AMENDMENT TO H.R. 3845
OFFERED BY MR. CONYERS OF MICHIGAN

Strike section 101 (page 2, line 3 through line 7 on page 3) and insert the following:

SEC. 101. ROVING WIRETAPS.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by striking “finds, based upon specific facts” and inserting “finds—

“(i) that the target of the application is a foreign power, as defined in paragraphs (1), (2), (3), and (6) of section 101(a), an agent of such a foreign power, or a specific individual; and

“(ii) based upon specific facts”.

Page 6, strike line 21 and all that follows through line 19 on page 8 and insert the following:

(d) REQUIREMENTS FOR ORDERS FOR CERTAIN RECORDS FROM LIBRARIES.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in subsection (b)(2)—
(A) in subparagraph (A)(iii), by striking “; and” and inserting “;”;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

“(B) if the records sought contain bookseller information, or are from a library (as defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1))) and contain personally identifiable information about a patron of such library, a statement of specific and articulable facts showing that there are reasonable grounds to believe that the records sought—

“(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

“(ii)(I) pertain to a foreign power or an agent of a foreign power;
“(II) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

“(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and”; and

(2) by adding at the end the following new subsection:

“(i) BOOKSELLER INFORMATION DEFINED.—In this section, the term ‘bookseller information’ means personally identifiable information concerning the purchase (including subscription purchases) or rental of books, journals, or magazines, whether in print or digitally.”.

Page 20, line 10, insert “(a) IN GENERAL.—” before “Section 3122(b)(2)”.

Page 20, after line 16, insert the following:

(b) CONFORMING AMENDMENTS.—Section 3123(a) of title 18, United States Code, is amended—

(1) in the first sentence of paragraph (1), by striking “finds that” and all that follows through the end of the sentence and inserting “finds that the facts presented in the statement under section
3122(b)(2) justify the applicant's belief that information likely to be obtained is relevant to an ongoing criminal investigation being conducted the applicant’s agency.”; and

(2) in paragraph (2), by striking “finds that” and all that follows through the end of the paragraph and inserting “finds that the facts presented in the statement under section 3122(b)(2) justify the applicant’s belief that information likely to be obtained is relevant to an ongoing criminal investigation being conducted the applicant’s agency.”.

Page 21, strike line 11 and all that follows through line 23 on page 24 and insert the following:

(b) MINIMIZATION.—

(1) DEFINITION.—Section 401 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841) is amended by adding at the end the following:

“(4) The term ‘minimization procedures’ means—

“(A) specific procedures, that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device, to minimize the retention, and prohibit the dis-
semination, of nonpublicly available information
known to concern unconsenting United States
persons consistent with the need of the United
States to obtain, produce, and disseminate for-

"(B) procedures that require that nonpub-
licly available information, which is not foreign
intelligence information shall not be dissemi-
nated in a manner that identifies any United
States person, without such person’s consent,
unless such person’s identity is necessary to un-
derstand foreign intelligence information or as-

ess its importance; and

"(C) notwithstanding subparagraphs (A)
and (B), procedures that allow for the retention
and dissemination of information that is evi-
dence of a crime which has been, is being, or
is about to be committed and that is to be re-
tained or disseminated for law enforcement pur-
poses.”.

(2) Pen registers and trap and trace de-
vices.—Section 402 of the Foreign Intelligence Sur-
veillance Act of 1978 (50 U.S.C. 1842) is amend-
ed—

(A) in subsection (d)(2)—
(i) in subparagraph (C)(i)(VII), by striking ‘‘; and’’ and inserting ‘‘;’’;

(ii) in subparagraph (C)(ii)(IV), by striking the period at the end and inserting ‘‘; and’’; and

(iii) by adding at the end the following new subparagraph:

“(D) shall, if the judge finds that there are exceptional circumstances, direct that minimization procedures be followed.’’;

(B) by adding at the end the following:

“(h) At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with any applicable minimization procedures by reviewing the circumstances under which information concerning United States persons was retained or disseminated.’’.

(3) EMERGENCIES.—Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following:
“(c) If the Attorney General authorizes the emergency installation and use of a pen register or trap and trace device under this section, the Attorney General shall require that minimization procedures be followed, if appropriate.”

(4) USE OF INFORMATION.—Section 405(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1845(a)(1)) is amended by inserting “and the minimization procedures under this title, if required” after “provisions of this section”.

Strike section 204 (page 27, line 22 through line 5 on page 28) and insert the following:

SEC. 204. MODIFICATION OF STANDARD.

(a) IN GENERAL.—A national security letter may not be issued unless the official having authority under law to issue that letter documents in a separate writing specific and articulable facts showing that there are reasonable grounds to believe that the information sought—

(1) pertains to a foreign power or an agent of a foreign power;

(2) is relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

(3) pertains to an individual in contact with, or personally known to, a suspected agent of a foreign
power who is the subject of such authorized investigation.

(b) MAINTENANCE.—The agency under whose authority a national security letter is issued shall maintain a copy of a separate writing required under subsection (a).

c) DEFINITIONS.—In this section, the terms “foreign power” and “agent of a foreign power” have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

Page 28, line 20, strike “, or any information derived therefrom,”.

Page 28, line 22, insert “, or a designee of the Attorney General at a level not lower than Section Chief of a division of the Department of Justice” after “Attorney General”.

Page 32, strike line 9 and all that follows through line 21 on page 33 and insert the following:

SEC. 12. MINIMIZATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(1) establish minimization procedures governing the acquisition, retention, and dissemination by the Federal Bureau of Investigation of any records re-
received by the Federal Bureau of Investigation in re-
response to a national security letter; and

(2) submit to the Committee on the Judiciary
and the Select Committee on Intelligence of the Sen-
ate and the Committee on the Judiciary and the
Permanent Select Committee on Intelligence of the
House of Representatives a copy of the minimization
procedures established under paragraph (1).

(b) DEFINITIONS.—In this section—

(1) the term “minimization procedures”
means—

(A) specific procedures that are reasonably
designed in light of the purpose and technique
of a national security letter, to minimize the ac-
quision and retention, and prohibit the dis-
semination, of nonpublicly available information
concerning unconsenting United States persons
(as defined in section 101 of the Foreign Intel-
1801)) consistent with the need of the United
States to obtain, produce, and disseminate for-
eign intelligence information;

(B) procedures that require that nonpub-
licly available information, which is not foreign
intelligence information (as defined in section
101(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)(1))) shall not be disseminated in a manner that identifies any United States person, without the consent of the United States person, unless the identity of the United States person is necessary to understand foreign intelligence information or assess its importance; and

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(2) the term “national security letter” means a request for information issued under section 2709 of title 18, United States Code, section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(5)), subsection (a) or (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u), or section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v).

At the end of the bill, add the following new section:
SEC.  ___. PUBLIC REPORTING ON NATIONAL SECURITY LETTERS.

Section 118(c) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “concerning different United States persons”; and

(B) in subparagraph (A), by striking “, excluding the number of requests for subscriber information”;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) CONTENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), each report required under this subsection shall include the total number of requests described in paragraph (1) requiring disclosure of information concerning—

“(i) United States persons;

“(ii) persons who are not United States persons;
“(iii) persons who are the subjects of authorized national security investigations;

or

“(iv) persons who are not the subjects of authorized national security investigations.

“(B) EXCEPTION.—With respect to the number of requests for subscriber information under section 2709 of title 18, United States Code, a report required under this subsection need not provide information separated into each of the categories described in subparagraph (A).”.