

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
August 3, 2006

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
On the Cornyn-Leahy Substitute and
Inclusion of the Missing Child Cold Case Review Act in S. 2679
August 3, 2006

I am very pleased that the Missing Child Cold Case Review Act has been partnered with the Unsolved Civil Rights Crime Act and that the substitute I cosponsored has been adopted by the Committee and reported to the Senate for its consideration.

Among its many vital functions, The National Center for Missing and Exploited Children ("NCMEC") serves as a clearinghouse for inactive case files in which a child has not been found or where a suspect has not been identified. This bill authorizes the various Inspectors General of federal law enforcement agencies to work with NCMEC and to provide their staff, on a voluntary basis, to assist NCMEC with the review of case files stored at the National Center.

Under current law, an inspector general's duties are limited to activities related to the programs and operations of an agency. My bill would allow our inspectors general to assign criminal investigators to assist in the review of cold case files at NCMEC, so long as doing so would not interfere with normal duties. I understand that our inspectors general are eager to provide this assistance and I understand why. These cases need resolution. As parents and grandparents we all know that. What they need is legal authorization to be allowed to help. That is what my amendment provides.

It is a useful step for us to enable this cooperation between one of our Nation's top resources for child protection and the diverse and talented investigators in the offices of our inspectors general. This cooperation will bolster efforts to resolve these heart-wrenching cases.

Just last week John and Reve Walsh and those who worked with us to help establish the National Center for Missing and Exploited Children observed the 25th anniversary of the tragic loss of young Adam Walsh. Working together, we have accomplished a good deal for many families in the last 25 years, but we have more to do. I am honored to sponsor this amendment to take another step forward in the interests of our children and to authorize our inspectors general to join in these efforts.

The Cornyn-Leahy amendment is a complete substitute for the underlying bill. In addition to the important addition of the Leahy amendment to assist NCMEC and authorize inspector general activity, the substitute makes other changes in the bill at the behest of the Department of Justice.

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Statement Of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Executive Business Meeting
Thursday, August 3, 2006

Today, the NSA bills are once again at the top of the Committee's legislative agenda, as they have been for several months now. Yet we are no further along in our understanding of the NSA's domestic spying activities.

How many Americans have had their conversations wiretapped? How many terrorists have been identified who would otherwise have escaped detection? Why did the Bush-Cheney Administration choose not to comply with the Foreign Intelligence Surveillance Act? Why did officials refuse to come to Congress for authorization?

We also do not know what else is going on. Are there other domestic spying activities being conducted behind Congress's back, outside of the law and without court approval?

We were told the one program the Bush-Cheney Administration has admitted to was narrowly focused on international calls of suspected terrorists. But then the Attorney General pointedly refused to "rule out" purely domestic warrantless wiretaps of conversations between Americans.

We also learned, in April, about a separate program. At least, we believe it to be a separate program, but since the Administration has refused to confirm or deny its existence, we are once again left stumbling about in the dark. That program reportedly has the NSA vacuuming up information on millions of ordinary Americans for inclusion in a massive database of Americans' phone calls.

In June, we learned about yet another secret spying program - this one involving banking data - that the Administration failed to mention to key members of the relevant oversight committees.

What else is this Administration doing without legal justification, oversight, or accountability, and what's next? At last week's hearing, the Administration witnesses again refused to say whether the President has authorized warrantless physical searches of Americans' homes and offices.

They did, however, support the language in Chairman Specter's bill, which would immunize from prosecution anyone who carries out such a search on the President's say-so.

This Republican Congress's oversight efforts to date have been few and far between, and even the anemic attempts at oversight have been stymied by White House obstruction. The Republican Chairman of the House Judiciary Committee has accused the Attorney General of "stonewalling" on this issue. That Committee later passed a Democratic resolution directing the Attorney General to produce all documents relating to Administration requests to telephone service providers to obtain information without a warrant. Of course, the House Republican leadership has refused to allow a vote on the measure.

To a commendable degree, this Committee and our Chairman have also been trying to elicit the information to which we are entitled and which we need to fulfill our constitutional responsibilities. But the fact is, we have not made much headway. After the Attorney General testified on this matter in February, Chairman Specter summed it up in six words: "He didn't tell us very much."

The Attorney General didn't tell us very much last month, either. I was particularly struck by his exchange with Senator Specter. The Chairman asked the Attorney General to confirm a statement he made when he was not on camera, when he was not under oath, to the effect that the so-called Terrorist Surveillance Program was the only Administration program operating without judicial authorization. On camera, under oath, the Attorney General would not give the Chairman a straight answer.

We have yet to hear from former Attorney General Ashcroft or the other senior Administration officials, past and present, who are reported to have expressed concerns about the legality of the NSA's activities.

We also have yet to hear from the phone companies that have been assisting the Administration with its domestic spying activities. Vice President Cheney put the kibosh on that hearing -- behind closed doors, of course -- at the Republican Senators caucus lunch. And when some telephone executives testified in June in connection with the proposed merger of AT&T and BellSouth, they essentially "took the Fifth" and refused to answer any questions about these matters.

What are we doing here? Since when must Congress get the Administration's permission to conduct oversight of the Administration, or to talk to American companies about the rights of American consumers? Last I checked our Constitution, this body was not part of the so-called "unitary Executive."

We held our one and only hearing on the Chairman's new bill just last week. The Chairman offered to hold additional hearings and I think that would be appropriate. I still have many questions about the bill and, in particular, the sweeping new changes to FISA proposed in Section 9. Section 9 has a benign-sounding title, "Other Conforming Amendments to FISA." But these amendments are more transforming than conforming, although I suppose they do "conform" FISA to the President's vision of unchecked Executive power. I have submitted detailed questions to the Administration witnesses regarding these proposed changes, and I know others have as well.

We need to understand what problems these changes are intended to address, and what they would enable the government to do that it cannot do now. We also need to know the extent to which these changes would sacrifice Americans' liberties. We should not wait to find out what the legislation means until the President's inevitable signing statement, after it is passed.

I continue to believe it is premature to mark up this bill. At a minimum, we should wait until the Administration has answered our questions in connection with last week's hearing and has told us how it interprets, and would apply, each of the many significant changes in Section 9.

Even then, however, most of us would still be flying blind with respect to the President's program, which is the whole reason we are considering another overhaul of FISA in the first place. Of the 18 members of this Committee, only four -- the four who also serve on the Intelligence Committee -- have been briefed on what the NSA is doing.

I have listened closely to my colleagues who have been briefed on the NSA's activities. Senator Feinstein has said that the surveillance the President wants to conduct can be done under the current FISA law. Representative Jane Harmon has said the same. The Attorney General himself testified, "I think there is a serious question as to whether or not FISA could accommodate what it is that the President has authorized." If there is a "serious question" that current law is sufficient, why are we messing with it?

Perhaps we are going about this the wrong way. The former presiding judge of the FISA court, Judge Royce Lamberth, said on May 8th that in his view, the President's warrantless wiretapping program would "require some tweaking" to make it comport fully with FISA. Instead of Congress amending FISA to accommodate what we imagine the President's unlawful program might be, perhaps the President should consider "tweaking" his program to comply with the law.

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