

The PRESIDENT pro tempore. You may.

Mr. ROCKEFELLER. I thank the President pro tempore.

NSA WARRANTLESS SURVEILLANCE PROGRAM

Mr. ROCKEFELLER. Mr. President, the National Security Agency has been wiretapping the conversations of Americans without obtaining court orders, as required by the Foreign Intelligence Surveillance Act, or FISA, for the past 5 years.

In recent months, a number of bills have been proposed which would codify the President's program of warrantless surveillance. The White House is now pushing the Senate Judiciary Committee to pass sweeping legislation that would amend FISA and grant the President unprecedented authority to undertake wiretapping in the United States without the judicial scrutiny currently required by law.

For Congress to legislate on this program in the coming days would not only be premature but irresponsible.

The fact remains that despite repeated assurances from the administration, Members of Congress remain in the dark and cannot answer fundamental questions about the program's existence, effectiveness or legal justification.

As one of the few Members who have received the most detailed information to date. I can tell you that, putting aside the legal argument, the administration has not been able to document convincingly the counterterrorism benefits of the program.

In fact for the past 6 months, I have been requesting, without success, specific details about the program including how many terrorists have been identified, how many arrested, how many convicted, and how many terrorists have been deported or killed as a direct result of information obtained through the warrantless wiretapping program.

I can assure you, not one person in Congress has the answers to these fundamental questions.

At the same time, let me be perfectly clear, I support all efforts to track down terrorists wherever they are using all of our best technology and resources. But it can and must be done legally and in a way that protects the rights of all Americans.

For 4½ years, the President had restricted knowledge of this program to the top leaders of the Senate and House and the two top leaders on the congressional Intelligence Committees.

By limiting the briefings to 2 of the 15 Intelligence Committee members, the White House had sought to prevent the committee from conducting the legally required oversight of the NSA program.

Because of this restriction on access to the program, the committee has been effectively prevented from knowing about the program, evaluating the program, and acting on the program.

Frankly, I believe the White House goal of the past 5 years has been to use the iron cloak of secrecy to keep Congress ignorant of and powerless to challenge a controversial program of suspect legality.

The repeated representations by the President and senior administration officials that the warrantless wiretapping program was and is subject to extensive congressional oversight are simply outrageous.

Entire committees, not individual Senators, report out legislation that authorizes and funds intelligence collection programs. The full Senate, not individual Senators, takes action to approve or reject this legislation.

The White House wanted a warrantless wiretapping program that was exempt from the scrutiny of both the courts and the Congress, even if it meant ignoring the legal requirements of FISA and the National Security Acts and shattering what had been decades of responsible, bipartisan congressional oversight of intelligence programs. Why?

Administration officials have stated that the fact that the NSA was collecting the communications of suspected terrorists coming in or out of the United States without a court's determination that probable cause existed was simply too sensitive to disclose to the other Members of Congress intimating that the congressional Intelligence Committees could not keep aspects of the program classified.

I would remind this administration that the Intelligence Committee is entrusted on a daily basis with the secrets that if disclosed would irreparably harm our national security, compromise multibillion-dollar collection programs, and even get people killed.

There are 15 members of the Senate Intelligence Committee and many more of my colleagues who at an earlier time served on the committee.

All Senators, by right of their elected position and the duties they are sworn to carry out have access to the details of these highly classified collection programs.

It is a sobering responsibility but members of our committee and the Senate as a whole have protected these secrets because each of us understands what is at stake.

In fact, as someone who has been briefed on the NSA wiretapping program, I can assure my colleagues that the sensitivity of the program pales in comparison with other intelligence activities our committee oversees on a routine basis.

My colleagues should be troubled by the fact that the only NSA intelligence collection program that the White House has directed be described in detail publicly is also the only NSA program the White House continues to withhold from the full Senate.

I want my colleagues to consider the implications of this carefully.

At a time when terrorism is the No. 1 threat to America's security, the

White House has decided that Congress cannot be trusted with the job of protecting our citizens.

Instead of working with Congress, the President decided with an almost imperial disdain to ignore the constitutional role the legislative branch plays in providing for the National defense.

It wasn't until March 9 of this year, and after enormous pressure, that the administration agreed to allow five additional committee members and three staffers to be briefed into the program.

Another 2 months would pass before the White House agreed with our request that the entire committee membership be apprised of the program's operations.

However, contrary to public statements in recent months by the President and Vice President that Congress is being fully briefed, I am dismayed to report that this administration continues to pursue its policy of depriving the Congress the information it needs to understand and evaluate the NSA program's legal underpinnings, operational conduct, and usefulness in identifying and arresting terrorists.

On February 23, 2006, I wrote to NSA Director GEN Keith Alexander, Attorney General Alberto Gonzales and Director of National Intelligence John Negroponte requesting documents and information about the NSA program, including the Presidential orders authorizing the program, legal reviews and opinions relating to the program, procedures and guidelines on the use of information obtained through the program, and specifics about the counterterrorism benefits of the program.

This letter was followed up with a second more refined request on May 15 of 54 items based on briefings the committee had recently received.

The May letter repeated my earlier request for basic documentation and information, such as the Presidential authorization orders, which are essential in order for the Intelligence Committee to fully understand and thoroughly evaluate the NSA program, a necessary step before considering whether legislation relating to the program or amending FISA is needed.

Over 6 months have passed since I sent my original February letter and the Intelligence Committee has not received the requested information.

During this time, I and my staff director repeatedly raised the issue of the delinquent replies with White House and administration officials, including a direct appeal I made to Director Negroponte in July.

Six months and no response from the administration. This is simply unacceptable.

Three days after I met with Director Negroponte and expressed my concerns about the lack of a response to the February and May requests for documents and information, the Intelligence Committee received a fax from the NSA's Office of General Counsel forwarding "a set of administration-approved unclassified talking points for members to use."

The cover page of the fax included comments indicating that the talking points were prepared in response to questions from committee members about what could be said publicly about the NSA program.

When I read the talking points, I was stunned to find that the NSA provided political talking points.

Instead of providing the requested assistance in delineating what is and what is not classified about the program, the talking points contain subjective statements intended to advance a particular policy view and present the NSA program in the best possible light.

Instead of providing the committee with the documents and information requested a half year earlier and allowing the committee to complete its own review of the NSA program and to draw its own independent conclusions, the administration preferred telling committee members what to think and what to say.

The administration-approved talking points encouraged Senators to make statements such as "I can say that the Program must continue; It is being run in a highly disciplined way," and "There is strict oversight in place both at NSA and outside, now including the full congressional committees."

The talking points also argue for changes to FISA claiming "Current law is not agile enough to handle the threat" and "The FISA should be amended so that it is technologically neutral."

These statements were intended to advocate the White House policy line rather than provide guidance on classification.

Even before the intelligence committee can finish its own review of the NSA program the administration attempted to use the members of the intelligence committee—the only committee witting of the program's details—as mouthpieces to parrot conclusive statements in support of White House policy.

These talking points are the latest examples of how the administration has co-opted an agency of the intelligence community to keep information from Congress in support of a controversial policy or program. Our committee has run into this disturbing practice with respect to the administration's program for the detention, interrogation and rendition of individuals suspected on involvement with terrorism as well.

The White House's unwillingness to provide requested information to the Congress on the detention and interrogation program for many years created a void in congressional oversight, eventually filled by the courts and the Hamdan decision earlier this year.

In this case, the administration took the calculated risk that it could go it alone, without working with Congress, and they guessed wrong.

Now faced with a court decision not to its liking, the White House is com-

ing to Congress seeking a legislative remedy.

Evidently, the administration has failed to learn the lessons of this go-it-alone approach.

The documents I requested of the NSA, Justice Department, and Office of the DNI 6 months ago have been withheld at the direction of the White House.

The administration is trying to run out the clock on my requests in the hopes that Congress can be manipulated to pass legislation this session authorizing a program it does not fully understand.

At the same time, a simple request of the NSA to detail what is and is not classified about the warrantless surveillance program is forced to go through the White House and, as a result, turned into a litany of administration P.R. statements.

I and six other members of the Intelligence Committee wrote to NSA Director Alexander last month expressing our concerns over the appropriateness of these administration-approved talking points and objecting to the requirement that the NSA must clear with the White House any requested information about its own program before it is sent to Congress.

We also asked that Director Alexander review this incident and provided the committee in writing an explanation of by whom and on what authority these talking points were prepared, who approved of their distribution to members of the Intelligence Committee, and who made the decision that they should be cleared by the administration prior to being provided to committee members.

Mr. President, I ask unanimous consent to have printed in the RECORD the administration-approved NSA talking points, faxed to the Intelligence Committee on July 27, 2006, the August 29, 2006, letter to NSA Director Gen. Alexander signed by me and Senators LEVIN, FEINSTEIN, WYDEN, BAYH, MIKULSKI, and FEINGOLD, and the September 1, 2006, response from General Alexander.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

From: Alonzo Robertson, Office of General Counsel.

Date: 27 July 2006.

To: Hon. PAT ROBERTS, Chairman, SSCI.

During recent Terrorist Surveillance Program (TSP) briefings, a number of members have expressed a desire to know what they can say about the TSP. Attached is a set of Administration approved, unclassified talking points for the Members to use.

We would appreciate it if you would distribute to the Members.

ALONZO ROBERTSON.
TALKING POINTS FOR INTELLIGENCE COMMITTEE MEMBERS TO USE ON TERRORIST SURVEILLANCE PROGRAM

The terrorist threat to this country is real. We need to do everything possible to make our nation safe, and we need to do it in a way that preserves our civil liberties.

As a member of an intelligence committee of Congress, I am fully committed to that

goal. We are the watchdogs of the Intelligence Community, including the National Security Agency that is carrying out the Terrorist Surveillance Program.

I have been briefed on the Program and stood on the operations floor at NSA to see first-hand how vital it is to the security of our country and how carefully it is being run.

It would be irresponsible to reveal details because that would give our adversaries an advantage. My colleagues and I are very serious about protecting our nation's secrets.

I can say that the Program must continue. It has detected terrorist plots that could have resulted in death or injury to Americans both at home and abroad.

It is being run in a highly disciplined way that takes great pains to protect U.S. privacy rights. There is strict oversight in place, both at NSA and outside, now including the full congressional intelligence committees.

The Program is not "Data mining"; it targets only international communications closely connected to al Qaeda or an affiliated group.

I have personally met the dedicated men and women of NSA. The country owes them an enormous debt of gratitude for their superb efforts to keep us all secure.

Current law is not agile enough to handle the threat posed by sophisticated international terrorist organizations such as al Qaeda. This is because the Foreign Intelligence Surveillance Act of 1978, or "FISA," has not kept pace with communications technology and was not designed for the types of threats we now face.

Today, in part because of technological changes over the last 30 years, the FISA frequently requires judicial authority to collect the communications of non-U.S. persons outside the United States. This clogs the FISA process with applications for court orders that have little to do with protecting U.S. privacy rights.

The FISA should be amended so that it is technology neutral. This would return it to its original purpose of focusing FISA privacy protections on Americans in the United States. It would greatly improve the FISA process and relieve the massive amounts of resources currently being consumed.

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, August 29, 2006.

Gen. KEITH B. ALEXANDER,
Director, National Security Agency,
Fort George Meade, MD.

DEAR GENERAL ALEXANDER: If our intelligence agencies are to be successful in their mission, it is vitally important that they maintain their independence. It is the National Security Agency's (NSA) duty to make sure that policymakers and military leaders are presented with accurate, objective intelligence information. If the NSA, or any other intelligence agency, enters a policy debate, it risks the loss of policymakers' confidence and could compromise the agency's effectiveness. That is why we were so troubled by talking points that members of the Senate Select Committee on Intelligence recently received from the NSA.

The talking points at issue related to the NSA warrantless surveillance program and were accompanied by a cover page from the NSA's Office of General Counsel. The cover page included comments indicating that the talking points were prepared in response to questions from Committee members about what could be said publicly about the NSA program. Instead of providing assistance in delineating what is and is not classified about the program, the talking points contain subjective statements that appear intended to advance a particular policy view

and present certain facts in the best possible light.

The talking points include statements such as "I can say that the Program must continue"; "It is being run in a highly disciplined way"; and "There is strict oversight in place, both at NSA and outside, now including the full congressional oversight committees." The talking points also argue for changes to the Foreign Intelligence Surveillance Act (FISA) claiming "Current law is not agile enough to handle the threat" and "The FISA should be amended so that it is technologically neutral." These statements appear intended to advocate particular policies rather than provide guidance on classification.

As you know, the Congress is currently evaluating various aspects of the NSA program. The Senate Intelligence Committee is in the process of gathering information to understand operational aspects of the program, and the Senate Judiciary Committee has held public hearings related to the program's legal foundations. Several pieces of legislation dealing with this program and the FISA have been introduced in the Senate and the House of Representatives.

The future of the warrantless eavesdropping program and any proposed changes to the FISA are policy matters currently being considered in the political arena. We understand the Administration has a certain point of view regarding this program. The program is, however, the subject of consideration in the Congress.

We believe that it is inappropriate for the NSA to insert itself into this policy debate. In addition, we are particularly troubled by the statement on the cover page that the document is "Administration approved, unclassified talking points for Members to use." We object to an intelligence agency, such as the NSA, clearing documents such as these with the Administration prior to providing them to the Congress.

We also would note that the administration has failed to provide the Committee with documents and other basic information we need to conduct the strict oversight of the NSA program that the NSA talking points suggest is happening.

We ask that you review this incident and provide the Committee in writing, no later than September 8, 2006, an explanation of by whom and on what authority these talking points were prepared, who approved of their distribution to members of the Senate Intelligence Committee, and who made the decision that they should be cleared by the Administration prior to their being provided to Committee members. We also ask that your response describe steps you intend to take to ensure that all NSA employees understand the importance of NSA maintaining its independence from policy debates.

Thank you for your attention to this matter.

JAY ROCKEFELLER.
EVAN BAYH.
RUSSELL D. FEINGOLD.
DIANNE FEINSTEIN.
CARL LEVIN.
BARBARA A. MIKULSKI.
RON WYDEN.

NATIONAL SECURITY AGENCY,
Fort George G. Meade, MD, 1 September 2006.
Hon. JOHN D. ROCKEFELLER IV,
Vice Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR VICE CHAIRMAN ROCKEFELLER: I appreciated the chance to talk with you yesterday about the concerns you raised in your letter of 29 August 2006 pertaining to a set of talking points on the President's Terrorist Surveillance Program (TSP) that NSA provided to the full Senate and House intel-

ligence committees. I regret that our effort was misperceived as political.

As I stated on the phone, my intent was to respond to requests from intelligence committee Members who visited the Agency to oversee the TSP. They cited constituent concerns and asked what they could say publicly about the Program, and we wanted to be as helpful as possible. Because we are an Executive Branch agency, it is standard practice that NSA coordinated the talking points with the Department of Justice, National Security Council staff, and the Office of the Director of National Intelligence. We were especially concerned that nothing we gave out could or would be construed as classified.

I again assure you that we intended our effort to be apolitical. We are proud of our people, and our talking points reflect the pride in our service to our nation. I want to emphasize that NSA will not permit political considerations to taint our intelligence information.

If you have any questions, please call me or Michael Lawrence, Director of Legislative Affairs.

KEITH B. ALEXANDER,
Lieutenant General, U.S. Army,
Director, NSA.

Mr. ROCKEFELLER. Mr. President, it is clear to me that the administration's withholding of documents is designed to hamper the Intelligence Committee's review of the NSA program. Up to this point, information provided to the committee in briefings held since March has been filtered and generalized through charts and slides.

My attempts to obtain original documents, such as the Presidential authorizations, and to ask questions that go beyond these administration-approved briefings have been ignored.

This refusal to respond to legitimate information requests from the Oversight Committee, combined with the administration's over-restriction of member and staff access to the NSA program, is part of a cynical White House strategy to prevent Congress from either acting or forcing it to legislate on vital national security and privacy issues in the dark.

Twenty of the 100 currently serving Senators have been briefed on the NSA program at one point or another in the past 5 years. The White House currently allows only three members of the Intelligence Committee staff—two Republican staffers and one Democrat—to have access to the NSA program.

By contrast, there are well over a thousand employees at the NSA, CIA, FBI, Justice Department, Office of DNI, Pentagon and White House briefed into the NSA program.

I want my colleagues to take note of this disparity. Twenty Senators and three staffers compared with over a thousand executive branch employees.

If, in the remaining weeks of this session, the full Senate is asked to consider legislation to revise FISA or authorize aspects of the NSA warrantless surveillance program, it is untenable—if not unprecedented—to keep four-fifths of the Senate ignorant of why the changes are justified or what intelligence activities they are authorizing.

The Senate should insist that all Members be allowed to understand the

NSA wiretapping program—with the appropriate care being taken to protect the remaining classified aspects not already acknowledged by the President—and be given the chance to draw their own conclusions about whether it is justified.

Finally, General Hayden and others have publicly stated that no legal concerns have been raised within the administration about the operation of the NSA program. Limited information presented to the committee contradicts this assertion. But the committee has been prevented from understanding the details and context of these internal debates about the program's legality due to the administration's stonewalling.

I urge my colleagues—we must insist on a full accounting of the NSA's ongoing 5-year program before acting on legislation that gives the President the authority to wiretap the phone conversations of Americans where a court has not determined that a probable cause standard has been met.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I rise to speak for 8 minutes and ask the Chair to give me the signal when I have used that time.

The PRESIDENT pro tempore. The Senator has 16½ minutes.

UNITY IN THE WAR ON TERROR

Mr. ISAKSON. Mr. President, I am really delighted, after some of the things I have read and heard this morning. I decided last night to make the speech I am about to make. This morning, I want to go back to the speech the President made on Monday evening and go back to the President's clarion call for us to unite as a nation behind our effort to win the war on terror.

During the past 3 days—first Monday, September 11, where we all honored and mourned the tragic loss of 3,000 citizens, through today—I have read constant editorials and listened to numerous speeches that imply to me that that sense of unity doesn't really exist. I think the President was right to call for unity.

This morning I rise in an effort to have us focus on what we are really all about, not to point fingers or castigate anybody but to talk about what I believe is the ultimate war between good and evil. What happened on September 11 in 2001 was one of the most tragic events in the history of mankind. What the United States did, and what this President declared, by changing our policy from one of reaction to one of preemption was precisely the right thing to do. There is no doubt that in the last 5 years mistakes have been made. But there is no doubt that the greatest mistake would have been not to respond. It is now time for us to resolve to support this country, our men and women in harm's way, our intelligence agencies, with a resolve to see