

SUBJECT: Summary of Substitute to S.2453 (Specter National Security Surveillance Act)

DATE: July 13, 2006

Section 1. Short Title

Section 2. Findings.

Section 3. Definitions.

The NSSA updates the definitions of “electronic communication” and “electronic surveillance” to include technologies such as cell phones and the Internet that did not exist in 1978. The NSSA coins the term “electronic surveillance program” to denote programs such as the Terrorist Surveillance Program.

Section 4. Jurisdiction.

The NSSA grants the Foreign Intelligence Surveillance Court jurisdiction to review surveillance on a program-wide level. In the event the court declines to authorize a program, the Attorney General may modify and resubmit the program to the Foreign Intelligence Court of Review. This section also allows all lawsuits challenging an electronic surveillance program to be channeled to the FISA Court of Review, and empowers the FISA Court of Review to conduct discovery where needed.

Section 5. Applications for Approval of Program.

To obtain approval of an electronic surveillance program, the Attorney General or his designee must submit (i) his legal basis for concluding that the program is constitutional; (ii) the proposed operational and minimization procedures; and (iii) an explanation of how the program is reasonably designed to ensure that the communications intercepted involve a terrorist, agent of a terrorist, or someone reasonably believed to have communicated or associated with a terrorist.

Section 6. Approval of Programs.

The Foreign Intelligence Surveillance Court must (i) assess the program’s constitutionality; (ii) find that the program is reasonably designed to ensure that the communications intercepted will include a terrorist, agent of a terrorist, or person who has had communication with a terrorist or agent of a terrorist; and (iii) verify that the government has complied with the other requirements of the bill.

Section 7. Congressional Oversight.

Every six months, the Attorney General must provide all members of the House and Senate Intelligence Committees with information on any electronic surveillance programs in effect.

Section 8. Allows seven days, instead of 72 hours, to obtain authorization in an emergency.

Section 9. Section 9 confirms that the bill does not unconstitutionally retract any constitutional authority the President has to conduct collect information from foreign nations and their agents. Section 9 also increases the criminal penalties against officials who knowingly misuse foreign intelligence information.

Section 10. Modernizes FISA by (i) updating the definitions of “electronic communication” and “electronic surveillance” to include technologies such as cell phones and the Internet that did not exist in 1978; (ii) allows the FISC to authorize emergency surveillance as long as the court deems necessary, but no longer than one year; (iii) allows officials other than the Attorney General to begin emergency surveillance provided that the attorney General or his designee obtains FISA approval to continue that surveillance within seven days; (iv) requires the Executive Branch to conduct a feasibility study to develop and implement a document management system for classified information; and (v) creates a new criminal penalty for any official who “discloses or uses information obtained under color of law by electronic surveillance.”