

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy,
Ranking Member, Judiciary Committee Hearing On
"An Examination of the Call to Censure the President"
Friday, March 31, 2006

This is our fourth hearing to consider the President's domestic spying activities. Regrettably, this hearing, like the two that preceded it, is not an oversight hearing. After this hearing, we will have heard from a total of 20 witnesses. Of those, only one had any knowledge of the spying activities beyond what he had read in the newspapers. That witness was Attorney General Gonzales, who flatly refused to tell us anything beyond "those facts the President has publicly confirmed, nothing more."

What the President has publicly confirmed is that, for more than four years, he has secretly instructed intelligence officers at the National Security Administration to eavesdrop on the conversations of American citizens in the United States without following the procedures set forth in the Foreign Intelligence Surveillance Act.

After its secret domestic spying activities were revealed, the Administration offered two legal justifications for the decision not to follow FISA. First, it asserted a broad doctrine of presidential "inherent authority" to ignore the laws passed by Congress when prosecuting the war on terror. In other words, the rule of law is suspended, and the President is above the law, for the uncertain and no doubt lengthy duration of the undefined war on terror.

Second, the Administration asserted that in the Authorization for the Use of Military Force, or AUMF, which makes no reference to wiretapping, Congress unconsciously authorized warrantless wiretaps that FISA expressly forbids even in wartime. That is not what we in Congress said or intended.

Because the Republican-controlled Congress has not conducted real oversight, and because the attempts this Committee has made at oversight have been stonewalled by the Administration, we do not know the extent of the Administration's domestic spying activities. But we know that the Administration has secretly spied on Americans without attempting to comply with FISA. And we know that the legal justifications it has offered for doing so, which have admittedly "evolved" over time are patently flimsy. I therefore have no hesitation in condemning the President for secretly and systematically violating the law. I have no doubt that such a conclusion will be history's verdict.

History will evaluate how diligently the Republican-controlled Congress performed the oversight duties envisaged by the Founders. As of this moment, history's judgment of the diligence and resolve of the Republican-Controlled Congress is unlikely to be kind.

Our witnesses today will address whether censure is an appropriate sanction for those violations. I am inclined to believe that it is. If oversight were to reveal that when the President launched the program, he had been formally advised by the Department of Justice that it would be lawful, that kind of bad advice would not make his actions lawful, but might at least provide something of an excuse.

If, on the other hand, he knowingly chose to flout the law and then commissioned a spurious legal rationalization years later after he was found out, he should bear full personal responsibility. To quote Senator Graham from an

earlier point in his congressional service, when he bore the weighty role of a House Manager in a presidential impeachment trial: "We are not a nation of men or kings, we are a nation of laws."

I have said before that this Committee needs to see any formal legal opinions from this Administration that address the legality of NSA practices and procedures with respect to electronic surveillance. The American people have a right to know whether or not their President knowingly chose to flout the law when he instructed the NSA to spy on them.

That is why our next step should be to subpoena the opinions. We know the President broke the law - we should find out why.

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