



One Hundred Ninth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

April 6, 2006

The Honorable Peter King
Chairman
Committee on Homeland Security

The Honorable Robert Simmons
Chairman
Subcommittee on Intelligence, Information
Sharing and Terrorism Risk Assessment

Dear Chairmen King and Simmons:

We would like to express our concern with the assertion made by Chairman Rob Simmons this morning about the Homeland Security Committee's jurisdiction over any matters involving the National Security Agency (NSA), homeland security, and potentially illegal eavesdropping. During the Intelligence, Information Sharing and Terrorism Risk Assessment Subcommittee hearing this morning, it was agreed that this matter would be sent to the Full Committee for further assessment. The following explains why we believe that the Committee has some jurisdiction on this matter.

Under the House Rules, the Committee on Homeland Security has the following jurisdiction:

- (i) **Committee on Homeland Security.**
 - (1) Overall homeland security policy
 - (2) Organization and administration of the Department of Homeland Security.
 - (3) Functions of the Department of Homeland Security.
 - (A) Border and port security (except immigration policy and non-border enforcement).
 - (B) Customs (except customs revenue).
 - (C) Integration, analysis, and dissemination of homeland security information.
 - (D) Domestic preparedness for and collective response to terrorism.
 - (E) Research and development.
 - (F) Transportation security.

The Committee's jurisdiction over homeland security-related NSA matters appears on two fronts. First, the Committee has jurisdiction over "overall homeland security policy" in the federal government and the United States. The Department of Homeland Security has been assigned a Deputy National Security Agency/Central Security Service representative, who is responsible for the planning and coordination of NSA's considerable efforts in supporting DHS. This person is responsible for providing cryptologic Signals Intelligence (SIGINT), Information Assurance (IA) and Operations Security (OPSEC) to the Department of Homeland Security and the homeland security community at large. As such, information on the Department's role and knowledge of the NSA eavesdropping program would be within the Committee's jurisdiction given this nexus between the agencies.

Second, the Committee has jurisdiction over the "integration, analysis, and dissemination of homeland security information." The Committee's Rules have delegated this jurisdiction to the Intelligence, Information Sharing and Terrorism Risk Assessment Subcommittee. Specifically, the rules say that the Subcommittee has jurisdiction over "liaison of the Department of Homeland Security with U.S. intelligence and law enforcement agencies; information gathering, analysis and sharing by Department of Homeland Security entities, the role of intelligence in terrorism threat prioritization, [and] conducting relevant oversight..." Thus, to the extent that the Department of Homeland Security receives intelligence information from NSA or other intelligence outlets, how the Department uses that information falls squarely within the parameters of the Subcommittee's oversight and legislative responsibilities.

Information that is gained by illicit means and then passed to Homeland Security entities such as Customs and Border Protection, Immigration and Customs Enforcement, or the Secret Service potentially could be tainted under the "poisoned fruit" theory. If these entities acted upon this information, then the actions taken may also be tainted. For these reasons, Professor Jonathan Turley expressly addressed the fruit of the poisonous tree doctrine this morning in his testimony.

We are only asking for what Chairman Simmons himself asked for a few months ago in a statement he released on the NSA domestic eavesdropping. In December of 2005, Chairman Simmons called for a Congressional investigation because "our citizens need to know that Congressional oversight is working with our intelligence community, and [that] Congress has an obligation to get answers from the Administration on this issue." The NSA activities that bear directly on homeland security fall squarely within our jurisdiction. We support Chairman Simmons' December statement and believe we are the appropriate Committee to follow through with his recommendation as it relates to the Department of Homeland Security and the agency's use of information gathered by NSA, as well as the agency's relationship with NSA.

As you may have noted in the letter provided to Chairman Simmons this morning during the hearing, a majority of subcommittee Democrats have requested that you invite a witness that has direct experience with the NSA and its legal authorities to testify on the issue of domestic eavesdropping. It is vital that we examine all activities that negatively impact the ability of the Department to perform its mission and we look forward to discussing this matter with you in greater detail.

Sincerely,



Bennie G. Thompson
Ranking Member
Committee on Homeland Security



Zoe Lofgren
Ranking Member
Subcommittee on Intelligence,
Information Sharing and Terrorism
Risk Assessment Subcommittee