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www.house.gov/shuster

Contact: Jeff Urbanchuk, Press Secretary
(202) 225-2431
(202) 593-1040 cell
(202) 225-2486 fax
jg.urbanchuk@mail.house.gov

FISA's Failure: Shuster Calls for Investigation into Delay in Finding Captured Soldier

Lawyers Seeking Wire-Tap Warrants Bog Down Rescue Effort

Washington, D.C. – **Congressman Bill Shuster** signed onto a letter to House Intelligence Committee Chairman Silvestre Reyes demanding an investigation into the reasons why the search for an American soldier captured by Al-Qaeda was delayed due to the requirements of the Foreign Intelligence Surveillance Act.

As reported in Monday's *New York Post*, Specialist Alex Jimenez and two of his fellow soldiers were captured by Al-Qaeda terrorists in Iraq last May. However, a rescue effort to find these soldiers wasn't launched until 10 hours after the event because lawyers for the National Security Agency needed to find a legal basis to cite "probable cause" in obtaining a warrant to conduct surveillance on terrorists linked to the kidnapping.

"In the movies, when an American soldier is captured, their fellow troops immediately launch a rescue effort to get them back. It makes perfect sense to me and just about anyone else that this is how it works in the real world," Shuster said. "Unfortunately, it isn't that simple. Instead of calling in reinforcements, our commanders have to call in the lawyers."

"Our legal framework is ill equipped to deal with the terrorists we are fighting," Shuster said. "In this war, we need the speed and agility to collect, analyze and act on information that could save one life or the lives of thousands. The FISA Act is a huge hurdle in this regard."

Shuster's letter cited the importance of the Terrorist Surveillance Program as a key tool in the War on Terrorism because of its speed in collecting information. However, when the program was placed under the jurisdiction of the Foreign Intelligence Surveillance Court in January 2007, it had the consequence of creating a backlog of requests for surveillance and blocking intelligence officials from intercepting communications and obtaining information in a timely manner. It also created legal hurdles that obstructed intelligence officials from doing their job in the most efficient and effective manner possible.

"Congress needs a full explanation of what happened in this case," Shuster said. "We can't allow a law to protect our enemy and place our troops in harms way. FISA must be updated to meet the realities of the war we are fighting. Anything less will fail our troops and place them in jeopardy."



'WIRE' LAW FAILED LOST GI 10-HOUR DELAY AS FEDS SOUGHT TAP TO TRACK JIMENEZ CAPTORS IN IRAQ

By **CHARLES HURT**, Bureau Chief
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October 15, 2007 -- WASHINGTON - U.S. intelligence officials got mired for nearly 10 hours seeking approval to use wiretaps against al Qaeda terrorists suspected of kidnapping Queens soldier Alex Jimenez in Iraq earlier this year, The Post has learned.

This week, Congress plans to vote on a bill that leaves in place the legal hurdles in the Foreign Intelligence Surveillance Act - problems that were highlighted during the May search for a group of kidnapped U.S. soldiers.

In the early hours of May 12, seven U.S. soldiers - including Spc. Jimenez - were on lookout near a patrol base in the al Qaeda-controlled area of Iraq called the "Triangle of Death."

Sometime before dawn, heavily armed al Qaeda gunmen quietly cut through the tangles of concertina wire surrounding the outpost of two Humvees and made a massive and coordinated surprise attack.

Four of the soldiers were killed on the spot and three others were taken hostage.

A search to rescue the men was quickly launched. But it soon ground to a halt as lawyers - obeying strict U.S. laws about surveillance - cobbled together the legal grounds for wiretapping the suspected kidnapers.

Starting at 10 a.m. on May 15, according to a timeline provided to Congress by the director of national intelligence, lawyers for the National Security Agency met and determined that special approval from the attorney general would be required first.

For an excruciating nine hours and 38 minutes, searchers in Iraq waited as U.S. lawyers discussed legal issues and hammered out the "probable cause" necessary for the attorney general to grant such "emergency" permission. Finally, approval was granted and, at 7:38 that night, surveillance began.

"The intelligence community was forced to abandon our soldiers because of the law," a senior congressional staffer with access to the classified case told The Post. "How many lawyers does it take to rescue our soldiers?" he asked. "It should be zero."

The FISA law applies even to a cell phone conversation between two people in Iraq, because those communications zip along wires through U.S. hubs, which is where the taps are typically applied. U.S. officials had no way of knowing if Jimenez and his fellow soldiers were still alive during the nearly 10-hour delay. The body of one was found a few weeks later in the Euphrates River and the terror group Islamic State of Iraq - an al Qaeda offshoot - later claimed in a video that Jimenez and the third soldier had been executed and buried.

"This is terrible. If they would have acted sooner, maybe they would have found something out and been able to find my son," said Jimenez's mother, Maria Duran. "Oh my God. I just keep asking myself, where is my son? What could have happened to him?"

Duran said she was especially frustrated, "because I thought they were doing everything possible to find him." "You know that this is how this country is - everything is by the law. They just did not want to break the law, and I understand that. They should change the law, because God only knows what type of information they could have found during that time period."

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