

Permanent Select Committee on Intelligence

October 29, 2013

Committee Open Hearing Potential FISA Changes

HPSCI Chairman Mike Rogers Opening Remarks

The Committee will come to order.

I'd like to welcome our first panel today: Director of National Intelligence James Clapper, Deputy Attorney General James Cole, National Security Agency Director General Keith Alexander, and Deputy Director of the NSA Chris Inglis.

Following the first panel, we will move immediately into the second panel of non-government experts who are all very knowledgeable on FISA and privacy issues.

Today's hearing will provide an open forum to discuss potential amendments to the Foreign Intelligence Surveillance Act and possible changes to the way FISA applications are handled by the Department of Justice and the NSA. I hope that all of our witnesses will give clear answers about how proposals under consideration in Congress would affect the NSA's ability to stop terrorist attacks before they occur.

As a starting point, we first need to consider why America collects foreign intelligence. The United States began collecting

foreign intelligence even before we were a nation, when George Washington sent Nathan Hale covertly into New York to try to understand what British plans were during the Revolutionary War.

In 1929, the Secretary of State shut down the State Department's cryptanalytic office saying, "Gentlemen don't read each other's mail." The world was a dangerous place back then, with growing and aggressive military threats from Japan and Germany, both bent on world domination. Those threats eventually dragged us into a world war that killed millions. We didn't have the luxury of turning off intelligence capabilities as threats were growing back then, and we can't afford to do so today.

Today, we gather foreign intelligence to help understand the plans and intentions of our adversaries, such as North Korea and Iran. We collect foreign intelligence to learn about terrorist plots before they happen, as well as to learn about rogue nations developing the most dangerous weapons.

Every nation collects foreign intelligence. That is not unique to the United States. What is unique to the United States is our level of oversight, our commitment to privacy protections, and our checks and balances on intelligence collection. China does not ask a FISA court for a warrant to listen to a phone call on their state-owned and censored network. The Russian Duma

does not conduct oversight on the FSB. But America has those checks; America has those balances. That is why we should be proud of the manner in which America collects intelligence.

The world is more connected today than ever before. This allows terrorists and spies to hide in civilian populations all over the world. They use the Internet and telephone networks of our enemies and our allies. They are just as likely to be found in terrorist safe havens as in allied nations overseas.

We cannot protect only our homeland. Americans live all over the world and our businesses set up shop all over the world. We have embassies in more than 150 countries; we have military bases in dozens of countries to protect our interests and allies; we bring stability to chaotic areas; and we help secure the global economy. That is why collecting foreign intelligence is so important.

In July during floor debate, I committed to working with other Members to bring increased transparency and additional privacy protections to NSA's counterterrorism programs.

Our challenge is to build confidence and transparency while keeping our intelligence services agile and effective against our adversaries.

One change we are considering would require the Attorney General or his designee to make the reasonable, articulable

suspicion (or “RAS”) determination that a particular phone number is related to a terrorist and may be used to search the bulk telephone records data. This process would move the RAS determination outside of the NSA, and is similar to the way an FBI investigator works with an Assistant United States Attorney when trying to find the person responsible for a crime.

We are also looking at providing more transparency into FISA Court orders whenever possible. Reforms to the statute could include requiring more court orders to be declassified or publicly released in redacted form.

Additional transparency into the process may also be helpful. For example, we could put into statute the process and standards for how information incidentally collected about U.S. persons who are not the targets of our programs is handled and require more public reporting on the number of times that happens.

The recent debate over NSA programs often misses the fact that the 215 and 702 collection programs are conducted wholly within the bounds of the law and are approved by the FISA Court. More transparency can help share that outstanding track record with the American people.

Some proposals pending before Congress, however, would effectively gut the operational usefulness of programs that are necessary to protect America’s national security.

For example, ending bulk collection under the business records provision would take away a vital tool for the FBI to find connections between terrorists operating in the United States. We can't ask the FBI to find terrorists plotting an attack and then not provide them with the information they need. If we didn't have the bulk phone records collection back in 2009, we may not have known there was a plot to attack the New York Subway system until bombs went off on the subway platforms.

In the words of the 9/11 Commission Report, before 2001, narrow-minded legal interpretations "blocked the arteries of information sharing" between the intelligence community and law enforcement. We cannot go back to a pre-9/11 mindset and risk failing to "connect the dots" again.

I look forward to having a frank discussion about your perspectives on potential changes to FISA and how those changes could impact our ability to disrupt terrorist plots before they happen.

Before turning the floor over to our witnesses, I recognize the Ranking Member for any opening comments he would like to make.

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