

GOVERNMENTAL AFFAIRS  
OFFICE

AMERICAN BAR ASSOCIATION

Governmental Affairs Office

740 Fifteenth Street, NW  
Washington, DC 20005-1022  
(202) 662-1760  
FAX: (202) 662-1762

DEPUTY DIRECTOR  
Denise A. Cardman  
(202) 662-1761  
cardmand@staff.abanet.org

February 4, 2008

SENIOR LEGISLATIVE COUNSEL  
R. Larson Frisby  
(202) 662-1098  
frisbyr@staff.abanet.org

Dear Senator:

Lillian B. Gaskin  
(202) 662-1768  
gaskinl@staff.abanet.org

As you debate S. 2248, legislation to amend the Foreign Intelligence Surveillance Act ("FISA"), I urge you to support a bipartisan amendment introduced by Senator Dianne Feinstein (D-CA) to reiterate that FISA is the exclusive means for conducting electronic surveillance for foreign intelligence purposes.

LEGISLATIVE COUNSEL  
Kristi Gaines  
(202) 662-1763  
gainesk@staff.abanet.org

Kenneth J. Goldsmith  
(202) 662-1789  
goldsmithk@staff.abanet.org

The ABA believes that any future foreign intelligence surveillance must be conducted within the framework of FISA. The Feinstein Amendment (S.A. 3910) accomplishes this by reiterating that FISA and Title III of the Crime Control and Safe Streets Act are the exclusive means for conducting electronic surveillance.

Kerry M. Lawrence  
(202) 662-1766  
lawrenck@staff.abanet.org

Ellen McBarnette  
(202) 662-1767  
mcbarnee@staff.abanet.org

E. Bruce Nicholson  
(202) 662-1769  
nicholsonb@staff.abanet.org

Furthermore, the Feinstein Amendment codifies the requirement that affirmative and explicit action by Congress is necessary to take exception to the requirement to abide by FISA when conducting foreign intelligence surveillance. When the ABA studied the NSA warrantless surveillance activities in 2006, we found that the argument that Congress implicitly authorized the NSA program when it enacted the 2001 Authorization for Use of Military Force (AUMF) was unpersuasive. There is nothing in the text or the history of the AUMF to suggest that Congress intended to permit the Executive to engage in warrantless electronic surveillance in the United States without judicial approval or a showing of probable cause as required by FISA. Adoption of the Feinstein Amendment would ensure that it is absolutely clear that Congress must specifically authorize any exception to the exclusivity requirements of FISA.

DIRECTOR GRASSROOTS  
OPERATIONS/LEGISLATIVE COUNSEL  
Julie M. Strandlie  
(202) 662-1764  
strandlj@staff.abanet.org

INTELLECTUAL PROPERTY  
LAW CONSULTANT  
Hayden Gregory  
(202) 662-1772  
gregoryh@staff.abanet.org

STATE LEGISLATIVE COUNSEL  
Rita C. Aguilar  
(202) 662-1780  
aguilarr@staff.abanet.org

EXECUTIVE ASSISTANT  
Julie Pasatiempo  
(202) 662-1776  
jpasatiempo@staff.abanet.org

As originally enacted, FISA achieved the necessary balance of providing tools to protect our country while preserving the privacy of American citizens. In amending FISA, we urge you to adopt appropriate safeguards, including the Feinstein Amendment, to ensure that national security objectives are being accomplished within the bounds of our constitutional system of government.

STAFF DIRECTOR FOR  
INFORMATION SERVICES  
Sharon Greene  
(202) 662-1014  
greenes@staff.abanet.org

EDITOR WASHINGTON LETTER  
Rhonda J. McMillion  
(202) 662-1017

Sincerely,



Denise A. Cardman  
Acting Director