

August 2, 2007

STATEMENT BY DIRECTOR OF NATIONAL INTELLIGENCE

Subject: Modernization of the Foreign Intelligence Surveillance Act (FISA)

I greatly appreciate the significant time many Members of the Senate and the House of Representatives have taken to discuss with me the urgent need to modernize FISA. I also appreciate the bipartisan support for ensuring the Intelligence Community can effectively collect the necessary intelligence to protect our country from attack. In view of the significance of this issue, its impact on the Intelligence Community's ability to be effective and the continuing dialogue to come to closure on an effective bill, it is important for me to discuss the essential provisions needed by the Intelligence Community.

We must urgently close the gap in our current ability to effectively collect foreign intelligence. The current FISA law does not allow us to be effective. Modernizing this law is essential for the Intelligence Community to be able to provide warning of threats to the country.

Critical Changes Needed

First, the Intelligence Community should not be required to obtain court orders to effectively collect foreign intelligence from foreign targets located overseas. Simply due to technology changes since 1978, court approval should not now be required for gathering intelligence from foreigners located overseas. This was not deemed appropriate in 1978 and it is not appropriate today.

Second, those who assist the Government in protecting us from harm must be protected from liability. This includes those who are alleged to have assisted the Government after September 11, 2001 and have helped keep the country safe. I understand the leadership in Congress is not able to address before the August recess the issue of liability protection for those who are alleged to have helped the country stay safe after September 11, 2001. However, I appreciate the commitment of the congressional leadership to address this particular issue immediately upon the return of Congress in September 2007.

Provisions that Harm Intelligence Community Operations

The Intelligence Community should not be restricted to effective collection of only certain categories of foreign intelligence when the targets are located overseas. We must ensure that the Intelligence Community can be effective against all who seek to do us harm.

The bill must not require court approval before urgently needed intelligence collection can begin against a foreign target located overseas. The delays of a court process that requires judicial determinations in advance to gather vital intelligence from foreign targets overseas can in some cases prevent the rapid gathering of intelligence necessary to provide warning of threats to the country. This process would also require in practice that we continue to divert scarce

intelligence experts to compiling these court submissions. Similarly, critical intelligence gathering on foreign targets should not be halted while court review is pending.

However, to acknowledge the interests of all, I could agree to a procedure that provides for court review—after needed collection has begun—of our procedures for gathering foreign intelligence through classified methods directed at foreigners located overseas. While I would strongly prefer not to engage in such a process, I am prepared to take these additional steps to keep the confidence of Members of Congress and the American people that our processes have been subject to court review and approval.

I appreciate the President's and the congressional leadership's commitment to provide the Intelligence Community the necessary tools to protect our country and keep us safe from those who seek us harm. My most solemn duty is to protect America, provide warning, and ensure that our Intelligence Community acts within our Constitution and laws.