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U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

H-405, THE CAPITOL
WASHINGTON, DC 20515
(202) 225-7690

MICHAEL DELANEY
STAFF DIRECTOR

MICHAEL MEERMANS
MINORITY STAFF DIRECTOR

2005
July 26, 2007

The Honorable Silvestre Reyes
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Our country is at enhanced risk of terrorist attack, and the time for dodging and excuses is over. We have long known of the fundamental need to fix the Foreign Intelligence Surveillance Act, and the Committee has been on notice of the urgency of the problem since April 12, when Director McConnell formally transmitted the President's proposal to reform FISA to the Committee. As he further pointed out in a May 21 op-ed in the Washington Post, this legislation would "close critical gaps" and "provide a higher level of protection against terrorist attacks."

Since then, instead of acting with urgency to solve the problem the Committee has held multiple hearings to review years-old disagreements between lawyers about highly specific issues of legal theory that have since been fully and favorably resolved by federal judges. Those issues have no bearing whatsoever on the plain fact that "we are missing a significant portion of what we should be getting" about potential foreign terrorists in foreign countries.

It appears that the majority now is going to walk away from the problem yet again for the August recess while, according to the declassified key judgments of the recent National Intelligence Estimate, Al Qaeda "continues to plan high-impact plots" that are "likely to continue to focus on prominent political, economic, and infrastructure targets with the goal of producing mass casualties, visually dramatic destruction, significant economic aftershocks, and/or fear amongst the US population." We must act immediately and with urgency to close the FISA terrorist loophole and ensure that we are doing everything possible to detect and prevent potential attacks on the American people.

We have seen your letter to Congresswoman Wilson of July 24, and none of the excuses provided justify the Committee's failure to act. We would like to briefly correct

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the record on these issues, and welcome any further discussion you may wish to have on them.

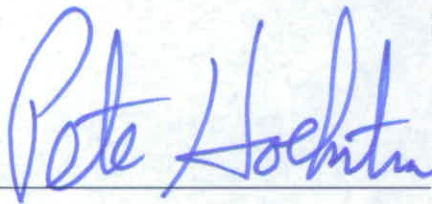
First, you correctly note that FISA has been amended multiple times since the September 11, 2001 attacks. However, this point is completely irrelevant to the fundamental barriers that remain. None of those amendments have in any way changed the fundamentally outdated processes and structures of the law. FISA still contains artificial, decades-old distinctions between wire and radio communications that have not been changed. The urgency of the problem described by Director McConnell and more starkly in our classified briefings obviously still exists regardless of any previous amendments.

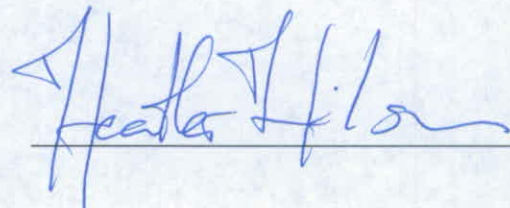
Second, you claim that FISA does not require a court order for communications between foreign targets outside the United States. This does not fully or accurately state the law with respect to FISA, and your position would place intelligence community personnel at potential risk of criminal liability if they were to operate outside of FISA without clear legal authority. Not all of our intelligence is collected under the specific provision of law you mention, and in any event our personnel need clear and binding legal authority in order to obtain cooperation and to have full assurance that their activities are lawful.

Third, you claim that the problem can be easily solved with more lawyers and analysts. Director McConnell told us that that is not the case in his July 26 letter. Moreover, Intelligence Community professionals have told us flatly that that is not the case, and I am surprised that you are politicizing the issue by disregarding their advice. Developing "probable cause" to pass judicial scrutiny is highly specialized, time consuming work requiring specific expertise on overseas terrorist networks. Not only can more of that expertise not be grown overnight, Director McConnell has questioned the wisdom of moving such critical analytic resources from tracking current threats to filling out legal paperwork to protect radical jihadists overseas.

Finally, you claim that the House Intelligence Committee is addressing this issue. We're still waiting while America is at risk of attack.

Sincerely,





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[Handwritten Signature]

Ethan Sawyer

[Handwritten Signature]

John W. McHugh

[Handwritten Signature]

[Handwritten Signature] (MI)

[Handwritten Signature]

cc: President George W. Bush
Speaker Nancy Pelosi
Republican Leader John Boehner
Majority Leader Steny Hoyer
Majority Whip James Clyburn
Republican Whip Roy Blunt
Members of the House Permanent Select Committee on Intelligence