

Restoring, Repairing and Renewing Checks and Balances

December 18, 2006

Senator Patrick Leahy (D-Vermont), the incoming chair of the Senate Judiciary Committee, [spoke last week at Georgetown University Law Center](#) [1], sharing his agenda for the 110th Congress. Leahy paid particular attention to the checks and balances that lie at the heart of the Judiciary committee's historical role. Senator Leahy's big-picture agenda calls for "restoration, repair and renewal." He spoke emphatically about restoring constitutional values and fundamental liberties, repairing a broken oversight process by demanding more accountability from the Administration, and renewing the public right to know what the government is doing. He recognized the importance of making our nation secure but denounced doing so in ways that "undercut the Constitution." By sacrificing fundamental rights in the name of national security, Senator Leahy said that the Administration is allowing terrorists to win "what they could never win on the battlefield." Senator Leahy touched on many specific agenda items, but a major theme was privacy. He said that the Administration must stop "treating the privacy of ordinary Americans as an expendable commodity," and vowed to have Congress exercise more oversight in an effort to bring checks and balances back to government. In reference to the current state of privacy law, Senator Leahy said that we have "analog rules in a digital world," and committed to amending key privacy laws that are severely out of date. In particular, he vowed to update the Foreign Intelligence Surveillance Act (FISA) and the Electronic Communications Privacy Act (ECPA). In so doing, Senator Leahy plans to attack the Administration's assertions that it can electronically spy on innocent Americans and that individuals have no privacy interests in personal information kept online. He lamented federal programs, such as the [Automated Targeting System](#) [2], that collect personal information on innocent Americans and house it in vast government databases that individuals have no right to know the contents of. Senator Leahy said that the unauthorized collection of digital information is just as bad as a warrantless search of physical file cabinet. CDT also strongly believes that privacy laws must be amended to conform to the current technological landscape. In February of this year, CDT published a report entitled [Digital Search & Seizure: Updating Privacy Protections to Keep Pace With Technology](#) [3]. We hope that Senator Leahy follows through on this important agenda item.

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[1] <http://leahy.senate.gov/press/200612/121306.html>

[2] http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_ats.pdf

[3] <http://www.cdt.org/publications/digital-search-and-seizure.pdf>