

**Statement by Chairman Jerrold Nadler**  
**Subcommittee on the Constitution, Civil Rights and Civil Liberties**  
**Hearing on the Constitutional Limitations on Domestic Surveillance**  
**June 7, 2007**

Today the Subcommittee on the Constitution, Civil Rights and Civil Liberties begins a series of hearings entitled, “The Constitution in Crisis: The State of Civil Liberties in America.” Through these hearings, the Subcommittee will examine the Bush Administration’s policies, actions and programs that threaten Americans’ fundamental constitutional rights and civil liberties and also hear proposals for potential legislative fixes.

Today’s hearing specifically looks at one of the foundations of our fundamental liberties: the constitutional and statutory restrictions on the government’s ability to spy on people.

Both the Fourth Amendment, and the Foreign Intelligence Surveillance Act, were responses to abuses by governments that thought they were above the law.

The “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” is a core limitation on the government that protects each of us. The framers of the Constitution understood this and, despite periodic lapses, so have most of our nation’s leaders.

Congress enacted FISA following the Church Committee’s report on surveillance abuses. It reflects Congress’ understanding that the conduct of foreign intelligence activities is fundamentally different from domestic surveillance. It nonetheless also reflects one of our nation’s founding principles that power, especially the power to invade people’s privacy, cannot be exercised unchecked.

We rejected monarchy in this country more than 200 years ago. That means that no President may become a law unto him or herself. As with every part of government, there must always be checks and balances.

This President appears to have forgotten that fact. Not only has he asserted the right to go around the FISA Court and the Wiretap Act, but he has actually done so.

Even more disturbing, he does not believe that he is accountable to the Congress, the courts, or anyone else. This Committee created the FISA statute and the FISA court, yet the President believes we are not entitled to know what he or the court are doing. The President also believes that we are not entitled to know what he is doing, or has been doing, outside the confines of the FISA statute.

Now we are told, as we have been in the past, that the President needs changes to the FISA statute. Of course, we have no way to evaluate these claims, because he has also taken the

position that we have no right to know what legal limits he has been observing in his conduct of surveillance or how he came to the legal rationale for those limits, if any.

We have also been told that the President may, at any time, resume warrantless surveillance, so past practices bear directly on possible future actions.

Many have begun to conclude that the shroud of secrecy thrown over these activities has less to do with protecting us from terrorism and more to do with protecting the Administration from having its lawbreaking exposed.

The FISA statute is a criminal statute, and surveillance conducted without legal authorization is a crime. It is my fervent hope that no crime has been committed here, but the more secretive this Administration becomes, the more concerned I, and many other Americans, become.

I will not ask Mr. Bradbury to discuss the operational aspects of any of these programs. No one wants to expose sources and methods in a public forum. But I do expect honest and forthright answers concerning the legal justifications for the Administration's actions.

I want to welcome all of our witnesses, and thank them for agreeing to appear before the Subcommittee today. I look forward to your testimony.