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94TH CONGRESS  
2D SESSION

# H. R. 12750

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IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1976

Mr. RODINO (for himself, Mr. KASTENMEIER, Mr. DANIELSON, Mr. PATTISON of New York, Mr. HUTCHINSON, Mr. RAILSBACK, Mr. WIGGINS, and Mr. MOSHER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That this Act may be cited as the "Foreign Intelligence Sur-  
4        veillance Act of 1976".

5        SEC. 2. Title 18, United States Code, is amended by add-  
6        ing a new chapter after chapter 119 as follows:

1 **Chapter 120.—ELECTRONIC SURVEILLANCE WITH-**  
 2 **IN THE UNITED STATES FOR FOREIGN INTEL-**  
 3 **LIGENCE PURPOSES**

4 **§ 2521. Definitions**

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

8 “(b) As used in this chapter—

9 “(1) ‘Agent of a foreign power’ means—

10 “(i) a person who is not a permanent resident  
 11 alien or citizen of the United States and who is an  
 12 officer or employee of a foreign power; or

13 “(ii) a person who, pursuant to the direction  
 14 of a foreign power, is engaged in clandestine intelli-  
 15 gence activities, sabotage, or terrorist activities, or  
 16 who conspires with, assists, or aids and abets such  
 17 a person in engaging in such activities.

18 “(2) ‘Electronic surveillance’ means—

19 “(i) the acquisition, by an electronic, mechani-  
 20 cal, or other device, of the contents of a wire com-  
 21 munication to or from a person in the United States,  
 22 without the consent of any party thereto, where  
 23 such acquisition occurs in the United States while  
 24 the communication is being transmitted by wire;

1 “(ii) the acquisition, by an electronic, mechani-  
 2 cal, or other device, of the contents of a radio  
 3 transmission, without the consent of any party there-  
 4 to, made with a reasonable expectation of privacy  
 5 where both the point of origin and all intended re-  
 6 cipients are located within the United States; or

7 “(iii) the installation of an electronic, me-  
 8 chanical, or other device in the United States to  
 9 acquire information not transmitted by wire or  
 10 radio under circumstances in which a person has a  
 11 reasonable expectation of privacy.

12 “(3) ‘Foreign intelligence information’ means—

13 “(i) information relating to the ability of the  
 14 United States to protect itself against actual or  
 15 potential attack or other hostile acts of a foreign  
 16 power or its agents;

17 “(ii) information, with respect to foreign  
 18 powers or territories, which because of its impor-  
 19 tance is deemed essential to the security or national  
 20 defense of the Nation or to the conduct of the for-  
 21 eign affairs of the United States;

22 “(iii) information relating to the ability of the  
 23 United States to protect the national security against  
 24 foreign intelligence activities.

1           “(4) ‘Attorney General’ means the Attorney Gen-  
2           eral of the United States or in his absence the acting  
3           Attorney General.

4           “(5) ‘Foreign power’ includes foreign governments,  
5           factions, parties, military forces, or agencies or instru-  
6           mentalities of such entities, or organizations composed  
7           of such entities, whether or not recognized by the United  
8           States, or foreign based terrorist groups.

9           **“§ 2522. Authorization for electronic surveillance for for-  
10           eign intelligence purposes**

11           “Applications for a court order under this chapter are  
12           authorized if the President has, by written authorization, em-  
13           powered the Attorney General to approve applications to  
14           Federal judges having jurisdiction under section 2523 of this  
15           chapter, and a judge to whom an application is made may  
16           grant an order, in conformity with section 2525 of this chap-  
17           ter, approving electronic surveillance of a foreign power or  
18           an agent of a foreign power for the purpose of obtaining  
19           foreign intelligence information.

20           **“§ 2523. Designation of judges authorized to grant orders  
21           for electronic surveillance**

22           “(a) The Chief Justice of the United States shall desig-  
23           nate seven district court judges, each of whom shall have  
24           jurisdiction to hear applications for and grant orders ap-

1           proving electronic surveillance anywhere within the United  
2           States under the procedures set forth in this chapter.

3           “(b) The Chief Justice shall designate three judges  
4           from the United States district courts or courts of appeals  
5           who together shall comprise a special court of appeals which  
6           shall have jurisdiction to hear an appeal by the United States  
7           from the denial of any application made under this chapter.  
8           The United States shall further have the right to appeal an  
9           affirmance of denial by that court to the Supreme Court. All  
10           appeals under this chapter shall be heard and determined as  
11           expeditiously as possible.

12           “(c) Applications made and orders granted under this  
13           chapter shall be sealed by the presiding judge and shall be  
14           kept under security measures established by the Chief Justice  
15           in consultation with the Attorney General.

16           **“§ 2524. Application for an order**

17           “(a) Each application for an order approving electronic  
18           surveillance under this chapter shall be made in writing upon  
19           oath or affirmation to a judge having jurisdiction under  
20           section 2523 of this chapter. Each application shall be  
21           approved by the Attorney General and shall include the  
22           following information:

23           “(1) the identity of the officer making the  
24           application;

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

4       “(3) the identity or a characterization of the  
5 person who is the subject of the electronic surveillance;

6       “(4) a statement of the facts and circumstances  
7 relied upon by the applicant to justify his belief that—

8           “(i) the target of the electronic surveillance  
9 is a foreign power or an agent of a foreign power;  
10 and;

11          “(ii) the facilities or the place at which the  
12 electronic surveillance is directed are being used, or  
13 are about to be used, by a foreign power or an agent  
14 of a foreign power;

15       “(5) a statement of the procedures by which the  
16 acquisition and retention of information relating to  
17 permanent resident aliens or citizens of the United States  
18 that is not foreign intelligence information will  
19 be minimized;

20       “(6) a description of the type of information sought  
21 and a certification by the Assistant to the President for  
22 National Security Affairs or an executive branch of-  
23 ficial designated by the President from among those  
24 executive officers employed in the area of national se-  
25 curity or defense and appointed by the President by and

1       with the advice and consent of the Senate that such  
2 information is foreign intelligence information that can-  
3 not feasibly be obtained by normal investigative  
4 techniques;

5       “(7) a statement of the means by which the sur-  
6 veillance will be effected;

7       “(8) a statement of the facts concerning all pre-  
8 vious applications known to the Attorney General that  
9 have been made to any judge under this chapter in-  
10 volving any of the persons, facilities or places specified  
11 in the application, and the action taken on each previous  
12 application; and

13       “(9) a statement of the period of time for which  
14 the electronic surveillance is required to be maintained.  
15 If the nature of the intelligence gathering is such that  
16 the approval of the use of electronic surveillance under  
17 this chapter should not automatically terminate when the  
18 described type of information has first been obtained, a  
19 description of facts supporting the belief that additional  
20 information of the same type will be obtained thereafter.

21       “(b) The Attorney General may require any other affi-  
22 davit or certification from any other officer in connection  
23 with the application.

24       “(c) At the time of the hearing on the application, the  
25 applicant may furnish to the judge additional information in-

1 support of the application and the judge may require the  
2 applicant to furnish such other information or evidence as  
3 may be necessary to make the determinations required by  
4 section 2525 of this title.

5 **“§ 2525. Issuance of an order**

6 “(a) Upon an application made pursuant to section  
7 2524 of this title, the judge shall enter an ex parte order  
8 as requested or as modified approving the electronic sur-  
9 veillance if he finds that—

10 “(1) the President has authorized the Attorney  
11 General to approve applications for electronic surveil-  
12 lance for foreign intelligence information;

13 “(2) the application has been approved by the  
14 Attorney General;

15 “(3) on the basis of the facts submitted by the  
16 applicant, there is probable cause to believe that:

17 “(i) the target of the electronic surveillance  
18 is a foreign power or an agent of a foreign power;  
19 and

20 “(ii) the facilities or place at which the elec-  
21 tronic surveillance is directed are being used, or are  
22 about to be used, by a foreign power or an agent of  
23 a foreign power;

24 “(4) minimization procedures to be followed are  
25 reasonably designed to minimize the acquisition and

1 retention of information relating to permanent resident  
2 aliens or citizens of the United States that is not foreign  
3 intelligence information;

4 “(5) certification has been made pursuant to sec-  
5 tion 2524 (a) (5) that the information sought is foreign  
6 intelligence information that cannot feasibly be obtained  
7 by normal investigative techniques.

8 “(b) An order approving an electronic surveillance  
9 under this section shall—

10 “(1) specify—

11 “(i) the identity or a characterization of the  
12 person who is the subject of the electronic sur-  
13 veillance;

14 “(ii) the nature and location of the facilities or  
15 the place at which the electronic surveillance will be  
16 directed;

17 “(iii) the type of information sought to be  
18 acquired;

19 “(iv) the means by which the electronic sur-  
20 veillance will be effected; and

21 “(v) the period of time during which the  
22 electronic surveillance is approved; and

23 “(2) direct—

24 “(i) that the minimization procedures be fol-  
25 lowed;

1           “(ii) that, upon the request of the applicant, a  
2           specified communication or other common carrier,  
3           landlord, custodian, contractor, or other specified  
4           person furnish the applicant forthwith any and all  
5           information, facilities, technical assistance, or other  
6           aid necessary to accomplish the electronic surveil-  
7           lance in such manner as will protect its secrecy and  
8           produce a minimum of interference with the services  
9           that such carrier, landlord, custodian, contractor, or  
10          other person is providing the target of electronic  
11          surveillance; and

12          “(iii) that the applicant compensate, at the  
13          prevailing rates, such carrier, landlord, custodian,  
14          contractor, or other person for furnishing such aid.

15          “(c) An order issued under this section may approve an  
16          electronic surveillance for the period necessary to achieve its  
17          purpose, or for ninety days, whichever is less. Extensions of  
18          an order issued under this chapter may be granted upon an  
19          application for an extension made in the same manner as  
20          required for an original application and after findings re-  
21          quired by subsection (a) of this section. Each extension may  
22          be for the period necessary to achieve the purposes for which  
23          it is granted, or for ninety days, whichever is less.

24          “(d) Notwithstanding any other provision of this chap-  
25          ter when the Attorney General reasonably determines that—

1           “(1) an emergency situation exists with respect to  
2           the employment of electronic surveillance to obtain for-  
3           eign intelligence information before an order authorizing  
4           such surveillance can with due diligence be obtained, and

5           “(2) the factual basis for issuance of an order un-  
6           der this chapter to approve such surveillance exists,  
7           he may authorize the emergency employment of electronic  
8           surveillance if a judge designated pursuant to section 2523  
9           of this title is informed by the Attorney General or his  
10          designate at the time of such authorization that the decision  
11          has been made to employ emergency electronic surveillance  
12          and if an application in accordance with this chapter is made  
13          to that judge as soon as practicable, but not more than  
14          twenty-four hours after the Attorney General authorizes such  
15          acquisition. In the absence of a judicial order approving such  
16          electronic surveillance, the surveillance shall terminate when  
17          the information sought is obtained, when the application for  
18          the order is denied, or after the expiration of twenty-four  
19          hours from the time of authorization by the Attorney Gen-  
20          eral, whichever is earliest. As provided in section 2523, a  
21          denial of the application may be appealed by the Attorney  
22          General.

23          “(e) A judge denying an order under this section or a  
24          panel affirming such denial under section 2523 (b) shall state  
25          the reasons therefor.

1 **“§ 2526. Use of information**

2 “(a) Information acquired from an electronic surveil-  
3 lance conducted pursuant to this chapter may be used and  
4 disclosed by Federal officers and employees only for the pur-  
5 poses designated under this chapter or for the enforcement of  
6 the criminal law.

7 “(b) The minimization procedures required under this  
8 chapter shall not preclude the retention and disclosure of  
9 nonforeign intelligence information acquired incidentally  
10 which is evidence of a crime.

11 “(c) When information acquired from or the product of  
12 an electronic surveillance conducted pursuant to this chapter  
13 is received in evidence in any trial, proceeding, or other  
14 hearing in any Federal or State court, the provisions of sec-  
15 tion 2518 (9) of chapter 119 shall not apply. No otherwise  
16 privileged communication obtained in accordance with, or in  
17 violation of, the provisions of this chapter shall lose its privi-  
18 leged character.

19 “(d) If an emergency employment of electronic surveil-  
20 lance is authorized under section 2525 (d) and a subsequent  
21 order approving the surveillance is not obtained, the judge  
22 shall cause to be served on any United States citizen or per-  
23 manent resident alien named in the application and on such  
24 other United States citizen or permanent resident alien sub-  
25 ject to electronic surveillance as the judge may determine in

1 his discretion it is in the interest of justice to serve, notice  
2 of—

3 “(1) the fact of the application;

4 “(2) the period of the surveillance; and

5 “(3) the fact that during the period information  
6 was or was not obtained.

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

13 **“§ 2527. Report of electronic surveillance**

14 “In April of each year, the Attorney General shall  
15 report to the Administrative Office of the United States  
16 Courts and shall transmit to the Congress with respect to  
17 the preceding calendar year:

18 “(1) the number of applications made for orders  
19 and extensions of orders approving electronic surveil-  
20 lance and the number of such other orders and extensions  
21 granted, modified and denied;

22 “(2) the periods of time for which applications  
23 granted authorized electronic surveillances and the actual  
24 duration of such electronic surveillances;

1           “(3) the number of such surveillances in place at  
2           any time during the preceding year; and

3           “(4) the number of such surveillances terminated  
4           during the preceding year.

5   **“§ 2528. Presidential power**

6           “Nothing contained in this chapter shall limit the con-  
7           stitutional power of the President to order electronic surveil-  
8           lance for the reasons stated in section 2511 (3) of title 18,  
9           United States Code, if the facts and circumstances giving rise  
10          to such order are beyond the scope of this chapter.”.

94TH CONGRESS  
2D SESSION

# H. R. 12750

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## A BILL

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

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By Mr. RODINO, Mr. KASTENMEIER, Mr. DANIELSON, Mr. PATTISON of New York, Mr. HUTCHINSON, Mr. RAILSBACK, Mr. WIGGINS, and Mr. MOSHER

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MARCH 23, 1976

Referred to the Committee on the Judiciary

MAY 5 1976

THE WHITE HOUSE  
WASHINGTON

May 5, 1976

MEMORANDUM FOR: JACK MARSH  
FROM: MIKE DUVAL  
SUBJECT: HEARINGS BY KASTENMEIER

*Mike*

Mr. Kastenmeier has asked NSA to testify before his Committee (Judiciary) on the general scope of their activities. This is in connection with the general electronic surveillance bill being considered by the Committee.

Tom Latimer called me and said that DoD did not want NSA to provide such testimony because it just opens up the whole security problem with yet another committee of Congress. I talked to Charlie Leppert and, based on his advice along with conversations I had with Latimer and Tim Hardy, I have suggested that Defense representatives (probably Latimer and Lew Allen) go up and talk to Kastenmeier and McClory. They should develop general ground rules whereby NSA would be willing to provide a general overall briefing similar to that provided Church and Pike but, obviously, under the appropriate security arrangements in terms of executive session, publication, etc.

I also told Tom and Tim that they should check with Doug Marvin at Justice because this bill is primarily their responsibility.

cc: Charlie Leppert ✓