

MR. STANLEY S. BROTMAN: Thank you, Senator.

Good morning, everyone. Like the other judges, I also am honored to have been asked to appear before your committee this morning to discuss the draft legislation entitled the National Security Surveillance Act of 2006. As you mentioned, I served as a member of the United States Foreign Intelligence Surveillance Court from May 1997 to May 2004. I might add that, coincidentally, when I was recalled to active duty for the Korea campaign, I was assigned to an organization known as the Armed Forces Security Agency, which is a predecessor of the National Security Agency, only in those days it was operating solely from a military standpoint.

I feel that since the other judges will be talking a little more of the legal intricacies, I would try and give you a picture of the FISA Court as it really works -- who makes it work, its composition, the type of judge who serves on the court, who appoints that person, and such other aspects of the operative procedure that I feel can be disclosed. And it's really to give you added confidence to those who do not know or have not -- heard very little about this court, what this court really is and how it approaches the issues that come before it.

Again, I also will say I am talking only for myself. I'm not speaking for the FISA Court or any member of the FISA Court. My remarks are intended, as I said, to give you a feel for this court. Starting with its inception in 1978, the process of appointment to the court was handled through the appointment of each judge by the chief justice of the Supreme Court of the United States. The term is a seven-year term. The judge cannot be reappointed. When his term is over, it's over.

Prior to 9/11 the court was comprised of seven members. Subsequent to 9/11 it was increased to its present membership of 11 members. There's a geographic mix, an ethnic mix. Each of these judges are United States District Court article III judges, who have had extensive trial experience and have had a very, very interesting dossier.

And how are the matters presented to the court? What's the process? The process is by an application submitted by the requesting body's authority, passed through various stages of review within that particular authority by the attorney general and others, and then it is filed with the court. In other words, there've been extensive reviews even before it reaches the court in terms of making sure it complied with the provisions of the statute and the facts of the situation.

It is then thoroughly reviewed by the assigned judge, and the agents are representative of the applicant, appears before the judge at a hearing held. That is held, and if there are no problems, an order is issued allowing the collection. If there are problems, the judge will raise them and send the application back for further review and presentation.

The culture or the theory of the court is we're not there to stop the collection of information. It's vital to the security of the United States. What we are there is to help those who make the application, by making sure they comply with the law, with the statute. And, as I say, if they're complying or something is lacking, we'll send it back and you resubmit it.

And that discipline has grown up over the last 28 years. As I say, the application must meet the request of the statute and of the Congress in the legislation creating the court. And there must be -- as we review these applications, there must be a balance between the needs of the surveillance and the protection of the provisions of Article IV. This balance has already been discussed by both Allan and Harold and I will not repeat it, but it is crucial. And that balance is not always the same. It depends on the application and what is being sought.

The judges assigned to this court, and I think I can say this about all of them, they really have dedicated themselves to doing the job that they're there for. They recognize the security of our country is at stake. They recognize the protections due our citizens. They're hard working. At times I was visited in my home in south Jersey at 2:00 or 3:00 o'clock in the morning to sign orders. I was even fond out in California where I was attending a meeting at one time.

FISA has worked, and worked well. It is a necessary court, and its orders reflect the balance to which I have made reference. It has no axe to grind in this court. Judicial review provides confidence to the citizens of our country to know that a court has looked on what is being sought. Times change,

methodology changes, equipment changes, processes change. All these things can be and should be and should be accommodated with the FISA Court. And again I say I support, as do the other judges, the proposed amendment by Senator Specter in his draft.

I thank you very much.