

DENNIS J. KUCINICH
10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-5871

14400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-8850



Congress of the United States
House of Representatives

Committees:
Government Reform
Education
and the
Workforce

www.kucinich.house.gov

May 11, 2006

Senator Mike DeWine
140 Russell Senate Office Building
Washington, D.C. 20510-0001

Dear Senator DeWine:

I urge you to vote against the nomination of Air Force General Michael Hayden for the Director of the Central Intelligence Agency (CIA). General Hayden directed the National Security Agency (NSA) from March 1999 to April 2005. In that period, General Hayden would have overseen the agency's illegal domestic call-tracking program just revealed by the USA Today. This program is another example of the continued attacks on our Constitution and fundamental freedoms. Nominees to the CIA must demonstrate a fundamental respect for the rule of law and our core civil liberties and civil rights. General Hayden has consistently failed that test.

Recently, U.S. Attorney General Alberto Gonzales appeared before the House Judiciary Committee. He was asked whether he thought the White House has the legal authority to monitor domestic traffic without a warrant. He testified, "I wouldn't rule it out."

And today, we have all discovered what the Attorney General was so coy about. According to today's article in the USA Today, the NSA has been illegally collecting the phone call records of tens of millions of Americans. The NSA has refused to seek permission from the FISA court and even get approval from the Attorney General. This is a clear violation of the 4th amendment of the Constitution, illegal search or seizure without a warrant.

The USA Today article quotes anonymous sources that claim, "it's the largest database ever assembled in the world," and the agency's goal is "to create a database of every call ever made".¹ In essence, the NSA now has detailed records of most domestic calls. The information apparently includes the originating phone number, destination phone number, and length of time for each call. The phone numbers the NSA collects can easily be crosschecked with other databases to obtain customer names and addresses.

The USA Today article clearly lays out evidence that the NSA is fully aware that this program is illegal. The only phone company to comply with the law of the land and refuse the NSA demand for records was Qwest Communications. The article quotes various sources that all confirmed that Qwest's attorneys requested the NSA take its proposal to the FISA court. The NSA rejected that suggestion. Worse yet, the NSA's explanation worried Qwest's lawyers. A source in the article stated "They told (Qwest) they didn't want to do that because FISA might not agree with

¹ USA Today. NSA has massive database of Americans' phone calls. Leslie Cauley. May 11, 2006.

them." Furthermore, "NSA rejected Qwest's suggestion of getting a letter of authorization from the U.S. attorney general's office."² It is outrageous that the NSA launched a classified program spying on Americans that neither the secret FISA court nor the Attorney General would support.

The White House deputy press secretary, Dana Perino, stated, "all appropriate members of Congress have been briefed on the intelligence efforts of the United States." I would like to know if you were briefed on the program details and the legal authority of such a program, in your role as member of the Senate Intelligence Committee? If you were briefed on this program, what actions have you taken to halt the clearly illegal program? If you were not briefed about this program and just learned about its existence today, like myself, would you join me in an effort to terminate this illegal program?

Furthermore, you have been quoted in local papers suggesting you are not concerned about the military background of CIA nominee Gen. Michael Hayden and has said that Hayden is "well-qualified" to head the CIA.³ Please explain how can General Hayden be "well qualified" if under his command he has operated at least two programs, illegal wiretapping and today's revelations, that directly tread on the 4th Amendment of the Constitution.

As a member of both the Senate Select Intelligence Committee and the Senate Judiciary Committee, you should be aware the consequences of promoting to the head of the CIA someone who has demonstrated their willingness to trample the Constitution. As such, I again urge you to reject General Hayden as the next Director of the CIA. It is the role of the Congress to defend the Constitution, not the President's nominee.

Sincerely,



Dennis J. Kucinich
Ranking Member
Subcommittee on National Security, Emerging Threats,
and International Relations

DJK:ap

² *ibid.*

³ Dayton Daily News, DeWine: Hayden fine CIA candidate. Jessica Wehrman. May 9, 2006. Page A13.