

OPENING STATEMENT
CHAIRMAN JOHN D. ROCKEFELLER IV
NOMINATION OF J. PATRICK ROWAN TO BE
ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY
SEPTEMBER 25, 2008

The Committee meets today to consider the nomination of J. Patrick Rowan to be Assistant Attorney General for National Security.

I would like to begin by congratulating the nominee and asking whether there are any members of his family present whom he would like to introduce to the Committee.

In the PATRIOT Act Reauthorization in 2006, Congress established the National Security Division at the Department of Justice and the position of Assistant Attorney General to head that Division. That legislation also established the somewhat unique, or at least rare, procedure which brings to our Intelligence Committee the nomination of a Justice Department official. The nomination was first considered by the Judiciary Committee which favorably reported it two weeks ago. It was then automatically referred to our Committee.

There is an important reason why the 2006 statute provided for an automatic sequential referral to the Intelligence Committee. The Assistant Attorney General for National Security carries out intelligence-related functions that are at the heart of the legislative and oversight responsibilities of this Committee. These include representing the Government before the FISA Court and being the Government's chief counterterrorism and counterespionage prosecutor.

Mr. Rowan is a career Department of Justice prosecutor who has rendered important service in the U.S. Attorney's Office for the District of Columbia, at the FBI, and in several offices in the Department of Justice. Of particular relevance to the nomination that brings him here today, Mr. Rowan has been in the leadership of the National Security Division from its beginning in 2006. He first served there as a Principal Deputy Assistant Attorney General. In that capacity, he managed the Department of Justice's national security

investigations and prosecutions. From April 2008 to the present, he has been the Acting Assistant Attorney General.

Mr. Rowan has obviously earned the confidence of Attorney General Mukasey, and I am advised that the Director of National Intelligence strongly supports his nomination. We treat both as high recommendations.

If confirmed, Mr. Rowan will head his office at a time of important challenges and responsibilities for the National Security Division.

The National Security Division has a leading role in implementing the recently passed FISA Amendments Act of 2008 in a manner that is true to the twin objectives of the law: providing for the effective of collection of intelligence and preserving the liberties and privacy of Americans.

Robust congressional oversight of the new law, as well as older parts of FISA that were unchanged by it, is essential. Our ability to conduct this oversight will depend on full and informative reporting by the Attorney General, which will rely in turn on comprehensive and penetrating reviews and reporting by the National Security Division.

Our oversight responsibilities will be particularly important in areas that are not subject to judicial review. Key among them is the adequacy of, and adherence to, the Attorney General guidelines required by the FISA Amendments to ensure adherence to the Act's limitations, including the prohibition on reverse targeting. We will be looking forward to the National Security Division's full participation in that effort.

It is not too soon to note that several FISA provisions added by the 2001 PATRIOT Act, and extended in the 2006 reauthorization, will sunset at the end of 2009. One is the business records title of FISA. A challenge Congress will face, that will also occur when provisions of the FISA Amendments sunset at the end of 2013, is how to enable public consideration of interpretations of these laws by the FISA Court and its Court of Review.

We would welcome the nominee's thoughts on what he would do, if confirmed, to work with those courts and the Intelligence Community to release publicly any opinions on important issues of law, to the extent consistent with national security.

And there are important challenges for the National Security Division apart from FISA. The Assistant Attorney General is the Government's chief counterterrorism prosecutor. The time is rapidly approaching when, in my opinion, there needs to be a thorough reconsideration of the effort to substitute military commissions for military courts-martial or federal criminal trials.

Simply put, seven years have passed since the terrorist attacks of September 11 and more than that since the U.S.S. Cole attack, and it is clear that the effort to bypass established ways, both military and civilian, for trying terrorism cases has failed to bring to justice the participants in those attacks. While the nominee may be limited in what he can say at this time, I hope that if confirmed he quickly and energetically makes the National Security Division an active participant in the search for a better course.

I now turn to the distinguished Vice Chairman for his opening remarks.