



NEW YORK
CITY BAR

BARRY M. KAMINS
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
bkamins@nycbar.org

August 1, 2007

Hon. Nancy Pelosi
Speaker of the House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515

Hon. John Boehner
House Republican Leader
1011 Longworth House Office Building
Washington, D.C. 20515

Re: Electronic surveillance and potential FISA amendments

Dear Speaker Pelosi and Republican Leader Boehner:

I write on behalf of the Association of the Bar of the City of New York (“the Association”) to urge you to resist efforts to hastily and unnecessarily expand Executive surveillance powers through amendments to the Foreign Intelligence Surveillance Act (FISA). In particular, the Association urges you to oppose H.R. 3138, which would enable broad surveillance programs to go forward in the complete absence of judicial review. In general, we would underscore the importance of having meaningful judicial checks on the exercise of executive power when such fundamental rights are at issue, and we would urge you not to support any legislation that would disrupt the important balance between individual liberties and national security in the absence of a compelling demonstration of need.

The surveillance powers that the Administration is currently seeking are extraordinary and would constitute a substantial intrusion into the privacy rights of Americans. Rather than justify such a drastic measure, however, the Administration has consistently rebuffed efforts by Congress to gather information on the current Terrorist Surveillance Program (TSP) and related surveillance activities. Instead it has relied on

vague and misleading statements suggesting that FISA is insufficient to meet “modern” surveillance needs and current security threats. Although FISA was originally enacted in 1978, it has been amended nearly fifty times since its original adoption, including eight updates since September 11, 2001. The degree of judicial oversight that it requires is significantly limited in deference to the need for quick decision making, and any further restrictions in this oversight should not occur without substantial and specific justification.

H.R. 3138 represents just such an unjustified intrusion. This bill would amend FISA’s definition of “electronic surveillance” in a manner that creates enormous loopholes through which the Administration could conduct improper warrantless surveillance. Specifically, this bill would allow warrantless surveillance wherever it is not “intentionally direct[ed]” at a “particular known person who is reasonably believed to be in the United States.” It would also allow surveillance of communications where one party to the communication is not “reasonably believed” to be in the United States. Among other things, both definitions would create an incentive for the government to direct their surveillance actions broadly and to deliberately ignore whether surveillance targets are inside the United States.

We strongly recommend that you resist this and similar efforts to unduly expand the government’s surveillance authority in the absence of sufficient information concerning the Administration’s surveillance programs and any alleged FISA inadequacies to allow Congress to properly determine what amendments are necessary to meet national security needs, and what measures are required to prevent undue encroachments on civil liberties.

Very truly yours,

A handwritten signature in cursive script that reads "Barry Kamins".

Barry Kamins

cc: Hon. John Conyers, Jr.
Hon. Lamar S. Smith

Hon. Silvestre Reyes
Hon. Peter Hoekstra

NY Congressional Delegation



NEW YORK
CITY BAR

BARRY M. KAMINS
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
bkamins@nycbar.org

August 1, 2007

Hon. Harry Reid
Senate Majority Leader
528 Hart Senate Office Building
Washington, D.C. 20510

Hon. Mitch McConnell
Senate Minority Leader
361-A Russell Senate Office Building
Washington, DC 20510

Re: Electronic surveillance and potential FISA amendments

Dear Majority Leader Reid and Minority Leader McConnell:

I write on behalf of the Association of the Bar of the City of New York (“the Association”) to urge you to resist efforts to hastily and unnecessarily expand Executive surveillance powers through amendments to the Foreign Intelligence Surveillance Act (FISA). In particular, the Association urges you to oppose H.R. 3138, which would enable broad surveillance programs to go forward in the complete absence of judicial review. In general, we would underscore the importance of having meaningful judicial checks on the exercise of executive power when such fundamental rights are at issue, and we would urge you not to support any legislation that would disrupt the important balance between individual liberties and national security in the absence of a compelling demonstration of need.

The surveillance powers that the Administration is currently seeking are extraordinary and would constitute a substantial intrusion into the privacy rights of Americans. Rather than justify such a drastic measure, however, the Administration has consistently rebuffed efforts by Congress to gather information on the current Terrorist Surveillance Program (TSP) and related surveillance activities. Instead it has relied on

vague and misleading statements suggesting that FISA is insufficient to meet “modern” surveillance needs and current security threats. Although FISA was originally enacted in 1978, it has been amended nearly fifty times since its original adoption, including eight updates since September 11, 2001. The degree of judicial oversight that it requires is significantly limited in deference to the need for quick decision making, and any further restrictions in this oversight should not occur without substantial and specific justification.

H.R. 3138 represents just such an unjustified intrusion. This bill would amend FISA’s definition of “electronic surveillance” in a manner that creates enormous loopholes through which the Administration could conduct improper warrantless surveillance. Specifically, this bill would allow warrantless surveillance wherever it is not “intentionally direct[ed]” at a “particular known person who is reasonably believed to be in the United States.” It would also allow surveillance of communications where one party to the communication is not “reasonably believed” to be in the United States. Among other things, both definitions would create an incentive for the government to direct their surveillance actions broadly and to deliberately ignore whether surveillance targets are inside the United States.

We strongly recommend that you resist this and similar efforts to unduly expand the government’s surveillance authority in the absence of sufficient information concerning the Administration’s surveillance programs and any alleged FISA inadequacies to allow Congress to properly determine what amendments are necessary to meet national security needs, and what measures are required to prevent undue encroachments on civil liberties.

Very truly yours,

A handwritten signature in cursive script that reads "Barry Kamins".

Barry Kamins

cc: Hon. Patrick J. Leahy
Hon. Arlen Specter

Hon. John D. Rockefeller, IV
Hon. Christopher S. Bond

Hon. Charles E. Schumer
Hon. Hillary Rodham Clinton