

**Statement of Senator Orrin G. Hatch Before the United States Senate On the FISA Amendments Act July 9, 2008:**

From the outset, let me be crystal clear in voicing my strong opposition to all three pending amendments to HR 6304. But before I discuss these amendments, let me address a few things that were said on this floor yesterday. One of my colleagues said that Congress shouldn't "Jam this bill through." If working on a bill for over 440 days is jamming it through, then Webster's dictionary should prepare a new definition for the word.

We also heard comments yesterday which were critical of the fact that not every Senator has been fully briefed on the activities of the intelligence community. I guess since this same argument didn't stick the first time it was offered back in December, more desperate attempts would be made. If at first you don't succeed, try, try again.

Memories are short around here, and we should appreciate that the very creation of the Intelligence Committee was controversial. The Committee was created so that a limited number of members would have oversight of our intelligence agencies. During the ten days of debate on the resolution creating this committee, numerous Senators openly worried about possible leaks in providing highly classified material to a large number of individuals.

Here's what Senator Milton Young said in May of 1976: "It is my understanding that on this new committee, the staff would have access to the most sensitive information. Human nature is such that when too many people have access to this information, someone is bound to leak parts of it an ambitious and inquisitive press."

Also in 1976, here's what Senator Walter Mondale said: "We have the worst possible system for congressional oversight of intelligence. Responsibility and authority are fragmented in several committees; it is impossible to look at intelligence as a whole; because authority and responsibility are not welded together, we are incapable of dealing with problems privately, and there is the inevitable temptation to deal with them through leaks." Thirty two years later, these statements contain points that are still vitally important to this discussion. Is this the system of oversight that we should go back to? Those that argue that we shouldn't vote until every member gets some sort of vague access are essentially saying that all 535 members of Congress, plus hundreds of cleared staff, should be read into all highly classified programs whose jurisdiction is otherwise limited to the Intelligence Committees. If you want to guarantee future leaks, this would be a good approach. This sort of logic begs the question: Why do we have the Intelligence Committee? The answer is obvious, and I urge my colleagues to remember the extensive efforts of our predecessors which created a committee with the authority to review these materials.

While the issue of civil liability protection for telecoms has been debated extensively over the last 9 months, the three final amendments before us all attempt to alter or remove the carefully crafted bipartisan civil liability provision. I agree with the comments from both sides of the aisle in opposition to these amendments. The Bingaman amendment, for example, would needlessly delay the liability provision. I believe the amendment is unwise, as its purpose disregards the extensive work that Congress has already conducted on this issue. By my last count, Congress has conducted over 27 hearings on the TSP and FISA over the last few years. Let there be no doubt; the IG review will not, and can not, determine the legality of the Terrorist Surveillance Program. Any suggestion that the review will do so is absolutely incorrect. Inspectors General are not qualified and lack jurisdiction to review the legality of intelligence programs.

In addition, the IG review will not publicly reveal which companies elected to participate in this program, as that information remains highly classified. Simply put, attempts to alter the FISA compromise based on a misperception of the eventual IG review should be strongly rejected, and we should do so this morning.

Close inspection of the lawsuits against the telecoms reveals quite dubious claims. As has previously been stated, the plaintiffs persistently confuse speculative allegations and untested assertions for established facts.

It's very simple - Congress should not condone oversight through litigation. The lawsuits seize on the President's brief comments about the existence of a limited program to go on a fishing expedition of NSA activities. But this is really worse than a fishing expedition; this is draining the Loch Ness to find a monster. Sometimes what you are looking for just doesn't exist. Yet we consistently hear as justification for the apparent paranoia that some wiretaps were warrantless. But lest we forget, the 4<sup>th</sup> Amendment does not proscribe warrantless searches, it proscribes unreasonable searches.

The fact is the President created an early warning system to prevent future attacks; essentially a terrorist smoke detector. But rather than appreciate the protection it offered, critics rushed to pull out the batteries so that it couldn't work. My feelings of admiration and respect for the companies who did their part to defend America are well known. As I've said in the past, any company who assisted us following the attacks of 9/11 deserves a round of applause and a helping hand, not a slap in the face and a kick to the gut.

When companies are asked to assist the intelligence community based on a program authorized by the President himself and based on assurances from the highest levels of government that the program has been determined to be lawful, they should be able to rely on those representations.

In the over 40 outstanding civil lawsuits, is there any proof that any litigant was specifically targeted by the government? Can any of the plaintiffs show that they are "aggrieved persons" under the definition of FISA? The answer to both questions is no.

Rather, many of the lawsuits utilize the following logic: I have long distance service, so I am going to sue because I think you listened to my calls. Even though they have no proof; even though the government has more important things to do than listen to their random phone calls, they push on in their desire to justify their view of self importance and irrational belief in government conspiracy. I don't want to bruise anyone's ego, but if Al Qaeda is not on your speed dial the government is probably not interested in you.

The possible disclosure of classified materials from ongoing court proceedings is a grave threat to national security, and the very point of these lawsuits is to prove plaintiffs' claims by disclosing such classified information. Simply put, you don't tell your enemies how you track them. This is why the NSA and other government agencies won't say what they do, how they do it, or who they watch. Nor should they! To confirm or deny any of these activities, which are at the heart of the civil lawsuits, would harm national security. We should not discuss what our capabilities are. If the identities of the companies are revealed and officially confirmed through litigation, they will face irreversible harm: Harm in their business relations with foreign governments and companies, and possible physical harm to their employees both here and abroad, who are truly soft targets for attackers.

I have come to this floor on numerous occasions during the last year to discuss the issue of FISA modernization, and am hopeful that the need to continue to do so will finally end today. I am confident that when we vote this morning, we will finally send this vitally important legislation to the President to be signed into law.