
BOP - Bureau of Prisons  
CIA - Central Intelligence Agency  
DEA - Drug Enforcement Administration  
DOI - Department of Interior  
DOJ - Department of Justice  
DOL - Department of Labor  
FBI - Federal Bureau of Investigation  
INS - Immigration and Naturalization Service  
IRS - Internal Revenue Service  
NSC - National Security Council  
SEC - Securities and Exchange Commission  
SBA - Small Business Administration  
U.S.A. - United States of America

CASE EXAMPLES OF LAWSUITSPENDING JUNE 1, 1976

## 1. Jane Fonda

Plaintiff

v.

Richard M. Nixon, President of the United States; L. Patrick Gray; William C. Ruckelshaus; Charles W. Colson; John W. Dean, III; John D. Ehrlichman; H. Robert Haldeman; John Mitchell; Richard Kleindienst; Tom Charles Huston; Robert C. Mardian; Elliot L. Richardson, Attorney General of the United States; George P. Schultz, Secretary of the Treasury of the United States; James R. Schlesinger, Secretary of Defense of the United States; Henry A. Kissinger, Secretary of State of the United States; Clarence Kelley, Director of the Federal Bureau of Investigation of the United States; James W. Roley, Director of the United States Secret Service; Vernon A. Walters, Acting Director of the United States Central Intelligence Agency; Vernon D. Acree, Commissioner of Customs of the United States Bureau of Customs; E. T. Klassen, Postmaster General of the United States Postal Service; Morgan Guaranty Trust Company of New York; City National Bank of Los Angeles, California.

Defendants

DATE FILED:

October 18, 1973

AGENCIES INVOLVED:

White House, DOJ, FBI, DOD,  
CIA, Postal Service,  
Departments of the Treasury  
and State, Secret Service

COURT FILED:

Central District of California

SECTION OF BILL TO WHICH ONE  
OR MORE ALLEGATIONS APPLY:

Section A

MONETARY DAMAGES:

\$19,800,000

DOCKET NUMBER:

145-1-323

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

- U.S. Customs agents searched plaintiff's baggage without warrant, subpoena, or permission, and seized and forwarded an address book to the FBI.
- FBI agents obtained records of plaintiff's personal and professional financial transactions without subpoena, warrant, or any legitimate need.
- U.S. Government agents took written materials from plaintiff's rental car after breaking into the car.
- Unknown U.S. agents, without warrant, subpoena, or permission, intercepted plaintiff's mails, wire, and/or oral communications.
- Defendants or their agents engaged in electronic surveillance of plaintiff's residence and conversations without warrant or probable cause.

2. Grove Press, Inc., Barnet Lee Rosset, Jr., Fred Jordan

Plaintiffs

v.

Central Intelligence Agency, William E. Colby, Robert S. Young, Charles W. Kane, James Schlesinger, Richard Helms, John A. McCone, William F. Radborn, James J. Angleton, Raymond Rocca, William J. Hood, Newton S. Miller, Thomas Karamessines, Richard Obor, John Doe, Richard Roe, Jane Doe, and other unknown employees of the CIA and other agencies of the Federal Government.

Defendants

DATE FILED:

July 17, 1975

COURT FILED:

Southern District of New York

MONETARY DAMAGES:

Not determinable

AGENCY INVOLVED:

CIA

SECTIONS OF BILL TO WHICH ONE OR MORE ALLEGATIONS APPLY:

Sections A and B

DOCKET NUMBER:

145-1-433

STATUS:

Original action voluntarily dismissed; second similar action commenced on December 8, 1976

SUMMARY OF ACTIONS:**Plaintiffs allege the following:**

- Plaintiffs formally requested access to all records held by the CIA, and the request was denied. Plaintiffs believe the denial was motivated by desire to conceal evidence of actions undertaken by officials of the CIA and are now suing to obtain their files.
  - A counterintelligence file was collected on the magazine publishing and motion picture distribution of Grove Press using overt and covert methods of investigation and surveillance. The file was organized and maintained to investigate Plaintiff Rosset's political beliefs, and Plaintiff Grove's publishing and distribution activities in the U.S. for purposes unrelated to any lawful function of the defendants.
  - Wire communications were intercepted to obtain information for the file.
  - A "mailwatch" by the defendants including the opening and reproduction of first-class mail sent to plaintiff.
  - Defendants arranged for physical surveillance of home of plaintiff's secretary, and for a forceful entry and search of said home to collect information for file.
3. Morton H. Halperin and Ina Halperin, suing individually and on behalf of their minor children, David Halperin, Mark Halperin, and Gary Halperin.

## Plaintiffs

v.

Henry A. Kissinger, Richard M. Nixon, John N. Mitchell, H. R. Haldeman, John Ehrlichman, Alexander Haig, William C. Sullivan, Robert C. Mardian, Clarence Kelley, Jeb Stuart Magruder, John Doe, Richard Doe, and other employees of the Federal Bureau of Investigation and the Executive Department and other agencies of the Government, Chesapeake and Potomac Telephone Company.

Defendants

DATE FILED:

June 1973

COURT FILED:

District of Columbia

MONETARY DAMAGES:

\$66,000 plus punitive damages

AGENCIES INVOLVED:

FBI, White House, Department of State

SECTION OF BILL TO WHICH ONE OR MORE ALLEGATIONS APPLY:

Section A

DOCKET NUMBER:

145-1-271

STATUS:

Summary judgment grant to all defendants except Nixon, Haldeman, and Mitchell on December 16, 1976

SUMMARY OF ACTIONS:

Plaintiffs allege the following:

- Electronic surveillance devices were installed on their home telephone to intercept plaintiffs' wire communications.
- All FBI records of such occurrences were given to the White House and were fraudulently concealed.

4. Mary Kirby

Plaintiff

v.

Detective Robert E. Murrey, Jr., Detective Larry L. Clark, Detective Gary R. Smith, and Special Agent Joseph Boykevich.

Defendants

DATE FILED:

Date received  
July 25, 1974

AGENCY INVOLVED:

Office of Drug Abuse Law Enforcement (currently DEA)

COURT FILED:

District of Maryland

MONETARY DAMAGES:

\$60,000

SECTION OF BILL TO WHICH ONE  
OR MORE ALLEGATIONS APPLY:

Section A

DOCKET NUMBER:

157-35-649

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

--Defendants entered her premises under the authority of a search and seizure warrant against plaintiff's brother, who, according to the affidavit in support of the warrant, was alleged to be keeping controlled dangerous drugs on the premises. The defendants did not exhibit the warrant to the plaintiff.

--Plaintiff also alleges assaults upon her person and arrest without any cause or reason.

--Plaintiff alleges unreasonable search and seizure among other charges.

5. Richard Dhoruba Moore

Plaintiff

v.

Edward Levi, Attorney General of the United States, John N. Mitchell, former Attorney General of the United States; Clarence M. Kelley, Director of the Federal Bureau of Investigation; Richard M. Nixon, former President of the United States; Robert C. Mardian, former Assistant Attorney General, Department of Justice; Henry L. Kissinger, Secretary of State; William E. Colby, Director of the Central Intelligence Agency; Michael Codd, Commissioner of the New York City Police Department; Howard Metzdorf, commander of the Intelligence Division of the New York City Police Department; Arthur C. Grubert, former commander of the Intelligence Division of the New York City Police Department; Hugo Massini, past commander of the Intelligence Division of the Inspectional Services Bureau of the New York City Police Department; Robert M. Morgenthau, District Attorney for County of New York, State of New York; Eugene Gold, District Attorney for the County of Kings, State of New York; Mario Merola, District Attorney for Bronx County, New York; Nicholas Ferraro, District Attorney for Queens County, State of New York; Richard Roe, representative of an

unknown number of present and or former employees of the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Justice, the White House, the Secret Service, the "Plumbers" Unit, or other department or institution which is hereinafter disclosed to have directed or participated in the acts complained of herein.

Defendants

DATE FILED:

December 15, 1975

COURT FILED:

Southern District of New York

MONETARY DAMAGES:

\$750,000

AGENCIES INVOLVED:

DOJ, FBI, CIA, White House, Secret Service, Department of State

SECTIONS OF BILL TO WHICH ONE OR MORE ALLEGATIONS APPLY:

Sections A and C

DOCKET NUMBER:

146-1-19676

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

- Defendants have conducted a widespread campaign of harrassment and physical and electronic surveillance.
- Information was kept on him under the Counterintelligence Program ("COINTELPRO") gained by electronic surveillance, infiltration, and CIA conducted electronic surveillance and kept a file on plaintiff.
- During plaintiff's trial, plaintiff's attorney's office was illegally searched, and documents seized.

6. Seymour Pollack

Plaintiff

v.

United States of America, Harold Tyler, John Mitchell, Charles E. Peterson, Johnathan Goldstein, Robert Ogren, Richard Kibby, Robert Clark, Herbert Stern, Richard T. Phillips, Joel Rosen, William Robertson, Brian Shaughnessy, Sylvester Mollo,

Harold McGuire, Harold Titus, Seymour Glanzer, John Fine, John J. Kelly, Francis J. Cox, James Donovan, Thomas Sullivan, Stuart Allen, Lester Green, Vincent Gambino, Michael Gardner, Thayer C. Lindauer, Daniel Williamson, Estate of J. Edgar Hoover, Clarence Kelly (sic), and "John Doe" and "Mary Roe," true names unknown, persons intended being the persons who installed illegal "bugs" and conducted illegal surveillance in the office of Louis Ostrer, Georgia Triantis Liakakis and "Mr. Flag," name fictitious, an informer, whose true name is known to the Government.

Defendants

DATE FILED:

March 22, 1976

COURT FILED:

District of New Jersey

MONETARY DAMAGES:

\$50,000,000

AGENCIES INVOLVED:

FBI, IRS, SEC, DOJ

SECTION OF BILL TO WHICH ONE  
OR MORE ALLEGATIONS APPLY:

Section A

DOCKET NUMBER:

95-49-237

STATUS:

Action dismissed in October  
1976

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

- Defendants committed grand larceny of plaintiff's papers, records, tapes, and documents from the home of Robert G. (Bobby) Baker.
- Defendants put plaintiff under illegal surveillance and wiretapping or allowed their subordinates to commit those acts.
- He was subjected to illegal surveillance and wiretapping without prior permission as required by law, constituting a trespass and an invasion of plaintiff's privacy.

7. Colonel Lloyd Sager

Plaintiff

v.

Benjamin Bailar, Postmaster General

Defendant

DATE FILED:

November 6, 1975

AGENCY INVOLVED:

Postal Service

COURT FILED:

District of Columbia

SECTION OF BILL TO WHICH ONE OR MORE ALLEGATIONS APPLY:

Section A

MONETARY DAMAGES:

\$1 million

DOCKET NUMBER:

145-5-4025

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

- His grandfather, father, and uncle were murdered.
- Information on plaintiff's mail has been given to people at the plaintiff's current residence, the D.C. Veterans Home, Rehabilitation Center for Alcoholics.
- These people and postal employees are diverting plaintiff's checks and intercepting, opening, and reading plaintiff's mail.
- The birth of plaintiff's daughter was kept a secret from him.
- Plaintiff's wife was used as a farmer uses a cow--for breeding purposes to produce heirs to that property.
- Plaintiff received no medical treatment while in the Army, and as a result, has been sexually impotent for more than 25 years.
- Plaintiff has never enjoyed the privileges of a commissioned officer.

## 8. Walter D. Teague, III and Indo-China Solidarity Committee

Plaintiff

v.

Donald C. Alexander, Randolph W. Thrower, Johnnie M. Walters, Paul H. Wright, Jr., Edward D. Hughes, James J. McGarty, William F. Gibney, Charles A. Hulberg, Donald W. Bacon, Roger V. Barth, Harold E. Snyder, Donald O. Viridin, Raymond F. Harless, Francis Geibel, John J. Flynn, Phillip Granite, Leon Green, R. Richards Rolapp, Joseph Clarkson, Robert Mardian, Edward Levi, Clarence M. Kelley, Thomas Coll, Heston C. Cole, Harold R. Aaron, Howard H. Calloway, George J. Keegan, Jr., John L. McLucas, Tom Charles Huston, John Doe, Richard Roe, and Jane Poe.

Defendants

DATE FILED:

March 25, 1975

AGENCIES INVOLVED:

IRS, FBI, DOD, DOJ

COURT FILED:

District of Columbia

SECTION OF BILL TO WHICH ONE OR MORE ALLEGATIONS APPLY:

Section D

MONETARY DAMAGES:

\$375,000 compensatory,  
\$500,000 punitive

DOCKET NUMBER:

5-16-893

SUMMARY OF ACTIONS:

Plaintiff alleges the following:

- Plaintiffs were targets of a special bureau called Special Service Staff because of their political beliefs, associations, and activities.
- Information has been gathered and used to initiate special tax investigations and special tax enforcement actions against plaintiffs.

EXAMPLE OF PRIVATE ATTORNEYRETENTION LETTER

Dear Mr.

This will confirm your retention by the Department of Justice to represent \_\_\_\_\_ in one or more of the following cases: John Doe, et al. v. John McCone, et al., USDC N.D. Calif., Civil Action No. C-75-1211-CBR; Rodney Driver, et al. v. Richard Helms, et al., USDC D. R.I., Civil Action No. 75-0224; and Grove Press, Inc., et al., v. CIA, et al., USDC S.D. N.Y., Civil Action No. 75-3493. The fee agreed upon was \$ \_\_\_\_\_ per hour plus costs. I wish to emphasize that although the Department of Justice has assumed responsibility for your remuneration in the course of such representation, your responsibility is, of course, solely to your individual clients. Furthermore, should the current conflicts of interest which led to our decision to retain outside counsel be resolved in the future, there is the possibility that the Department will reevaluate its position on representation and may wish, at that time, to undertake the defense of your clients in this matter. In addition, should any of your clients be indicted or otherwise determined to be criminally culpable by the Criminal Division for any role he might have played in the mail opening program, we may reevaluate the propriety of our continuing to pay counsel for that person in these civil actions. You and your clients should, finally, be aware that by entering into this agreement, the Department of Justice in no way assumes any responsibility on the part of the United States government for any liability that may be assessed against the individual defendants in these cases.

Attached is a letter to us from \_\_\_\_\_, Esq., the independent counsel retained by the Department to undertake the groupings of defendants. This letter provides you with the names of other attorneys retained by Justice and their clients. If you have any questions

- 2 -

about the groupings, or if you or your clients become aware of a potential conflict of interest at any time in the future, please contact Mr.            who will continue to handle problems involving conflicts of interests in these three cases.

Sincerely,

Assistant Attorney General



Office of the Attorney General  
Washington, D. C. 20530

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 20 -- STATEMENTS OF POLICY

Order No. 683-77

AGENCY: Department of Justice

ACTION: Statement of policy

EFFECTIVE DATE: The date of this publication.

SUMMARY: The attached statement of policy describes the limits within which the Department may provide for representation of Federal employees with respect to employment-related matters in which they are involved in their individual capacity. Representation in these matters is limited to state criminal proceedings, and civil and Congressional proceedings.

SUPPLEMENTARY INFORMATION: It may be helpful to set forth briefly the manner in which the representation authority set forth in the statement of policy is currently being applied. Bearing in mind that extraordinary situations may justify going to the outer limits of the guidelines, the present practice of the Department is as follows:

1. The Department will represent an employee who is sued or subpoenaed in his individual capacity, if the acts which constitute the subject of the proceeding reasonably appear to have been performed within the scope of his employment and if he is not the target of a Federal criminal investigation with respect to such actions.

2. Where, although the employee reasonably appears to have acted within the scope of his employment, a pending investigation has disclosed some evidence of his specific participation in a crime, the Department will pay for representation by a private attorney.
3. The Department will likewise pay for representation by a private attorney when several employees, otherwise entitled to representation by the Department, have sufficiently conflicting interests which in the Department's view preclude representation of each of them by the Department.
4. The Department will not represent, or pay for the representation of, any employee, if, with respect to the acts that are the subject of the representation, an indictment or information has been filed against him by the United States or a pending investigation of the Department indicates that he committed a criminal offense.
5. The Department will not provide or pay for representation where the positions taken would oppose positions maintained by the United States itself.

By virtue of the authority invested in me by 28 U.S.C. 509, Part 50 of Chapter I of Title 28 of the Code of Federal Regulations is hereby amended by addition of the following sections:

**§ 50.15 Representation of Federal Employees by Department of Justice Attorneys or by Private Counsel Furnished by the Department in State Criminal Proceedings and in Civil Proceedings and Congressional Proceedings in Which Federal Employees are Sued or Subpoenaed in Their Individual Capacities.**

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- (a) Under the procedures set forth below, a federal employee (herein defined to include former employees) may be represented by Justice Department attorneys in state criminal proceedings and in civil and Congressional proceedings in which he is sued or subpoenaed in his individual capacities, not covered by §15.1 above.
- (1) When an employee believes he is entitled to representation by the Department of Justice in a proceeding, he must submit a request for that representation, together with all process and pleadings served upon him, to his immediate supervisor or whomever is designated by the head of his department or agency, forthwith. The employee's employing federal agency shall submit to the Civil Division in a timely manner a statement, with all supporting data, as to whether the employee was acting within the scope of his employment, together with its recommendation as to whether representation should be provided. The communication between the employee and any individual acting as an attorney at his employing agency, with regard to the request for representation, shall be treated as subject to the attorney-client privilege. In emergency situations the Civil Division may initiate conditional representation after communication by telephone with the employing agency. In such cases, appropriate written data must be subsequently provided.
- (2) Upon receipt of the agency's notification of request for counsel, the Civil Division will determine whether the employee's actions reasonably appear to have been performed within the scope of his employment, and whether providing representation

is in the interest of the United States. If a negative determination is made; Civil Division will inform the agency and/or the employee that no representation will be provided.

- (3) Where there appears to exist the possibility of a federal criminal investigation or indictment relating to the same subject matter for which representation is sought, the Civil Division will contact a designated official in the Criminal Division for a determination whether the employee is either a target of a federal criminal investigation or a defendant in a federal criminal case. An employee is the target of an investigation if, in addition to being circumstantially implicated by having the appropriate responsibilities at the appropriate time, there is some evidence of his specific participation in a crime. In appropriate instances, Civil Rights and Tax Divisions and any other prosecutive authority within the Department should be contacted for a similar determination.
- (4) If the Criminal, Civil Rights or Tax Division or other prosecutive authority within the Department (hereinafter "prosecuting division") indicates that the employee is not the target of a criminal investigation concerning the act or acts for which he seeks representation, then representation may be provided. Similarly, if the prosecuting division indicates that there is an ongoing investigation, but into a matter other than that for which representation has been requested, then representation may be provided.
- (5) If the prosecuting division indicates that the employee is the target of a criminal investigation concerning the act or acts for which he seeks representation, Civil Division will inform the employee that no representation by Justice Department attorneys will be provided. If the prosecuting division indicates that the employee is a target of an investigation concerning the act or acts for which he seeks representation, but no decision to seek an indictment or issue an information has been made, a private attorney may be provided to the

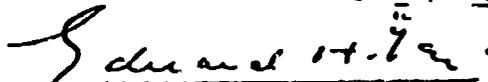
employee at federal expense under the procedures of § 50.16.

- (6) If conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Some situations may make it advisable that private representation be provided to all conflicting groups and that Justice Department attorneys be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply.
- (7) Once undertaken, representation under this subsection will continue until either all appropriate proceedings, including applicable appellate procedures, have ended, or until any of the foregoing bases for declining or withdrawing from representation is found to exist, including without limitation the basis that representation is not in the interest of the United States. In any of the latter events, the representing Department attorney on the case will seek to withdraw but will ensure to the maximum extent possible that the employee is not prejudiced thereby.
- (8) Justice Department attorneys who represent employees under this section undertake a full and traditional attorney-client relationship with the employees with respect to the attorney-client privilege. If representation is discontinued for any reason, any incriminating information gained by the attorney in the course of representing the employee continues to be subject to the attorney-client privilege. All legal arguments appropriate to the employee's case will be made unless they conflict with governmental positions. Where adequate representation requires the making of a legal argument which conflicts with a governmental position, the Department attorney shall so advise the employee.

- (b) Representation by Department of Justice attorneys is not available to a federal employee whenever:
- (1) the representation requested is in connection with a federal criminal proceeding in which the employee is a defendant;
  - (2) the employee is a target of a federal criminal investigation on the same subject matter;
  - (3) the act or acts with regard to which the employee desires representation do not reasonably appear to have been performed within the scope of his employment with the federal government; or
  - (4) it is otherwise determined by the Department that it is not in the interest of the United States to represent the employee.

**§ 50.16 Representation of Federal Employees  
by Private Counsel at Federal Expense.**

- (a) Representation by private counsel at federal expense may be provided to a federal employee only in the instances described in § 50.15(a)(5) and (a)(6).
- (b) Where private counsel is provided, the following procedures will apply:
- (1) The Department of Justice must approve in advance any private counsel to be retained under this section. Where national security interests may be involved, the Department of Justice will consult with the employing agency.
  - (2) Federal payments to private counsel for an employee will cease if the Department of Justice (i) decides to seek an indictment of or to issue an information against that employee on a federal criminal charge relating to the act or acts concerning which representation was undertaken; (ii) determines that the employee's actions do not reasonably appear to have been performed within the scope of his employment; (iii) resolves the conflict described in § 50.15(a)(6) and tenders representation by Department of Justice attorneys; (iv) determines that representation is not in the interest of the United States; (v) terminates the retainer with the concurrence of the employee-client, for any reason.
- (c) In any case in which the employee is not represented by a Department of Justice attorney, the Department of Justice may seek leave to intervene or appear as amicus curiae on behalf of the United States to assure adequate consideration of issues of governmental concern.

  
Edward H. Levi  
Attorney General

Date: Jan 19, 1977

RETENTION OF PRIVATE ATTORNEYS BYDEPARTMENT OF JUSTICE FORGOVERNMENT MATTERS

<u>Lawsuit</u>	<u>Federal defendants</u>	<u>Law firms and/or private attorneys</u>
1. Jane Fonda v. Richard Nixon, et al.	<u>a</u> /John Mitchell	<u>b</u> /Hundley, Cacheris and Sharp
2. Morton Halperin, et al. v. Henry Kissinger, et al. (note c)	Henry Kissinger	Jones, Day, Reavis and Pogue
3. Bertram Zweibon, et al. v. John N. Mitchell, et al. (note c)	Malcolm J. Barrett Alfred E. Camire H. R. Doherty Anthony T. Trabik A. M. Gansky Gerald C. Holland R. W. Patterson Eddie A. Sodolak W. R. Sweeney	<u>d</u> /Martin, Obermaier and Morvillo
4. Socialist Workers Party, et al. v. Attorney General, et al.	George P. Braxtrum, Jr. Arthur J. Greene, Jr.  John F. Malone Joseph Furrer	Martin, Obermaier and Morvillo  Windels and Marx Stanley S. Arkin
5. Berlin Democratic Club, et al. v. Donald H. Rumsfeld, et al.	Maj. Gen. Harold R, Aaron  Lt. Col. Gasper V. Abene  David C. Wales  Frank Dent  Maj. Gen. Frederick E. Davison	White and Case  Wieseman and Wieseman  James E. Sharp  Dickstein, Shapiro and Morin  Ginsberg Feldman and Bress

APPENDIX VII

APPENDIX VII

<u>Lawsuit</u>	<u>Federal defendants</u>	<u>Law firms and/or private attorneys</u>
	Col. Richard E. Evers	Roger Zuckerman
6. Grove Press, et al. v. CIA, et al. (note e)	C. W. Kane Robert S. Young	Webster, Sheffield, Flesichmann, Hitchcock and Brookfield
	<u>a</u> /Richard Helms	Arent, Fox, Kintner, Plotkin and Kahn
	<u>a</u> /Vice Adm. William F. Raborn, Jr. <u>a</u> /Thomas Karamessines <u>a</u> /William Hood	Harry Asquith
	<u>a</u> /Richard Ober Newton Miler	Cole and Groner
	<u>a</u> /James Schlesinger <u>a</u> /William Colby	Cadwalader, Wickersham and Taft
	<u>a</u> /James Angleton Raymond Rocca	Duncan, Brown, Weinberg and Palmer
	<u>a</u> /John McCone	Thelen, Mairin, Johnson and Bridges
7. Stephanie Kipperman, et al. v. John McCone, et al. (Doe v. McCone) (note e)	<u>a</u> /J. Edward Day	Webster, Sheffield, Flesichmann, Hitchcock and Brookfield
	<u>a</u> /Richard Helms	Arent, Fox, Kintner, Plotkin and Kahn
	<u>a</u> /James Schlesinger <u>a</u> /William Colby	Cadwalader, Wickersham and Taft

APPENDIX VII

APPENDIX VII

<u>Lawsuit</u>	<u>Federal defendants</u>	<u>Law firms and/or private attorneys</u>
	<u>a/</u> John Mitchell	Hundley, Cacheris and Sharp
	<u>a/</u> John McCone	Thelen, Marrin, Johnson and Bridges
	<u>a/</u> William Cotter	Dickstein, Shapiro and Morin
8. Rodney Driver v. Richard Helms, et al. (note e)	McGeorge Bundy Marshall S. Carter <u>a/</u> J. Edward Day W. Marvin Watson	Webster, Sheffield, Flesichmann, Hitchcock and Brookfield
	<u>a/</u> Richard Helms	Arent, Fox, Kintner Plotkin and Kahn
	<u>a/</u> Richard Ober	Cole and Groner
	Thomas Karamessines William Hood Vice Adm. Rufus L. Taylor Lyman B. Kirkpatrick, Jr. Richard Bissell, Jr. Vice Adm. William F. Raborn, Jr. Col. Lawrence K. White Cord Meyer James Murphy	Swan, Kenney, Jenckes and Asquith
	William M. Blount Elmer T. Klassen L. Patrick Gray III Howard J. Osborn	Higgins, Cavanaugh, Cooney
	<u>a/</u> James Schlesinger	Hinkley, Allen, Salisbury, Parsons

APPENDIX VII

APPENDIX VII

Lawsuit

Federal defendants

Law firms and/or private attorneys

a/William C. Colby  
Gen. Vernon A. Walters  
Gen. Robert E. Cushman  
John Granovski

Cadwalader,  
Wickersham and  
Taft

a/James Angleton

Duncan, Brown,  
Weinberg and  
Palmer

a/John Mitchell

Hundley, Cacheris  
and Sharp

a/William J. Cotter

Dickstein, Shapiro  
and Morin

a/Defendant was represented in more than one lawsuit.

b/Private attorneys were retained but not utilized as of February 1977.

c/Retention of private attorneys was terminated in March 1976 for the Zweibon case and December 1976 for the Halperin case.

d/The hourly fee paid for private attorney services was \$100 an hour. The attorney was hired at his standard rate before any agreement had been reached in the Department to limit the fee to \$75 an hour.

e/William Nelson, private attorney, was retained to represent various defendants in Grove Press, Kipperman, and Driver cases, solely for the purpose of assuring that each was represented by an attorney who had no conflict among clients.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

APR 7 1977

Mr. Victor L. Lowe  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the proposed report to the House Subcommittee on Government Information and Individual Rights regarding pending lawsuits which may be covered by the provisions of H.R. 12039.

While there appear to be no major problems with the draft report, we are providing some general comments and suggested changes in language to clarify or correct parts of the report and its attachments. Our comments and the organizations submitting them follow:

Office of Legal Counsel

Regarding the discussion on page 5 of the report concerning representation of employees sued in their individual capacities, former Attorney General Levi issued Order No. 683-77 providing guidelines for such representation on January 19, 1977. These guidelines were published in the Federal Register on January 31, 1977, as 28 C.F.R. Sections 50.15 and 50.16 (42 Federal Regulation 5695-96). A copy of the order is enclosed. You may wish to include it within your report.

On page 5 of the draft, the second full paragraph should be modified to reflect the following points:

1. The first sentence refers to statements of Mr. Scalia. That statement should be amended by adding "former" before "Department official."



[See GAO note on the last page of this letter.]

On page 7, the first full paragraph might mention that, according to the background statement in Order No. 683-77, the present policy of the Department is not to pay for representation "where the positions taken would oppose positions maintained by the United States itself."

Administrative Counsel, Office of Management and Finance

On page 6, the second paragraph, second sentence, should be revised to read:

"The Department decided that it was more economical to hire private attorneys already working on the cases than retain new private attorneys because of the former's knowledge of the factual and legal aspects of the cases."

The last sentence starting at the bottom of page 6 should be revised to read:

"Because the need to hire private attorneys was not as frequent in the past, established contracting procedures were determined to be inappropriate."

Criminal Division

A revision is needed on page 3 under the section "Liability of the United States not Estimable." The reason we do not assess the chances of a plaintiff winning is that as a matter of ethics we cannot speculate on the basis of information obtained as a result of the attorney-client privilege, nor may we do so as a matter of policy, 28 C.F.R. §50.2(c)(4).

On pages 4 and 5, the second and third paragraphs relating to the retention of private attorneys should be revised to read:

"When a defendant is sued in his official capacity within the meaning of Rule 25(d) of the Federal Rules of Civil Procedure, the Department will represent him as a public officer (i.e., will represent his office). Since this is a suit to control Government conduct, the Department will always represent the defendant official in his official capacity, which is just another way of saying that the Department always represents the Government in such cases. (No relief can be obtained against a Federal official personally in a suit against him in his official capacity-- relief against a Federal official personally must be sought in a suit against him in his individual capacity.)

"When a defendant is sued in his individual capacity for acts arising out of his employment, the defendant must request the Department to represent him. We were told that most defendants being sued in their individual capacity request Department representation and most of the time the Department agrees to represent them. The Government would have difficulty hiring employees if they were held responsible for their own defense for actions against them personally arising out of their employment."

Also on page 5, under the section "Basis for Retention of Private Attorneys", the draft discusses the potential for conflict between the civil defendant and the Government in the event of later criminal prosecutions by the Government. One area of possible conflict which is not discussed in the draft is the possibility of conflict between the defendants themselves. Guidance to the resolution of such a conflict can be found in Attorney General Order No. 683-77, which amends Part 50 of Chapter I of Title 28 of the Code of Federal Regulations. Section 50.15(a) (6) states that:

- "(6) If conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated

into as many groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Some situations may make it advisable that private representation be provided to all conflicting groups and that Justice Department attorneys be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply."

#### Tax Division

The cases identified for which the Tax Division is responsible are listed on pp. 14-15 of Enclosure II. The listing appears to accurately identify cases which may relate to the activities covered by H.R. 12039, based solely upon the allegations of the complaints.

We believe that the report should state more clearly the manner in which the cases listed were identified and suggest the insertion of the following after the first sentence on page 3 of the GAO report: "The analysis of the cases which may relate to the activities covered by H.R. 12039 is based solely upon the allegations in the complaints reviewed."

#### Civil Division

A number of comments or suggested changes relating to various sections of the report are identified below.

#### The Report

1. The first paragraph of page 2 of the report should be clarified to conform with Rule 4, Federal Rules of Civil Procedure. We suggest the following language:

"When a civil lawsuit is filed against the United States, an agency thereof, or an officer thereof in his official capacity, the complaint, stating facts allegedly constituting a cause of action and containing a

request for relief, is to be served on the U.S. Attorney for the district where the lawsuit originates. A copy is also to be served upon the agency or employee named as a party, and upon the Department of Justice, where it is assigned to the appropriate division and section. See Rule 4(d), Federal Rules of Civil Procedure."

[See GAO note on the last page of this letter.]

3. The third sentence of paragraph 3 on page 3 should be modified to read: "The Department believes that such an assessment would expose the strengths and weaknesses of the parties' positions."

4. The explanation of Department representation when an employee is sued in his official capacity, as contained in the paragraph beginning at the bottom of page 4, is inaccurate and needs to be clarified. When an employee is sued in his official capacity, neither the employee nor the Department have any choice regarding representation, for it is the office and not the official which is being represented. We would resist any attempt by an official to engage counsel other than the Department in such a suit, for representation is reserved by 28 U.S.C. § 516 to the Attorney General. We have revised the paragraph to reflect that position as follows:

"When a Federal employee is sued in his official capacity, the Department will represent him. 28 U.S.C. § 516 specifically reserves to the Department, except where otherwise authorized by law, the conduct of litigation in which the United States, its agencies or officers are parties or are interested. This is because it is the office and not the individual employee which is being represented. Indeed, the Department would resist any attempt by an official to utilize counsel other than the Department."

Enclosure II

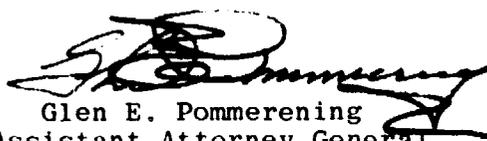
[See GAO note on the last page of this letter.]

Enclosure IV

[See GAO note on the last page of this letter.]

We appreciate the opportunity to comment on the draft report. Should you have any further questions, please feel free to contact us.

Sincerely,



Glen E. Pommerening  
Assistant Attorney General  
for Administration

Enclosure

GAO note:

- Note 1: Deleted comments refer to material contained in the draft report which has been revised in the final report.
2. Page references throughout the Department's comments refer to our draft report and may not correspond to this final report.

**CENTRAL INTELLIGENCE AGENCY**  
WASHINGTON, D.C. 20505

7 February 1977

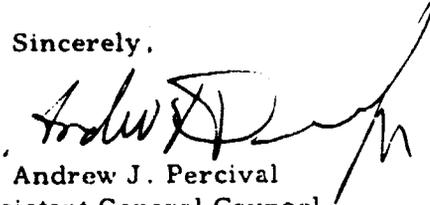
Mr. John Ols, Jr.  
General Government Division  
General Accounting Office  
Washington, D.C.

Dear Mr. Ols:

Pursuant to our telephone conversation of January 24, 1977 and Mr. Lowe's letter to Mr. Bush dated January 17, 1977 about your proposed report to the Chairman of the House Subcommittee on Government Information and Individual Rights regarding lawsuits against the Government as a result of alleged illegal activities covered by provisions of H.R. 12039, this Agency interposes no objection.

If you have any questions, please contact the undersigned on 351-7231.

Sincerely,

  
Andrew J. Percival  
Assistant General Counsel





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

February 9, 1977

Dear Mr. ~~Lowe~~:

This is in response to your letter to the Secretary of the Treasury of January 17, 1977 forwarding GAO's proposed report regarding lawsuits against the Government as a result of alleged illegal activities covered by provisions of H.R. 12039.

We furnished the report for comment to the Commissioner, IRS; the Director, Bureau of Alcohol, Tobacco and Firearms; and Treasury's Office of the General Counsel. They declined to comment on the draft since it does not appear to be of primary interest to Treasury and we have so notified your Justice Department site staff.

The Commissioner, IRS did advise us that provisions of H.R. 12039 would have an adverse effect on the operations of IRS. He would like to be given an opportunity to comment on any proposal of this type if introduced in this Congress.

Thank you for giving us the opportunity to review this proposed report.

Sincerely yours,

A handwritten signature in cursive script that reads "Wilbur R. DeZerne".

Wilbur R. DeZerne  
Director, Office of Audit(OS)

Victor L. Lowe, Director (GGD)  
United States General Accounting Office  
Washington, D.C. 20548