



House Permanent Select Committee on Intelligence

Congressman Silvestre Reyes, Chairman

<http://intelligence.house.gov>

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Intelligence Committee questions DNI McConnell on FISA

Washington, D.C. – *The House Permanent Select Committee on Intelligence held an open hearing on the Foreign Intelligence Surveillance Act (FISA) with witnesses Director of National Intelligence Mike McConnell and Kenneth L. Wainstein, Assistant Attorney General for the National Security Division, U.S. Department of Justice.*

Chairman Reyes' opening statement is attached:

Today the Committee will receive testimony from the Director of National Intelligence -- Michael McConnell -- and the Assistant Attorney General for National Security -- Kenneth Wainstein -- concerning the Foreign Intelligence Surveillance Act and the recently enacted legislation that expanded the Administration's surveillance powers, the Protect America Act, or the PAA.

We are here today to discuss this legislation and deal with one of the critical issues of our time – the need to balance measures intended to protect the homeland with preserving civil liberties. Getting this right is fundamental to the proper functioning of this great democracy, and I believe that Congress must do everything it can to give the Intelligence Community what it needs to protect America, while ensuring that we do not abandon the fundamental principles of liberty that underpin the Constitution.

For more than 200 years we have managed to have both liberty and security, and I intend to do my part to ensure that we continue to maintain this careful balance for years to come.

This brings me to the recent modifications to FISA Congress passed on the eve of our August recess – legislation that I believe alters the precious balance between liberty and security in an unnecessary and dangerous way.

I want to begin by setting the record straight about the concerns that have been raised over the expansive scope of the new law. There has been a lot of rhetoric from the Administration and some in Congress suggesting that critics of

the new Act are placing the rights of foreigners and terrorists abroad before the need to protect America.

Our position shouldn't be characterized as seeking to protect the rights of foreigners. Our concerns are about protecting the rights of Americans, not foreigners abroad. Thus we are concerned for the privacy rights of Americans who may happen to be communicating with someone abroad.

To be clear, when a doctor living in Los Angeles calls a relative living abroad, I am concerned about her rights.

When a soldier serving in Iraq or Afghanistan emails home to let his family know that he made it back from his latest mission, I am concerned about his rights and the rights of his family.

But, under the new law, we have allowed the government to intercept these calls and these emails without a warrant and without any real supervision from the judicial branch. In doing so, we have unnecessarily put liberty in jeopardy by handing unchecked power to the Executive Branch.

I say unnecessarily, because there was no need to do it this way. There was an alternative, but the Administration torpedoed it.

Let me explain:

In late July, the Director of National Intelligence came to us and identified a specific gap – he described it publicly as a “backlog” – with respect to the FISA process that he claimed had placed the country in a heightened state of danger.

At first, he said he needed two things – (1) a way to conduct surveillance of foreign targets in a block, without individual determinations of probable cause; and (2) a way to compel communications carriers to cooperate. We gave him both.

After we shared our draft legislation with him, he came back to Congress and said that he wanted three more things. We again agreed and tailored our bill to provide each of these three things.

That bill – HR 3356 – was the result of substantial and, I believed at the time, good faith negotiations with Director McConnell. It gave Director McConnell everything he said he needed to protect America. But it also did something else – it protected the Constitution.

Yet, at the final hour and without explanation, after having repeatedly assured me and other Members of Congress that the negotiations had been in good faith, the Administration rejected this proposal. Director McConnell not only

rejected it, he issued a statement urging Congress to vote it down, claiming that it would not allow him to carry out his responsibility to protect the nation.

Director McConnell, in your testimony here today, I want to hear your side of this story. I want to hear why it is that--even though we tailored legislation to meet your requirements--you still rejected it.

I want to hear why you believe that HR 3356 would not have allowed you to do your job and why you issued a statement to that effect on the eve of the House vote.

I want to know what, specifically, you believed was lacking in HR 3356.

Most importantly, I want to know what it is about the inclusion of proper checks-and-balances and oversight in our bill that you found so unacceptable.

These are important questions, because Congress intends to enact new legislation as soon as possible as a replacement to the Administration's bill. In early October, at the Speaker's request, this Committee will mark-up FISA legislation to address the needs of the Intelligence Community.

The new legislation will deal with the deep flaws in the Administration's bill – the vague and confusing language that allows for warrantless physical searches of Americans' homes, offices, and computers; the conversion of the FISA Court into a "rubber stamp;" and the insufficient protections for Americans who are having their phone calls listened to and emails read under this new authority as I speak here today.

Before closing, I want to take this opportunity to reiterate a critically important request for documentation regarding the NSA surveillance program that remains outstanding.

To date, 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 DNI requesting copies of the President's Authorizations and the DOJ legal opinions. We have yet to receive this information.

Mr. Wainstein has advised this Committee that DOJ is, in fact, in possession of the material that this Committee is seeking and I would like a clear understanding today of why it has not been provided to this Committee.

Congress cannot and should not be expected to legislate on such important matters in the dark.

I look forward to this hearing, and I now recognize the Ranking Member for any statement he may have.