

The Honorable Jeff Flake

Testimony on H.R. 4976 – The NSA Oversight Act of 2006

July 25, 2006

Thank you Mr. Chairman,

Mr. Chairman, I am here to testify on legislation I introduced with my colleague from California, Mr. Schiff.

Our legislation is designed to accomplish a number of key objectives. Primarily, we believe that the President can not ignore the Foreign Intelligence Surveillance Act (known as FISA). Our bill reiterates that FISA is the law, until Congress says otherwise.

I believe strongly that, if the President wanted to go beyond the powers he currently has with FISA, he should have sought clear congressional authorization. I am willing to help the President achieve the flexibility he needs.

But I would ask this committee - and the members of the Judiciary Committee on which I and Mr. Conyers and Mr. Schiff sit – why did we spend a year working on the Patriot Act reauthorization when the President contends that he has “inherent commander-in-chief power” to ignore everything we approved?

What point would it serve to pass yet another bill to give the President more flexibility if we do not make it clear to him that a new law *must* be followed, not circumvented?

The Schiff-Flake bill also seeks to give the Committee on the Judiciary its proper role in oversight over FISA and warrantless wiretapping.

As you are aware, under the National Security Act, the congressional intelligence committees “shall promptly call to the attention . . .of any appropriate committee or committees...any matter relating to intelligence activities requiring the attention of such committee or committees.”

While Mr. Schiff and I recognize the essential need to protect sensitive information related to national security matters, members of the other committees of the House still must be afforded access, in an appropriate classified setting, to materials that fall within their jurisdiction.

In the case of the House Judiciary Committee, under the current Rules of the House, the Committee on the Judiciary has jurisdiction over matters implicated by NSA programs, including matters related to subversive activities affecting the internal security of the United States, espionage, civil liberties, criminal law enforcement, the judiciary and judicial proceedings, and federal courts and judges.

Indeed, the Committee on the Judiciary maintains jurisdiction over the Foreign Intelligence Surveillance Act, the Fourth Amendment of the Constitution, and chapters 119 and 121 of title 18 of the United States Code.

It is also notable that the Schiff-Flake, Harman, and Wilson-Sensenbrenner bills have all received primary referrals to the House Judiciary Committee.

Since the Judiciary Committee must determine whether the NSA program complies with the Constitution, FISA, and civil liberties, the Members of the Committee must be better informed.

To accomplish this, the Schiff-Flake bill states that the President would have to submit to the Intelligence and Judiciary Committees a report, in classified form, identifying the United States persons who have been the subject of electronic surveillance under the NSA program and the basis for the selection of such persons for such electronic surveillance.

I realize the Intelligence Committee has jurisdiction over sources and methods. But it also has a process by which a member can request access to classified information. Briefings could be arranged to assuage Judiciary Committee member concerns.

Such briefings would comply with House Rules that specifically state that nothing in the clause creating the Intelligence Committee “shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence activity or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.”

I believe the Schiff-Flake bill fulfills the spirit of that provision in requesting that the Judiciary Committee be briefed on certain aspects of the Terrorist Surveillance Program related to our jurisdiction.

I thank the Chairman, and yield back.