

## IN THE SENATE OF THE UNITED STATES

Mr. \_\_\_\_\_

introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

**A BILL**

To amend title 18, United States Code, to authorize applications for a court order approving the use of certain investigative techniques to obtain foreign intelligence information.

(Insert title of bill here.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the*  
"Foreign Intelligence Investigations Act of 1977."

SEC. 2. Title 18, United States Code, is amended by adding a new chapter after 119 as follows:

"CHAPTER 120. -- WARRANT PROCEDURES IN FOREIGN INTELLIGENCE INVESTIGATIONS.

- "Sec.
- "2521. Definitions.
- "2522. Authorizations for certain investigative techniques for foreign intelligence purposes.
- "2523. Designation of judges authorized to grant orders for certain investigative techniques.
- "2524. Application for an order.
- "2525. Issuance of an order.
- "2526. Use of information.
- "2527. Report of certain investigative techniques.
- "2528. Common carriers."

"§2521. Definitions

"(a) Except as otherwise provided in this section the definitions of section 2510 of this title shall apply to this chapter.

"(b) As used in this chapter --

"(1) 'Foreign power' means --

"(A) a foreign government or any component thereof, whether or not recognized by the United States;

"(B) a faction of a foreign nation or nations, not substantially composed of United States persons;

"(C) an entity, which is directed and controlled by a foreign government or governments which is engaged in terrorist, sabotage, or clandestine intelligence activities or which is not substantially composed of United States persons;

"(D) a foreign-based terrorist group not substantially composed of United States persons;

or

"(E) a foreign-based political organization, not substantially composed of United States persons.

"(2) 'Agent of a foreign power' means --

"(A) a person who is not a United States person and who is an officer or employee of a foreign power;

"(B) a person who --

"(1) pursuant to the direction of foreign power, knowingly engages ~~in-or~~ knowingly-acts-in-furtherance-of, in terrorist activities for or on behalf of a foreign power,

"(ii) knowingly conspires with, aids, or abets such a person, engaged in terrorist activities for or on behalf of a foreign power;

"(C) a person who --

"(i) pursuant to the direction of a foreign power, knowingly engages in, ~~or~~ ~~knowingly-acts-in-furtherance-of~~ sabotage activities for or on behalf of a foreign power, or

"(ii) knowingly conspires with, aids, abets such a person ~~knowing-that-such-person~~ is engaged in such sabotage activities for or on behalf of a foreign power;

"(D) a person who --

"(i) pursuant to the direction of a foreign power, knowingly engages in clandestine intelligence activities for or on behalf of a foreign power, which activities involve or will soon involve a violation of the criminal statutes of the United States or will substantially harm the security of the United States, or

"(ii) knowingly conspires with, aids or abets such a person engaged in such clandestine intelligence activities for or on behalf of a foreign power.

"(3) 'Terrorist activities' means activities which --

"(A) are violent and dangerous to human life;

"(B) violate a Federal or State criminal statute, or if such activities have been or will

be conducted outside the United States, would  
be criminal under the laws of the United States  
or any state if committed within its jurisdiction;  
and

"(C) appear to be intended --

"(1) to intimidate or coerce the  
civilian population, or

(ii) to influence the policy of a  
government by intimidation or coercion.

"(4) 'Sabotage activities' means activities pro-  
hibited by Title 18, United States Code, chapter 105.

"(5) 'Clandestine intelligence activities' means  
the collection or transmission of information related  
to national defense or foreign policy, the fact or  
purpose of which collection is concealed or attempted  
to be concealed.

"(6) 'Foreign intelligence information or material  
means --

"(A) information or material which relates  
to, and is necessary to the ability of the United  
States to protect itself against, actual or poten-  
tial attack or other grave hostile acts of a  
foreign power or an agent of a foreign power;

"(B) information or material with respect  
to a foreign power or foreign territory, which  
relates to, and because of its importance is  
essential to --

"(i) the national defense or the  
security of the Nation, or

"(ii) the conduct of the foreign  
affairs of the United States;

"(C) information or material which relates to, and is necessary to the ability of the United States to protect against, the terrorist activities of a foreign power or an agent of a foreign power;

"(D) information or material which relates to, and is necessary to the ability of the United States to protect against, the sabotage activities of a foreign power or an agent of a foreign power; or

"(E) information or material which relates to, and is necessary to the ability of the United States to protect itself against, the clandestine intelligence activities of an intelligence service or network of a foreign power or an agent of a foreign power;

"(7) 'Electronic surveillance' means --

"(A) the purposeful selection for monitoring, on the basis of name, or other personal data which identifies a United States person which would result in the acquisition by an electronic, mechanical or other surveillance device, of the contents of any communication made with a reasonable expectation of privacy to or from such United States person, without the consent of any party thereto;

"(B) the acquisition by an electronic, mechanical, or other surveillance device, of the contents of a wire communication to or from a person which is not a foreign power without the consent of any party thereto, where such acquisition occurs in the United States while the communication

is being transmitted by wire;

"(C) the acquisition, by an electronic, mechanical, or other surveillance device, of the contents of a radio communication, to or from a person which is not a foreign power without the consent of any party thereto, made with a reasonable expectation of privacy, and where both the sender and all intended recipients are located within the United States; or

"(D) the installation or use of electronic, mechanical or other surveillance device to be used against a person which is not a foreign power in the United States or against a United States person for the purposeful acquisition of information other than from or related to a radio or wire communication under circumstances in which a person has a reasonable expectation of privacy.

"(E) nothing in this definition or chapter is intended to affect Section 605 and 606 of title 47 of the United States Code or to limit or affect the signals intelligence activities of the United States Government involving the acquisition of communications by electronic, mechanical or other surveillance device not falling within the term 'electronic surveillance' as defined in this Act provided that --

"(i) all such acquisition or activities are conducted for foreign intelligence purposes; and

"(ii) an agency authorized to conduct such signals intelligence activities shall not disseminate information which is not

foreign intelligence information derived from such activities or acquisition which identifies a United States person without his consent unless the information pertains to a possible threat to the physical safety of any person.

"(8) 'Mail opening' means the inspection of the contents of first-class mail before such mail is delivered to the person to whom it is directed.

"(9) 'Surreptitious search and seizure' means the unconsented search of any private dwelling, or any other building or property in the United States, or outside of the United States if such search is directed at a United States person, in order to obtain any information or material, the fact or purpose of which search is concealed or attempted to be concealed.

"(10) 'United States person' means --

"(A) a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association the majority of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States or a majority of the stock of which is owned by citizens of the United States, aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but not including corporations which are foreign powers.

"(11) 'Attorney General' means the Attorney General of the United States or in his absence the Acting Attorney General.

"(12) 'Minimization procedures' means procedures to minimize the acquisition of information or material that is not foreign intelligence information or material, to assure that information or material which is not foreign intelligence information or material not be maintained, and to assure that information or material obtained not be used except as provided in section 2526.

"§2522. Authorization for certain investigative techniques for foreign purposes.

"Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance, mail opening, or surreptitious search and seizure targeted at a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

"§2523. Designation of judges authorized to grant orders for certain investigative techniques.

"(a) The Chief Justice of the United States shall publicly designate seven district court judges, each of whom shall have jurisdiction to hear applications for and grant orders approving electronic surveillance, mail opening, or surreptitious search and seizure anywhere within the United States under the procedures set forth in this chapter. except that no judge designated under this subsection shall



have jurisdiction of an application under this chapter which has been denied previously by another judge designated under this subsection. If any judge designated under this subsection denies an application for an order authorizing electronic surveillance, mail opening, or surreptitious search and seizure under this chapter, such judge shall provide immediately for the record a complete written statement of the reasons for his decision and, on motion of the United States, direct that the record be transmitted, under seal, to the special court of appeals review established in subsection (b). In the event of an appeal in the denial of an application made under this chapter, the judge denying the application shall be, for the purposes of the appeal, a respondent in the action with the right to assistance of counsel.

"(b) The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a special court of review appeals which shall have jurisdiction to review the denial of any application made under this chapter. ~~If such special court determines that the application was properly denied,~~ On making its determination, the special court shall immediately provide for the record a complete written statement of the reasons for its decision and, on motion of the United States or of the respondent District Court judge, direct that the record be transmitted to the Supreme Court, which shall have jurisdiction to review such decision

"(c) All proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted, shall be sealed by the presiding judge and shall be

maintained under security measures established by the Chief Justice in consultation with the Attorney General.

"(d) The special court of review shall promulgate orders establishing the procedure for selecting to which judge designated under section 2523(a) each successive application under this chapter shall be submitted.

"(e) The Chief Justice shall designate judges under this chapter from among judges nominated by the Judicial Conference of the United States. Each judge designated shall so serve for a maximum of seven years and shall not be eligible for re-designation, provided that the judges first designated under subsection (a) shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) shall be designated for terms of three, five, and seven years.

"§2524. Application for an order.

"(a) Each application for an order approving electronic surveillance, mail opening, or surreptitious search and seizure under this chapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application shall require the approval of the Attorney General based which may be granted only upon his finding that it satisfies the criteria and the requirements of such application as set forth in this chapter. It shall include the following information:

"(1) the identity of the Federal officer making the application;

"(2) the authority conferred on the applicant by the President of the United States and the approval of the Attorney General to make the application;

"(3) the identity or a characterization of the person or entity who is the target of the electronic

surveillance, mail opening, or surreptitious search and seizure;

"(4) a description of the facilities or place where the mail opening is to be conducted, or at which the electronic surveillance or surreptitious search and seizure is directed;

"(5) a statement of the facts and circumstances relied upon by the applicant to justify his belief that --

"(A) the target of the electronic surveillance, mail opening, or surreptitious search and seizure is a foreign power or an agent of a foreign power and

"(B) in the case of electronic surveillance or surreptitious search and seizure, the facilities or the place at which the electronic surveillance or surreptitious search and seizure is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

"(6) a statement of the minimization procedures to be applied to minimize the acquisition, retention, and dissemination, and to require the expunging, of information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information; does not relate to the ability of the United States:

"(A) to protect itself against actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(B) to provide for the national defense or the security of the Nation;

"(C)--to-provide-for-the-conduct-of-the  
foreign-affairs-of-the-United-States;

"(D)--to-protect-against-the-terrorist  
activities-of-a-foreign-power-or-an-agent-of-a  
foreign-power;

"(E)--to-protect-itself-against-the-elan-  
destine-intelligence-activities-of-an-intelligence  
service-or-network-of-a-foreign-power-or-an-agent  
of-a-foreign-power;

except, that appropriate steps shall be taken  
to insure that information or material maintained solely  
because it is foreign intelligence information  
or material as defined in section 2521(6)(B)(ii)  
information-retained-solely-because-it-which  
relates-to,-and-because-of-its-importance-is  
deemed-essential-to-the-conduct-of-foreign  
affairs shall not be maintained in such a manner  
as to permit the retrieval of such information  
or material by reference to a United States  
person who is a party to a communication inter-  
cepted as provided in this chapter, or identified  
through mail opening or surreptitious search and  
seizure conducted pursuant to this chapter.

"(6)--if-the-target-of-the-electronic-surveillance  
is-a-foreign-power-which-qualifies-as-such-solely-on-the  
basis-that-it-is-an-entity-controlled-and-directed-by  
a-foreign-government-or-governments,-and-unless-there-is  
probable-cause-to-believe-that-a-substantial-number-of-the  
officers-or-executive-of-such-entity-are-officers-or  
employees-of-a-foreign-government,-or-agents-of-a-foreign  
power-as-defined-in-section-2521(2)(B);-(C);-(D);-or-(E),  
a-statement-of-the-procedures-to-prevent-the-acquisition,

retention, -and-dissemination-and-to-require-the-expunging  
of-communications-of-permanent-resident-aliens-and  
citizens-of-the-United-States-who-are-not-officers-or  
executives-of-such-entity-responsible-for-these-areas  
of-its-activities-which-involve-foreign-intelligence  
information-

"(7) a factual description of the nature of the information or material sought, which in the case of surreptitious search and seizure shall particularly describe the information or material to be seized.

"(8) a certification or certifications by the Assistant-to-the-President-for-National-Security-Affairs or an executive branch official or officials designated by the President who is the incumbent or in his absence the acting incumbent of one of the following offices: Secretary of State, Secretary of Treasury, Secretary of Defense, Assistant Secretary of Defense (Intelligence), Director of the Arms Control and Disarmament Agency, Director of the Energy Research and Development Agency, Assistant to the President for National Security Affairs, Director of Central Intelligence, Director of the Federal Bureau of Investigation, Director of the National Security Agency --

"(A) that the information or material sought is foreign intelligence information or material;

"(B) that the purpose of the surveillance, mail opening, or surreptitious search and seizure is to obtain foreign intelligence information or material;

"(C) that such information or material cannot feasibly be obtained by normal investigative techniques;

"(D) that such information or material is likely to be obtained by the technique for which approval is sought;

"(E) including a designation of the type of foreign intelligence information or material being sought according to the categories described section 2521(b)(6); and

"(F) including a statement of the basis for the certification that --

"(i) the information or material sought is the type of foreign intelligence information or material designated, and

"(ii) such information or material cannot feasibly be obtained by normal investigative techniques; and

"(iii) such information or material is likely to be obtained by the technique for which approval is sought;

"(9) a statement of the means by which the surveillance, mail opening, or surreptitious entry will be effected;

"(10) a statement of the facts concerning all previous applications that have been made to any judge under this chapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

"(11) in the case of electronic surveillance or mail opening, a statement of the period of time for which the electronic surveillance or mail opening is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance or mail opening under this chapter should not automatically terminate when the

described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

"(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

"(c) The judge may require the applicant to furnish such other information or evidence as may be necessary to make the determination required by section 2525 of this chapter.

"§2525. Issuance of an order.

"(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance, mail opening or surreptitious search and seizure if he finds that --

"(1) the President has authorized the Attorney General to approve applications for electronic surveillance, mail opening, or surreptitious search and seizure for the purpose of obtaining foreign intelligence information or material;

"(2) the application has been made by a Federal officer and approved by the Attorney General;

"(3) on the basis of the facts submitted by the applicant there is probably cause to believe that:

"(A) the target of the electronic surveillance, mail opening or surreptitious search and seizure is a foreign power or an agent of a foreign power; and

"(B) in the case of electronic surveillance or surreptitious search and seizure the facilities



or place at which the electronic surveillance or surreptitious search and seizure is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

"(4) minimization procedures to be followed are reasonably designed to accomplish their purpose; minimize the-acquisition,-retention,-and-dissemination,-and-to require-the-expunging,-of-information-relating-to permanent-resident-alien-or-citizens-of-the-United States-that-is-not-foreign-intelligence-information, does-not-relate-to-the-ability-of-the-United-States-

"(A)--to-protect-itself-against-actual-or potential-attack-or-other-grave-hostile-acts-of a-foreign-power-or-an-agent-of-a-foreign-power;

"(B)--to-provide-for-the-national-defense or-the-security-of-the-Nation;

"(C)--to-provide-for-the-conduct-of-the-foreign-affairs-of-the-United-States;

"(D)--to-protect-against-the-terrorist-activities-of-a-foreign-power-or-an-agent-of-a-foreign power;

"(E)--to-protect-itself-against-the-sabotage activities-of-a-foreign-power-or-an-agent-of-a foreign-power;-or

"(F)--to-protect-itself-against-the-clandestine-intelligence-activities-of-an-intelligence service-or-network-of-a-foreign-power-or-an-agent of-a-foreign-power;

except, that appropriate steps shall be taken to insure that information maintained solely because it is foreign intelligence information or material as defined in section 2521 (6)(B)(ii) information-retained-which



~~solely-because-it-relates-solely-to,-and-because-of-its  
importance-is-deemed-essential-to-the-conduct-of-foreign~~  
affairs, shall not be maintained in such a manner as to  
permit the retrieval of such information or material by  
reference to a United States person who is a party to  
a communication intercepted as provided in this chapter  
or identified through mail opening as surreptitious search  
and seizure conducted pursuant to this chapter;

~~"(5)--if-the-target-of-the-electronic-surveillance  
is-a-foreign-power-which-qualifies-as-such-solely-on  
the-basis-that-it-is-an-entity-controlled-and-directed  
by-a-foreign-government-or-governments,-and-unless-there  
is-probable-cause-to-believe-that-a-substantial-number  
of-the-officers-or-executives-of-such-entity-are-officers  
or-employees-of-a-foreign-government,-or-agents-of-a  
foreign-power-as-defined-in-section-2521(2)(B);-(C);-(D);  
or-(E);-procedures-to-be-followed-are-reasonably-designed  
to-prevent-the-acquisition-retention,-and-dissemination;  
and-to-prevent-the-acquisition,-retention,-and-dissemina-  
tion,-and-to-require-the-expunging-of-communications-of-  
permanent-resident-alien-and-citizens-of-the-United  
States-who-are-not-officers-or-executives-of-such-entity-  
responsible-for-those-areas-of-its-activities-which  
involve-foreign-intelligence-information-~~

"(5) the application which has been filed contains  
the description and certification or certifications,  
specified in section 2524(a) (7) and (8), and there is  
probable cause ~~no-compelling-reason~~ to believe that  
such certification or certifications are correct.

"(b) An order approving an electronic surveillance  
under this section shall --

"(1) specify --

"(A) the identity or a characterization of the person or entity who is the subject target of the electronic surveillance;

"(B) the nature and location of the facilities or the place at which the mail opening will be conducted or at which the electronic surveillance or surreptitious search and seizure will be directed;

"(C) the nature of information or material sought to be acquired including a particular description of the information or material to be seized through surreptitious search and seizure;

"(D) the means by which the electronic surveillance, mail opening, or surreptitious search and seizure will be effected; and

"(E) the period of time during which the electronic surveillance or mail opening is approved or the period of time in which the surreptitious search and seizure is to be carried out; and

"(2) direct --

"(A) that the minimization procedures be followed;

"(B) that, upon the request of the applicant, the Postal Service of the United States, a specified communication or other common carrier, a landlord, custodian, contractor, or other specified person may furnish the applicant forthwith any and all information, facilities, or technical assistance, necessary to accomplish the electronic surveillance, mail opening, or surreptitious search and seizure, and-that-such-information,-facilities,-or-technical assistance-furnished-must-be-provided in such manner

as will protect its secrecy and produce a minimum of interference with the services that such service carrier, landlord, custodian, contractor, or other such person is providing that target of electronic surveillance, mail opening, or surreptitious search and seizure, provided that a landlord, custodian, contractor or other specified person may decline to cooperate in the electronic surveillance, mail opening, or surreptitious search and seizure and shall be notified of the right to so decline; and

"(C) that the applicant compensate, at the prevailing rates, such carrier, landlord, custodian, or other person for furnishing such aid.

"(c) An order issued under this section may approve and electronic surveillance or mail opening for the period necessary to achieve its purpose, or for ninety days, whichever is less. Extensions of an order for electronic surveillance or mail opening issued under this chapter may be granted upon an application for an extension made in the same manner as required for an original application and after new findings required by subsection (a) of this section. In connection with the new finding of probable cause, the judge may require the applicant to submit information obtained pursuant to the original order or to any previous extensions, or any other information or evidence as he finds necessary to make such new findings. Each extension may be for the period necessary to achieve the purposes for which it is granted, or for ninety days, whichever is less.

"(d) An order authorizing a surreptitious search and seizure issued under this section shall specify a period of time, not to exceed ten days, which such search and seizure is to be carried out.

"(e) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that --

"(1) an emergency situation exists with respect to the employment of electronic surveillance, mail opening, or surreptitious search and seizure to obtain foreign intelligence information or material before an order authorizing such technique can with due diligence be obtained, and

"(2) the factual basis for issuance of an order under this chapter to approve such technique exists, he may authorize the emergency employment of such technique if a judge designated pursuant to section 2523 of this title is informed by the Attorney General or his designate at the time of such authorization that the decision has been made to employ the technique under emergency circumstances and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes the employment of such technique. If the Attorney General authorizes such emergency employment of electronic surveillance, mail opening, or surreptitious search and seizure, he shall require that the minimization procedures required by this chapter for the issuance of a judicial order be followed. In the absence of a judicial order approving such technique, the surveillance, mail opening, or authority to conduct a surreptitious search and seizure shall terminate when the information sought is

obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance or mail opening is terminated or the surreptitious search and seizure is carried out without an order having been issued, no information obtained or evidence derived from such surveillance, mail opening, or surreptitious search and seizure shall be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee or other authority of the United States, a State, or a political subdivision thereof. As provided in section 2523, a denial of the application may be appealed by the Attorney General, and an approval of the application by the Special Court of Appeals established in section 2524 may be appealed by the respondent District Court judge.

"(f) A judge denying an order under this section or a panel affirming or overruling such denial under section 2523(b) shall state the reasons therefor.

"§2526 Use of information.

"(a) Information or material acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees only for the enforcement of the criminal law or for purposes relating to the ability of the United States:

"(1) to protect itself against actual or potential attack or other grave hostile acts of a foreign power or agent of a foreign power;

"(2) to provide for the national defense or the security of the Nation;

"(3) to provide for the conduct of the foreign affairs of the United States;

"(4) to protect against the terrorist activities of a foreign power or agent of a foreign power;

"(5) to protect itself against the sabotage activities of a foreign power or agent of a foreign power; or

"(6) to protect itself against the clandestine intelligence activities of an intelligence service or network of a foreign power or agent of a foreign power.

No information or material acquired from an electronic surveillance conducted pursuant to, or in violation of this chapter, may be disclosed to anyone except to a Federal or state officer or an officer of a foreign government for the purposes specified in this subsection, or to such persons as are necessary, including a potential victim, to prevent a crime of violence, or to a Committee of the Congress for purposes of congressional oversight, or to a court for purposes of judicial proceedings. No otherwise privileged communication obtained in accordance with or in violation of, the provisions of this chapter shall lose its privileged character.

"(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure, for law enforcement purposes, of any information or material which constitutes evidence of a crime if such disclosure is accompanied by a statement that such evidence, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

"(c) No information or material obtained or derived from an electronic surveillance, mail opening, or surreptitious

search and seizure shall be received in evidence or otherwise used or disclosed in any trial, hearing, or other proceeding in a Federal or State court unless, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to disclose the information or material or submit it in evidence in the trial, hearing, or other proceeding, the government notifies the court of the source of the information or material and the court, ~~in-camera-and-exparte~~, determines that the surveillance, mail opening, or surreptitious search and seizure was authorized and conducted in a manner that did not violate any right afforded by the Constitution and statutes of the United States to the person against whom the evidence is to be introduced. In making such a determination, the court, after reviewing a copy of the court order and accompanying application in camera, shall order disclosed to the person against whom the evidence is to be introduced the order and application, or portions thereof, if it finds that there is a reasonable question as to the legality of the surveillance and that such disclosure would promote a more accurate determination of such legality or that such disclosure would not harm the national security.

"(d) Any person who has been a subject of electronic surveillance, mail opening, or surreptitious search and seizure and against whom evidence derived from such electronic surveillance, mail opening, or surreptitious search and seizure is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or proceeding in or before any court, department officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress any information or material acquired by such technique, or evidence derived therefrom, on the grounds that --



"(1) the information or material was lawfully intercepted or seized;

"(2) the order of authorization or approval under which it was intercepted or seized is sufficient on its face; or

"(3) the interception or seizure was not in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the information or material acquired by such technique or evidence derived therefrom shall be suppressed. The judge, upon the filing of such motion may in his discretion make available to the person or his counsel for inspection such portions of the information or material or evidence derived therefrom as the judge determines to be in the interests of justice.

"(e) If an emergency employment of electronic surveillance, mail opening, or surreptitious search and seizure is authorized under section 2525(d) and a subsequent order approving the employment of such technique is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States person subject to such technique as the judge may determine in his discretion it is in the interest of justice to service, notice of --

"(1) the fact of the application;

"(2) the period of the surveillance or mail opening or the date of the surreptitious search and seizure;

"(3) the fact that during the period or on that date foreign intelligence information or material was



or was not obtained. On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

"§2527 Report of certain investigative techniques.

"(a) In April of each year, the Attorney General shall report to the Administrative Office of the United States Courts and shall transmit to the Congress with respect to the preceding calendar year --

"(1) the number of applications made for orders and extensions of orders approving electronic surveillance, mail opening, and surreptitious search and seizure and the number of such orders and extensions granted, modified, and denied;

"(2) the periods of time for which applications granted authorized electronic surveillances and mail openings and the actual duration of such electronic surveillances and mail openings;

"(3) the number of such surveillances and mail openings in place at any time during the preceding year; and

"(4) the number of such surveillances and mail openings terminated during the preceding year.

"(b) Within seventy-two hours of the initiation of any electronic surveillance, mail opening, or surreptitious search and seizure, the target of which is an agent of a foreign power as defined in section 2521(b)(2)(D) of Chapter 120, the Attorney General shall, ~~under a written injunction of secrecy if necessary~~, report to the Select Committee on

Intelligence of the United States Senate ~~and the Committee on the Judiciary of the Senate and the House of Representatives~~, and such committee or committees of the House of Representatives as the Speaker of such House of Representatives shall designate, or to such representatives as are designated by such committees, the facts and circumstances requiring such electronic surveillance, mail opening, or surreptitious search and seizure.

"(c) The Select Committee on Intelligence of the United States Senate is authorized to obtain such additional information as it may need to carry out its duties pursuant to Senate Resolution 400, 94th Congress, agreed to May 19, 1976, as such resolution may be extended as amended.

"(d) Any agency authorized to conduct signals intelligence on behalf of the United States Government shall report to the Select Committee on Intelligence of the United States Senate every ninety days of the number of instances of dissemination during such period of information which identifies a person which is not a foreign power derived from the acquisition of communications by electronic, mechanical, or other surveillance device not falling within the definition of electronic surveillance.

"§2528 Common carriers.

"No agency of the United States may request, directly or indirectly, any communication from any commercial carrier, if such communication would not be directly available to such agency except through electronic surveillance, unless such agency is authorized by a court order granted pursuant to this chapter or chapter 119 to obtain such communication or otherwise authorized by the Communications Act of 1934.

SEC. 3. The provisions of this Act and the amendment made hereby shall become effective upon enactment: Provided, That, any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of chapter 120, title 18, United States Code, if that surveillance is terminated or an order approving that surveillance is obtained under this chapter within sixty days following the designation of the first judge pursuant to section 2523 of chapter 120, title 18, United States Code.

SEC. 4. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(1) is amended --

(1) by inserting "or chapter 120 or as otherwise authorized by a search warrant or order of a court of competent jurisdiction," immediately after "chapter" in the first sentence;

(2) by inserting a comma and "or, under color of law, willfully engages in any other form of electronic surveillance as defined in chapter 120" immediately before the semicolon in paragraph (a).

(3) by inserting "or information obtained under color of law by any other form of electronic surveillance as defined in chapter 120" immediately after "contents of any wire or oral communication" in paragraph (c);

(4) by inserting "or any other form of electronic surveillance, as defined in chapter 120," immediately before "in violation" in paragraph (c);

(5) by inserting "or information obtained under color of law by any other form of electronic surveillance as defined in chapter 120" immediately after "any wire or oral communication" in paragraph (d); and

(6) by inserting "or any other form of electronic surveillance, as defined in chapter 120," immediately before "in violation" in paragraph (d).

"(b)(1) Section 2511(2)(a)(i) is amended by inserting the words 'or radio communication' after the words 'wire communication' and by inserting the words 'or otherwise acquire' after the word 'intercept.'

"(2) Section 2511(2)(a)(ii) is amended by inserting the words 'or chapter 120' after the second appearance of the word 'chapter,' and by striking the period at the end thereof and adding the following: 'or engage in electronic surveillance, as defined in chapter 120: Provided, however, That before the information, facilities, or technical assist-

ance may be provided, the investigative or law enforcement officer shall furnish to the officer, employee, or agency of the carrier either—

“(1) an order signed by the authorizing judge certifying that a court order directing such assistance has been issued, or

“(2) in the case of an emergency surveillance as provided for in section 2518(7) of this chapter or section 2525(d) of chapter 120, or a surveillance conducted under the provisions of section 2528 of chapter 120, a sworn statement by the investigative or law enforcement officer certifying that the applicable statutory requirements have been met,

and setting forth the period of time for which the surveillance is authorized and describing the facilities from which the communication is to be intercepted. Any violation of this subsection by a communication common carrier or an officer, employee, or agency thereof, shall render the carrier liable for the civil damages provided for in section 2520.”.

“(c)(1) Section 2511(2)(b) is amended by inserting the words ‘or otherwise engage in electronic surveillance, as defined in chapter 120,’ after the word ‘radio.’

“(2) Section 2511(2)(c) is amended by inserting the words ‘or engage in electronic surveillance, as defined in chapter 120,’ after the words ‘oral communication’ and by inserting the words ‘or such surveillance’ after the last word in the paragraph and before the period.

“(3) Section 2511(6) is amended by adding at the end of the section the following provision:

“(e) It shall not be unlawful under this chapter

or chapter 120, or section 605 of the Commissions Act of 1931 for an officer, employee, or agent of the United States in the normal course of his official duty, to conduct electronic surveillance as defined in section 2521 (b)(2) of chapter 120, for the sole purpose of determining the capability of equipment used to obtain foreign intelligence or the existence or capability of equipment used by a foreign power or its agents: *Provided*, (1) That the test period shall be limited in extent and duration to that necessary to determine the capability of the equipment, and (2) that the content of any communication acquired under this section shall be retained and used only for the purpose of determining the existence or capability of such equipment, shall be disclosed only to the officers conducting the test, and shall be destroyed upon completion of the testing; and (3) that the test may exceed ninety days only with the prior approval of the Attorney General.”

(d) Section 2511(3) is repealed.

“(e) Section 2515 is amended by inserting the words ‘or electronic surveillance as defined in chapter 120, has been made’ after the word ‘intercepted’ and by inserting the words ‘or other information obtained from electronic sur-

veillance, as defined in chapter 120,' after the second appearance of the word 'communication'."

(f) Section 2518(1) is amended by inserting the words "under this chapter" after the word "communication".

(g) Section 2518(4) is amended by inserting the words "under this chapter" after both appearances of the words "wire or oral communication".

(h) Section 2518(9) is amended by striking the word "intercepted" and inserting the words "intercepted pursuant to this chapter" after the word "communication".

(i) Section 2518(10) is amended by striking the word "intercepted" and inserting the words "intercepted pursuant to this chapter" after the first appearance of the word "communication".

(j) Section 2519(3) is amended by inserting the words "pursuant to this chapter" after the words "wire or oral communications" and after the words "granted or denied".

"(k) Section 2520 is amended by deleting all before subsection (2) and inserting in lieu thereof: 'any person other than an agent of a foreign power as defined in section 2521(b)(2)(A) of chapter 120, who has been subject to electronic surveillance, as defined in chapter 120, or whose wire or oral communication has been intercepted, or about whom information has been disclosed or used, in violation of this chapter, shall (1) have a civil cause of action against any person who so acted in violation of this chapter and'."

SEC. 5. Section 2236 of title 18, United States Code is amended to read as follows:

"§2236. Searches without warrant.

"(a) Whoever, being an officer, agent, or employee, of the United States or any department or agency thereof willfully --

"(1) searches any private dwelling or any other building or property, without a warrant issued pursuant to the Federal Rules of Criminal Procedure or chapter 120 of title 18; or

"(2) opens any foreign or domestic mail not directed to him without a warrant authorizing such opening issued pursuant to the Federal Rules of Criminal Procedure, or chapter 120 of title 18, or without the consent of the sender or addressee of such mail shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"(b) This section shall not apply to any person --

"(1) serving a warrant of arrest;

"(2) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony;

"(3) making a search at the request or invitation or with the consent of the occupant of the premises;

"(4) making a search or opening mail under emergency circumstances pursuant to section 2525(e) of title 18; or

"(5) serving as a customs officer inspecting mail from outside of the United States.



SEC. 6. On or before March 1979, and on the first day of March of each year thereafter, the Select Committee on Intelligence of the United States Senate shall report to the Senate concerning the implementation of this chapter. Said reports shall include but not be limited to an analysis and recommendations concerning whether this chapter should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.



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