

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 28, 2008

STATEMENT OF SENATOR PATRICK LEAHY  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
OPENING STATEMENT ON FISA  
EXECUTIVE BUSINESS MEETING  
FEBRUARY 28, 2008

Even as we meet here this morning, the President once again is misusing his bully pulpit, as he speaks again about changing the FISA law. Once again, his purpose is not to help the Congress and the country reach consensus on a sensible law, but to tell the Congress to set aside its legislative process and to merely take the administration's dictation.

The administration and some of its allies are intent on playing politics with this important issue, and once again they are showing they are not above fear-mongering if that's what it takes to get their way. They have even been willing to let portions of the law lapse, instead of allowing a brief extension to be passed. And this week, they have boycotted substantive meetings to find a sensible and workable solution.

The President and his spokeswoman have misstated the facts. I regret to have to speculate that he is probably doing that right now.

We can have both security and adequate protections of the rights of the American people. Those goals need not be mutually exclusive. But to get there, we need to work at it, in good faith.

I have supported amending FISA dozens of times to update it. But we must do it carefully and without signing away the rights of the American people.

We know that government can abuse surveillance powers. Earlier abuses just a few decades ago are why we have FISA in the first place.

Sunset provisions were included last summer to give more time to get this right. And getting this right is important. With the use of powerful surveillance tools, the rights of Americans are at stake, and so is the potential for abuse.

There is no reason why we can't modify FISA, while also having sufficient checks and balances to make sure these powers are used with accountability.

It is disappointing that the administration continues its partisan campaign with regard to

congressional efforts to reform the Foreign Intelligence Surveillance Act. I am told that President Bush will stage another event in this campaign this morning. It seems that somewhere in the Republican Party they have decided to make this a partisan issue to score political points. Maybe that is why Republicans would not extend the law they wrote last summer, the so-called Protect America Act, and instead allowed it to expire. What is incomprehensible is that they can then turn around and complain that it is no longer in force.

It is sad to see the Director of National Intelligence reduced to signing an inflammatory letter one day, and then turning around the next day and having to admit that the surveillance authorized by the Protect American Act has not been interrupted. The only surveillance I know that has been disrupted is when the administration did not pay its bills and the phone companies cut off interceptions.

Of course, FISA has been amended at least a dozen times since September 11, 2001, and the Congress has worked with this administration on each occasion. The impasse now has less to do with the ins and outs of surveillance, and to do more with the Bush-Cheney administration's efforts to avoid accountability for the unlawful surveillance of Americans, which it secretly conducted for almost six years. That is the core dispute, just as it was when this Committee was preparing under Chairman Specter to subpoena phone company records regarding the surveillance and Vice President Cheney intervened with Committee Republicans to prevent action on those subpoenas. The core principle we are working to incorporate in the final bill is court review of the legality, or I believe illegality of that warrantless surveillance of Americans outside of FISA.

That was the purpose of the initial legislation that Senator Specter introduced on this subject. Toward the end of the last Congress, Senator Specter believed he had an agreement from the President that the matter would be submitted to the courts for review. That is still what we are seeking and what the administration is resisting at all costs.

It is most unfortunate that the administration will hold press conferences but not meet with House and Senate leaders on a solution.

I would like to make part of the record the column Chairman Rockefeller and I joined in that appeared in The Washington Post this Monday and a letter from former senior intelligence officers on these matters.

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