

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
November 8, 2007

Opening Statement Of Chairman Patrick Leahy  
November 8, 2007

I thank all Members for their cooperation earlier this week at our extra business meeting and for their conscientious work to prepare for our meeting today. Today we focus on proposals to amend the Foreign Intelligence Surveillance Act (FISA). We held an important hearing last week and have had a number of briefings and meetings in the last several days on these matters.

Here is how I propose to proceed:

When we have a quorum of 10 Senators present, I would like to turn quickly to the Child Soldiers Accountability Act, S.2135, which was carried over from last week, and that is cosponsored by Senators Durbin, Coburn, Feingold and Brownback. We have a Durbin amendment and a Kyl amendment that have both been circulated and that I believe can be adopted by unanimous consent so that we can then report the bill by consent. We also carried over the nomination of Michael Sullivan that I understand is now ready to be reported.

After my opening remarks and any opening remarks by the Ranking Member, I would like to proceed directly to the FISA legislation and will place before the Committee the amendment to title I of the bill, which we circulated yesterday, and which Senator Feinstein is cosponsoring.

I would ask that the Committee adopt that amendment as a starting point with the understanding that it would be open to amendment and that any amendments filed to title I of the underlying bill be considered in order as amendments to it. It would be my hope that we could today adopt the substitute title I amendment, work through other title I amendments and complete our consideration of title I today. Yesterday evening, in compliance with our Committee rules, 26 amendments were filed to the bill, including 21 amendments to title I. So working through the title I amendments would be a good start and a logical place to begin.

I know that Members have been considering and are trying to work together to make improvements to title II of the underlying bill, which concerns, among other things, retroactive immunity provisions. This would allow us a few more days to continue working to try to get consensus on title II and title III.

Let me outline the title I amendment I have proposed, and point out some of the improvements I think it brings to the bill:

First, it contains an amendment that would reaffirm in the clearest terms the fact that FISA is to be the exclusive means by which the government conducts electronic surveillance for foreign intelligence. That is what the law said and what Congress meant. To me it was clear. But this provision will leave no question that the absurd argument that this Administration concocted after the fact to try to excuse its warrantless wiretapping by reference to the Authorization for the Use of Military Force is just that, absurd. This is an issue on which I have focused for years and one that I know concerns Senator Specter and Senator Feinstein among others. The substitute includes an amendment suggested by Senator Feinstein that grows out of her work with Senator Specter on this point.

The substitute also eliminates the provision in the Intelligence Committee bill that would have changed the definition of electronic surveillance. In his testimony to the Committee last week, Mort Halperin correctly called that language the "Alice in Wonderland" provision because it defined "electronic surveillance" to mean the opposite of what it said. Our amendment corrects that. The definition of "electronic surveillance" is used throughout FISA and should be consistent. Most importantly, there appears to be absolutely no reason to change the definition in the way the underlying bill had done it. It accomplishes nothing and creates significant confusion and potential harm.

Other significant provisions of the substitute include a strengthening of the minimization provisions in the Intelligence Committee bill. I thank Senators Whitehouse and Feingold for their important contributions to this provision. Another provision, which Senator Feingold has developed, would impose a common-sense restriction on the use of information the FISA Court has found to be collected improperly.

One other provision that is not included in the substitute for title I, but one that a number of us feel is important, is a requirement that the Department of Justice Inspector General conduct a thorough audit of the so-called Terrorist Surveillance Program and report back to the Congress and, to the greatest degree possible, the American people, about that program. This kind of review of this warrantless surveillance program and the legal arguments that supported it is long overdue. I very much want to see that provision included in our bill.

The FISA is intended to protect both our national security and the privacy and civil liberties of all Americans. The President's nominee to be the next Attorney General testified recently that "protecting civil liberties, and people's confidence that those liberties are protected, is a part of protecting national security." On that point, I agree with him.

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Statement of Senator Patrick Leahy  
On S. 2135, the Child Soldiers Accountability Act of 2007  
Senate Judiciary Committee  
November 8, 2007

I commend Senator Durbin and Senator Coburn for their leadership on this important legislation to combat the unconscionable practice of using children as soldiers in violent conflicts. I am glad that they and the other sponsors of this legislation consulted with me and with others on the Committee and that they were able to join with Senator Kyl to produce a consensus bill. The United States should do all it can to prevent and punish this conduct which is so contrary to our values.

This bill creates a tough new criminal provision aimed at those who recruit or conscript children under the age of 15 into armed conflict. It extends U.S. jurisdiction to perpetrators of this crime present in the United States, regardless of their nationality and where the crime takes place, so that those who commit human rights violations cannot come to this country as a sanctuary from prosecution. The bill also amends immigration law to allow those who have used children as soldiers to be barred or removed from the United States.

The conduct prohibited by this bill is appalling but happens all too often throughout the world. When children are forced to fight, they are robbed of their childhood and often their lives. We should do everything we can to stop this offense to human rights and human dignity. I support this important bill and hope the Committee will report it today.

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