

November 1, 2007

The Honorable Russell Feingold  
United States Senate  
506 Hart Senate Office Building  
Washington, DC 20510-4904

The Honorable Ron Wyden  
United States Senate  
230 Dirksen Senate Office Building  
Washington, D.C. 20510-3703

Dear Senator Feingold and Senator Wyden:

I write to thank you both for voting against the Senate Intelligence Committee bill amending the Foreign Intelligence Surveillance Act. I would like to offer the following statement in the hopes of persuading some Members of Congress to respect the constraints imposed by the 4th Amendment on extra-constitutional legislation.

I have read the "FISA Amendments Act of 2007" which is touted as being a balance by those who support it, but it is anything but balanced. The balance between liberty and security has already been hammered out by an earlier, apparently more enlightened generation of Americans and can be seen in the language of the 4th Amendment to the Constitution. That perfect balance between criminal investigation and respect for a person's privacy is known as probable cause. No search or arrest should be made without a warrant, and no warrant should issue without probable cause that a crime has been committed. Further the warrant must particularly describe the place to be searched and the person to be seized.

The Congress would be wise to heed the warnings of Judge Aiken in her September 26, 2007 opinion:

"For over 200 years, this nation has adhered to the rule of law — with unparalleled success. A shift to a nation based on extra-constitutional authority is prohibited, as well as ill advised."

I would be happy to remind Congress as often and as extensively as necessary the importance of honoring and upholding our Constitution and our bill of rights, even in times of perceived crisis. But I am not interested in supporting any legislation that undermines those rights whether it is the material witness statute of 1984, the Omnibus Counterterrorism Act of 1995, the Patriot Act of 2001, the Military Commissions Act of 2006, the Protect America Act, or the Restore Act of 2007.

If you think the following statement by me will still be helpful in restoring our rights then please feel free to use it on my behalf.

Also if there will be future opportunities for me and or my attorneys, Elden Rosenthal or Gerry Spence to testify before the Senate and you can help to arrange for that to happen I would be more than happy to assist and I am sure Mr. Rosenthal and Spence would as well. The erosions of our civil liberties since the mid 70's are advancing at an alarming rate and are heading us in the wrong direction.

To Members of Congress:

In the debate over the scope of the government's authority to wiretap Americans we often hear people say, "if you're not doing something wrong you have nothing to worry about." I am here to tell you that even the innocent can have their lives turned upside-down when laws designed to protect against unrestrained government actions are weakened. The Fourth Amendment guarantees the right of the people to be free from unreasonable searches and seizures, and demands that no warrants shall issue but upon probable cause particularly describing the place to be searched and the things to be seized. When legislation is written that waters down this standard it is not the guilty who suffer, but the innocent. When a bomb exploded in Madrid, Spain over-zealous government agents leapt to false conclusions based upon erroneous evidence, prejudice, and lies, which violated my constitutional rights and deprived me of my liberty. But it was a weakening of the standards in the law that allowed them to do it. The Patriot Act weakened the requirements the government needed under the Foreign Intelligence Surveillance Act in order to bug my home and office, and this weakening of the law – now found unconstitutional – caused the framework designed to protect the innocent to fail.

Rather than learn from this tragedy and return to the constitutional standards that have both protected our liberty and our security for the last 230 years, Congress is considering weakening them even further. Make no mistake, when Congress authorizes "blanket" warrants that allow the government to intercept communications without probable cause and individualized suspicion it is the innocent who will be harmed. Maybe you won't know why you were fired from your job, or evicted from your apartment or denied a loan, when similar government agents make false assumptions because of your beliefs, your associations, or something you said in an internet chat room, but the harm will be the same. Prior judicial review and probable cause based upon individualized suspicion is what the Fourth Amendment requires, and for Congress to authorize anything less is not just unconstitutional, it's un-American. And most importantly, when government agents and telecommunications companies conspire to break the law they are not being patriotic, and Congress should ensure they are held accountable.

Sincerely, Brandon Mayfield  
November 1, 2007