



Candidates, Senators, and Surveillance: The Stakes

By [Patrick Eddington](#)

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In the wake of the US Court of Appeals for the Second Circuit [ruling](#) that the Patriot Act's Section 215 metadata program is illegal, former Senator (and now presidential candidate) Hillary Clinton [tweeted](#) the following:

Congress should move ahead now with the USA Freedom Act—a good step forward in ongoing efforts to protect our security & civil liberties. -H

It was an interesting statement given her previous voting record, which arguably showed little concern about the constitutional rights of Americans:

- 2001: HRC [votes](#) for the original Patriot Act.
- 2005: HRC [votes](#) to renew the Patriot Act's three expiring provisions.
- 2006: HRC [votes](#) to modify and extend Patriot Act authorities.
- 2008: HRC [votes](#) for the FISA Amendments Act.

Clinton's hostility to Edward Snowden — without whom there would be no reform bill for Clinton to support — is both well documented and insightful, as [The Hill](#) revealed last year:

I think turning over a lot of that material intentionally or unintentionally, because of the way it can be drained, gave all kinds of information, not only to big countries but to networks and terrorist groups alike.

Except that Snowden didn't turn over NSA data to foreign governments; he turned it over to journalists because he had no faith in politicians charged with overseeing the NSA to actually rein in its mass surveillance programs — absent public pressure via major disclosures.

If Clinton is buying the line that the current version of the USA Freedom Act is “a good step”, she's hardly [alone](#) — despite ample [evidence](#) that the bill will actually allow bulk electronic surveillance to continue and that its passage could [kill](#) two other pending lawsuits on the subject. And there is the enduring mystery of why so-called “fiscal conservatives” continue to [support](#) surveillance programs that don't work and cost taxpayers billions.

Indeed, as presidential candidate Rand Paul wrote in [TIME](#) this week:

Opponents of civil liberties contend the NSA data collection has made our country more safe, but even the most vocal defenders of the program have failed to identify a single thwarted plot. If anything, the terror attack during the Boston marathon is a tragic reminder that casting too wide of a collection net for intelligence can be a distraction from the analysis necessary to stop plots — and, I'd argue, push us further from the fundamental reform necessary for our intelligence agencies to successfully counter terrorism.

Paul is right on both counts, but I would add a third: before legislating on surveillance again, Congress should actually make a real effort to find out exactly how many expansive government surveillance programs actually *exist*.

Remember that [DEA metadata program](#) (the one that came a decade before STELLAR WIND)? That story broke a month ago today. Number of hearings on the topic thus far? So far as I can tell, zero.

How many more such programs exist within the Justice Department? How many are conducted across the Intelligence Community under [Executive Order 12,333](#)? For the most part, we're only guessing at this stage.

And at this moment, Congress as an institution seems content to legislate in the dark when it comes to surveillance and the Fourth Amendment rights of its constituents. That will only change if our current House and Senate members heed the lessons of an earlier generation of their colleagues.

In his latest book, [Democracy in the Dark](#), former Church Committee Chief Counsel Fritz Schwarz summed up the proper approach in this way:

The Church Committee approached its job believing that understanding must rest upon a bed of facts and there would be no groundswell for reform unless we revealed shocking secret abuses to the American people. To understand the past and to propose guidance for the future, a congressional committee must investigate past wrongdoing and mistakes.

Edward Snowden started the task of surveillance reform. It's up to Congress to finish it before legislating on it.

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