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January 16, 1986

Blair D. Jaynes, Captain, IDANG
Staff Judge Advocate
Military Division
State of Idaho
VIA STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Establishment of Military Intelligence Units
in Idaho Army National Guard

Dear Capt. Jaynes:

Your inquiry of January 6, 1986, addressed to the Attorney General, has been referred to me for response.

Our answer to the question whether Idaho law would pose any obstacle to the training of Military Intelligence units must necessarily be quite general inasmuch as we are not advised of the specific activities to be undertaken in connection with such training. The assumption on which my response is predicated is that your reference to a "training environment" implies that the training is to be carried out on a military reservation or in some other enclosed location where the training activities are carried out in isolation from the public.

The Idaho Communications Security Act prohibits interception of wire or oral communications. Interception is defined as "aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device." Idaho Code § 18-6701(3). Wire communications are defined as those carried on transmission facilities of various kinds furnished by a common carrier. Oral communications are deemed to be those uttered under circumstances justifying an expectation of privacy.

These definitional elements appear to take training activities, where there is no intrusion on the transmissions of a common carrier and no intrusion on private conversations, beyond the scope of the act.

Manufacture, distribution and possession of intercepting devices is prohibited, but the United States, states, political subdivisions, and their officers and employees are exempt from the prohibition.

Inasmuch as the Communications Security Act does not appear to apply to military intelligence training, on the assumption previously stated, there is no occasion to consider questions of federal preemption, which might otherwise be significant.

Very truly yours,



Lynn E. Thomas
Solicitor General

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