

Opening Statement

of

Chairman Peter Hoekstra

“Modernization of the Foreign Intelligence Surveillance Act”

Permanent Select Committee on Intelligence  
U.S. House of Representatives

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Good morning, and welcome. Today the Committee will consider issues relating to potential legislation to modernize the Foreign Intelligence Surveillance Act, or “FISA”.

FISA provides critical authorities and procedures for the Intelligence Community in conducting certain electronic surveillance operations. But FISA was enacted in 1978. We cannot fight a 21<sup>st</sup> century intelligence war against a sophisticated terrorist adversary with laws that were designed to fight the cold war using 1970s technology. The 1978 model telephones pictured before you vividly demonstrate that FISA, like the technologies and operations for which it was written, is obsolete and needs modernizing.

In recent months, a broad variety of proposals have been offered by Members of Congress, scholars, and commentators to update, improve and strengthen FISA. Some of these proposals would seek to bolster the existing statutory structure, while others

would significantly modify and expand the flexibility of that structure. Some are driven by the view that the Terrorist Surveillance Program described by the President is fundamentally inconsistent with FISA, while others believe that the TSP has demonstrated FISA's fundamental age and weaknesses. And a few commentators have expressed the opinion that FISA should give way to the President's constitutional authority, and that no action is necessary.

Bringing these often conflicting positions together through the legislative process will not be easy. The Intelligence Committee will have a special responsibility as the process goes forward. Our members have been briefed on the particulars of the relevant programs, we understand how the Intelligence Community should be working to protect America, and we have the duty of ensuring that thorough oversight of these programs is in place.

As Congress considers these issues, my intention is for this Committee to focus first and foremost on the substantive question of how to best empower the Intelligence Community to fight the war on terror and protect American citizens, with appropriate protections for civil liberties. While there are unfortunately many agendas competing in this debate, our agenda will be simple and transparent – what is in the best interests of the United States.

I would particularly like to recognize the work in that regard that has been done by the Chair of our Subcommittee on Technical and Tactical Intelligence, Ms. Wilson, who has prepared legislation at my

request to address many of these issues. Her bill recognizes the importance of modernizing FISA and empowering the Intelligence Community, and it will provide an important base for our deliberations as the Committee moves ahead with the process. There are other pending legislative packages that the Committee will also review.

Today's hearing is the first legislative hearing in the Committee on FISA modernization. I have asked the witnesses to provide their perspectives on potential initiatives to modernize and reform FISA generally, as well as any testimony they may wish to offer on any specific bills that have been introduced with respect to FISA in Congress.

We have an excellent and distinguished panel with us. Judge Richard A. Posner is a member of the U.S. Court of Appeals for the Seventh Circuit, and previously served as its Chief Judge. He is also a prolific scholar and a Senior Lecturer in Law at the University of Chicago, and is appearing before the Committee today in that capacity. Mr. Kim Taipale is the Executive Director of the Center for Advanced Studies in Science and Technology Policy, and has done extensive work on technology and national security issues.

Mr. Michael Greco is the President of the American Bar Association, which has participated actively in the discussion of legal issues relating to the war on terrorism. And Mr. Jim Dempsey, the Policy Director for the Center for Democracy and Technology is with us once again, and it is good to have you back.

I look forward to the testimony, but first will recognize the Ranking Member for her opening statement.