Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on "Strengthening Privacy Rights and National Security:
Oversight of FISA Surveillance Programs"
July 31, 2013

Today, the Judiciary Committee will scrutinize government surveillance programs conducted under the Foreign Intelligence Surveillance Act, or FISA. In the years since September 11th, Congress has repeatedly expanded the scope of FISA, and given the Government sweeping new powers to collect information on law-abiding Americans – and we must carefully consider now whether those laws have gone too far.

Last month, many Americans learned for the first time that one of these authorities – Section 215 of the USA PATRIOT Act – has for years been secretly interpreted to authorize the collection of Americans' phone records on an unprecedented scale. Information was also leaked about Section 702 of FISA, which authorizes NSA to collect the communications of foreigners overseas.

Let me make clear that I do not condone the way these and other highly classified programs were disclosed, and I am concerned about the potential damage to our intelligence-gathering capabilities and national security. We need to hold people accountable for allowing such a massive leak to occur, and we need to examine how to prevent this type of breach in the future.

In the wake of these leaks, the President said that this is an opportunity to have an open and thoughtful debate about these issues. I welcome that statement, because this is a debate that several of us on this Committee have been trying to have for years. And if we are going to have the debate that the President called for, the executive branch must be a full partner. We need straightforward answers and I am concerned that we are not getting them.

Just recently, the Director of National Intelligence acknowledged that he provided false testimony about the NSA surveillance programs during a Senate hearing in March, and his office had to remove a fact sheet from its website after concerns were raised about its accuracy. I appreciate that it is difficult to talk about classified programs in public settings, but the American people expect and deserve honest answers.

It also has been far too difficult to get a straight answer about the *effectiveness* of the Section 215 phone records program. Whether this program is a critical national security tool is a key question for Congress as we consider possible changes to the law. Some supporters of this program have repeatedly conflated the efficacy of the Section 215 bulk metadata collection program with that of Section 702 of FISA. I do not think this is a coincidence, and it needs to stop. The patience and trust of the American people is starting to wear thin.

I asked General Alexander about the effectiveness of the Section 215 phone records program at an Appropriations Committee hearing last month, and he agreed to provide a classified list of terrorist events that Section 215 helped to prevent. I have reviewed that list. Although I agree that it speaks to the value of the overseas content collection implemented under Section 702, it

does not do the same with for Section 215. The list simply does not reflect dozens or even several terrorist plots that Section 215 helped thwart or prevent – let alone 54, as some have suggested.

These facts matter. This bulk collection program has massive privacy implications. The phone records of all of us in this room reside in an NSA database. I have said repeatedly that just because we have the ability to collect huge amounts of data does not mean that we *should* be doing so. In fact, it has been reported that the bulk collection of Internet metadata was shut down because it failed to produce meaningful intelligence. We need to take an equally close look at the phone records program. If this program is not effective, it must end. And so far, I am not convinced by what I have seen.

I am sure that we will hear from witnesses today who will say that these programs are critical in helping to identify and connect the so-called "dots." But there will always be more "dots" to collect, analyze, and try to connect. The Government is already collecting data on millions of innocent Americans on a daily basis, based on a secret legal interpretation of a statute that does not on its face appear to authorize this type of bulk collection. What will be next? And when is enough, enough?

Congress must carefully consider the powerful surveillance tools that we grant to the Government, and ensure that there is stringent oversight, accountability, and transparency. This debate should not be limited to those surveillance programs about which information was leaked. That is why I have introduced a bill that addresses not only Section 215 and Section 702, but also National Security Letters, roving wiretaps, and other authorities under the PATRIOT Act. As we have seen in the case of ECPA reform, the protection of Americans' privacy is not a partisan issue. I thank Senator Lee and others for their support of my FISA bill, and hope that other Senators will join our efforts.

Today, I look forward to the testimony of the Government witnesses and outside experts. I am particularly grateful for the participation of Judge Carr, a current member of the judiciary and a former judge of the FISA Court. I hope that today's hearing will provide an opportunity for an open debate about the law, the policy, and the FISA Court process that led us to this point. We must do all that we can to ensure our nation's security while protecting the fundamental liberties that make this country great.

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