

**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing on “Continuing Oversight of the Foreign Intelligence Surveillance Act”  
October 2, 2013**

Today, the Judiciary Committee meets to conduct further oversight of the intelligence community’s use of the Foreign Intelligence Surveillance Act, or FISA. No one knows for sure how long the Federal government will be shut down, but I feel strongly that the Senate Judiciary Committee must continue its work on this important subject. I consulted with Senator Grassley about this, and I appreciate that Director Clapper and General Alexander have agreed to proceed with the hearing today as scheduled. I am certain that they join me in thanking all of the dedicated intelligence community professionals who are also doing their jobs today despite the needless shutdown of the Federal government. That said, I have decided to cancel the committee’s weekly business meeting tomorrow in light of the government shutdown.

As we continue to re-examine the intelligence community’s use of FISA authorities, let’s be clear that no one underestimates the threats that our country continues to face, or the difficulty of identifying and meeting those threats. We can all agree that we should equip the intelligence community with the necessary and appropriate tools to help keep us safe. But I hope that we can also agree that there have to be limits on the surveillance powers we give to the government. Just because something is technologically possible, and just because something may be deemed technically legal, does not mean that it is the right thing to do.

This summer, many Americans learned for the first time that 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. The American public also learned more about the government’s collection of internet content data through the use of Section 702 of FISA.

Since the Committee’s last hearing on these revelations in late July, the American people have learned a great deal more. They have learned that the NSA has engaged in repeated, substantial legal violations in its implementation of both Section 215 and Section 702 of FISA. For example, the NSA collected, without a warrant, the content of tens of thousands of wholly domestic emails of innocent Americans. The NSA also violated a FISA Court order by regularly searching the Section 215 phone records database without meeting the standard imposed by the Court.

These repeated violations led to several reprimands from the FISA Court for what it called “systemic noncompliance” by the government. The Court also has admonished the government for making a series of substantial misrepresentations to the Court. Though we have seen no evidence of intentional abuse of FISA authorities, this pattern of misuse is deeply troubling.

The American people also have learned that the NSA in 2011 started searching for Americans’ communications in its Section 702 database – a database containing the contents of communications acquired without individualized court orders. And just this past weekend, the *New York Times* reported that the NSA is engaging in sophisticated analysis of both domestic and international metadata to determine the social connections of Americans.

As a result of these revelations, it is no surprise that the intelligence community faces a trust deficit. After years of raising concerns about the scope of FISA authorities and the need for stronger oversight, I am glad that many Members of Congress are now interested in taking a close look at these programs – at both the government’s legal and policy justifications for them, and the adequacy of the existing oversight regimes.

In my view, it is time for a change. Additional transparency and oversight are important parts of that change, but I believe we must do more.

That is why I am working on a comprehensive legislative solution with Congressman Sensenbrenner, Chairman of the Crime and Terrorism Subcommittee in the House, as well as other members of Congress across the full political spectrum. Our bipartisan, bicameral legislation will address Section 215 and Section 702, and a range of surveillance authorities that raise similar concerns.

Our legislation would end Section 215 bulk collection. It also would ensure that the FISA pen register statute and National Security Letters (NSLs) could not be used to authorize bulk collection. The government has not made its case that bulk collection of domestic phone records is an effective counterterrorism tool, especially in light of the intrusion on Americans’ privacy. In addition, I find the legal justification for this bulk collection to be strained at best, and the classified list of cases involving Section 215 to be unconvincing. As the Deputy Director of the NSA himself acknowledged at our last hearing, there is no evidence that Section 215 phone records collection helped to thwart dozens or even several terrorist plots.

In addition to stopping bulk collection, our legislation would improve judicial review by the FISA Court and enhance public reporting on the use of a range of surveillance activities. The bill would also require Inspector General reviews of the implementation of these authorities – putting into law a request that Senator Grassley and I, and eight other members of this Committee, made last week to the Inspector General for the Intelligence Community. This is a commonsense, bipartisan bill – and I look forward to working on this effort in the coming months with those in the Senate, in the House, and in the administration.

I appreciate the concrete steps that both Director Clapper and General Alexander have made in recent months to brief members of Congress and move towards more transparency and further declassification of documents. I also welcome the participation of the legal and technical experts on our second panel, and would note with particular pride that my alma mater, Georgetown Law, is well-represented among those witnesses.

I hope that today’s hearing will help inform our legislative efforts. We must do all that we can to ensure our nation’s security, restore the trust of the American people in our intelligence community, and protect the fundamental liberties that make this country great.

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