

Statement for the Record
Representative Rush Holt
House Permanent Select Committee on Intelligence
Hearing on FISA Legislation
July 27, 2006

Mr. Chairman, I thank you for honoring the Ranking Member's request that the committee hold an open hearing on proposals to amend the Foreign Intelligence Surveillance Act. I would suggest, however, that our focus is misplaced. We should not be talking so much about amending FISA, but about why we've failed to force the Administration to abide by it.

We all know why we're here: to address the embarrassing fact that this Congress has allowed the President to conduct warrantless domestic surveillance against American citizens in violation of FISA. It's really that simple. I've said it before and I'll repeat it now: to date, nothing I've been told about this particular NSA program leads me to believe that it could not be conducted within the confines of FISA in a manner that protects America's security.

I commend our witnesses and our colleagues on the committee who are here today and who, upon learning about this program, felt compelled to act to try to bring it under the rule of law. I share their impulse and their goal, as my co-sponsorship of their legislation suggests. But I think any talk of amending FISA is premature and ignores the elephant in the room—namely, the President's attempt to put himself above the law.

As the language in Mr. Schiff's bill reminds us, "The Foreign Intelligence Surveillance Act of 1978 and specified provisions of the Federal criminal code were expressly enacted as the `exclusive means by which electronic surveillance . . . may be conducted' domestically pursuant to law (18 U.S.C. 2511(2)(f))." There's nothing ambiguous about that language. If the President wants to conduct domestic electronic surveillance, he must do it within the confines of FISA.

As former Senator Daschle made clear last December, the President and his advisors seemed to know this when they asked then-Senate Majority Leader Daschle to give the President the kind of powers proposed in the bill offered by Mr. Hoekstra, Mr. Sensenbrenner, and Ms. Wilson. Senator Daschle wisely refused the administration's request—at which point the administration went forward with the program anyway.

What we're really should be talking about here is the appropriate scope of Presidential powers and Congressional oversight.

Some of my colleagues seem to believe that we should simply give the President what he wants, that we should trust his discretion and judgment in the exercise of warrantless searches subject to no oversight. We've been down this road before, and the result was other now-infamous programs of domestic surveillance or programs of suppression of

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political dissent suppression programs that swept up thousands of innocent Americans, including Dr. Martin Luther King and his wife Coretta. And it's too late for us to say "It can't happen here," because it's already happened—under many administrations under a variety of well-meaning people (and some not so well-meaning).

Indeed, on the basis of FBI and DoD documents made public as a result of FOIA litigation and related public hearings in Congress, we already know that the FBI and DoD's Counterintelligence Field Activity have conducted surveillance against Americans with no known or proven connection to al Qaeda. We also know that individuals and groups have been surveiled while exercising their Constitutionally protected right to free speech.

Before this hearing, I checked the State Department list of terrorist organizations and I just couldn't find the Truth Project, the Thomas Merton Center, the Catholic Workers Group, Greenpeace, or PETA on that list, but each of those groups—and almost certainly others—have all been surveiled or otherwise monitored by the feds because, I presume, of their political opposition to the Iraq war or other Bush administration policies. And if the FBI and DoD/CIFA have done it, it's not unreasonable at all to believe that NSA has done it.

When Senator Feingold asked General Hayden "whether it's ever happened that any Americans have been targeted who weren't associated with Al Qaeda," the general replied "Sir, I'll give you a detail in closed session, all right? Clearly, I think logic would dictate that if you're using a probable cause standard as opposed to absolute certitude, sometimes you may not be right." We shouldn't simply be troubled by that statement—we should be investigating it.

All of us want to prevent future terrorist attacks on America—there's no debate on that point. But when FBI and DoD personnel are surveiling political or religious groups exercising their legitimate 1st Amendment rights and who have no connection to al Qaeda, it makes our country weaker, not stronger, and certainly not safer. We need a thorough, probing review of the entire scope and propriety of the Administration's domestic surveillance activities before we consider any legislation on this topic. I hope we finally begin such an inquiry today.