



**Congressman Silvestre Reyes, D-TX**  
**Chairman, House Permanent Select Committee on Intelligence**  
**Opening Statement**  
**September 18, 2007**

“Today, the House Intelligence Committee will receive testimony from four recognized experts on the Foreign Intelligence Surveillance Act, or FISA.

“Following the wiretapping scandals of the 1970s, Congress enacted FISA in 1978 to regulate government surveillance of American citizens in national security cases. FISA instituted two important checks on the ability of the Executive Branch to conduct surveillance of Americans:

“First, the government would have to obtain an Order from a specially-designated Court before tapping the phones of Americans on U.S. soil.

“Second, the government’s eavesdropping activities would have to be reported to Congress.

“Since 1978, much has changed.

“The threat has changed. Our focus is no longer the Soviet Union, but rather a loose confederation of terrorist cells, WMD proliferators, and rogue nations.

“The technology has changed. Today, our calls and emails fly over the Internet, and through cell phones, Blackberries, blogs, and chat rooms.

“FISA has also changed. The statute has been amended or updated by Congress in roughly 50 different ways since 1978.

“And Congress has made significant changes to the statute since the attacks of 9/11, including the use of ‘John Doe’ roving wiretap authority, the expansion of the emergency period for obtaining Court orders, and authorization for targeting “Lone Wolf” suspected terrorists – just to name a few.

“One thing, however, has not changed – the Fourth Amendment. It is a cornerstone of our great nation and should not be set aside, suspended or amended -- not under threat of war, insurrection, rebellion, or even terrorism. To do so would greatly undermine our cherished system of checks and balances. Our Constitution has stood the test of time. It has protected the American people for more than 200 years.

“Two years ago, we were stunned to learn that after 9/11, the Bush Administration had been ignoring FISA. The NSA Program involved not only targets overseas, but also American citizens, whose phone calls were listened to and email read without a warrant.

“To this day, the Administration refuses to share critical information about this program with Congress. More than three months ago, Ranking Member Hoekstra and I sent a letter to the Attorney General and the Director of National Intelligence (DNI) requesting copies of the President’s Authorizations and the Department of Justice (DOJ) legal opinions. We have yet to receive this information.

“And so, today I would like to say publicly to President Bush’s nominee for Attorney General, Judge Mukasey: ‘One of your first tasks as Attorney General will be to repair DOJ’s relationship with Congress. You can start by turning over the documents that all Members of this Committee have long sought relating to the NSA surveillance program.’

“In April, the DNI proposed some changes to FISA. The committee had planned a thorough review. In late July, in the midst of this review, the Administration came rushing in with an urgent request to craft changes to FISA before the August district work period.

“Despite our misgivings over the rushed timing, we agreed to craft short-term legislation to ensure that our intelligence professionals had the tools they needed to uncover plots against the United States.

“The DNI asked for three things: 1) no individual warrants for foreign targets; 2) a mechanism to compel the telecommunications companies to cooperate with the government; and 3) individual warrants for targets inside the United States. We agreed to all of these things, and the Leadership bill, HR 3356, addressed all of these issues.

“Further, we agreed to the DNI’s request to expand this new authority from terrorism to all of foreign intelligence, and other changes requested by the DNI.

“But the Administration couldn’t say “yes” and insisted on moving the goal posts even after striking an agreement with Congressional leaders. The Administration demanded its version of the legislation – even though our bill gave the Intelligence Community 100 percent of what it asked for.

“The result was that Congress passed what I believe to be a very flawed bill, the so-called ‘Protect America Act.’

“I want to make clear: Our concerns are not about protecting the rights of foreign individuals overseas. The question is: When communications involve Americans – as was the case in the NSA Surveillance Program – what should the rules be?

“I am concerned that, as drafted, the Administration’s bill went too far. It allows warrantless physical searches of Americans’ homes, offices, and computers. It converts the FISA Court into a ‘rubber stamp.’ And it contains insufficient protections for Americans who will have their phone calls listened to and emails read under this new authority.

“I take small comfort that the legislation sunsets in six months. But we will not wait. In early October, at Speaker Pelosi’s request, we will mark-up FISA legislation to address the needs of the Intelligence Community.

“We will legislate based on a full record in this Committee. We held four hearings in June and July. Committee members and staff have made several trips to NSA to review this new authority. We held a closed hearing on September 6 with the NSA and FBI Directors. And after today’s hearing, we will hold another open hearing on Thursday with DNI McConnell and Assistant Attorney General Kenneth Wainstein.

“Our first witness today is **James Baker**. Mr. Baker is one of nation’s foremost experts on FISA, having run FISA operations for the Department of Justice for the past seven years. In 2006, Mr. Baker received the George H.W. Bush Award for Excellence in Counterterrorism, the CIA's highest award for counterterrorism achievements. He is currently on the Faculty of Harvard Law School.

“The committee is also pleased to welcome back **Jim Dempsey**, policy director of the Center for Democracy and Technology. He served for nine years as counsel to the House Judiciary Committee and remains an important advisor to Congress.

“I also want to welcome **Lisa Graves**, Deputy Director of the Center for National Security Studies. Lisa previously served as Senior Counsel at the ACLU and as Chief Nominations Counsel on the Senate Judiciary Committee. She also served as Deputy Assistant Attorney General in the Department of Justice.

“Finally, **David Rivkin** is a partner at the law firm of Baker, Hostetler. He has written several articles on Constitutional issues. He previously served in government at the Department of Energy and as a special assistant to Vice President Dan Quayle.

“I look forward to a productive hearing, and I now recognize the Ranking Member for any statement he may have.”