



# NSA Surveillance Programs Are a Cancer on the Constitution

**Will Congress act decisively to end unconstitutional executive branch overreach?**

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The month of June has proven to a notable one for revelations about abuses of government power carried out under the cloak of secrecy. June 1971 brought us the Pentagon Papers case, followed two years later with the Watergate hearings into the break in at the Democratic National Committee headquarters. A generation later, another national security whistleblower—Edward Snowden—revealed in June 2013 a fresh series of government abuses of power in secret.

And now, with some of those abusive powers facing a June 1, 2015 expiration date, Congress faces another moment of truth: Will it act decisively to end unconstitutional executive branch overreach, as it did a generation ago?

One of the most haunting and compelling witnesses at those initial Watergate hearings was former White House Counsel John Dean. In his testimony on June 25, 1973, Dean recounted for the committee how he told President Nixon that the Watergate burglary and subsequent cover up were "a cancer on the Presidency" that threatened to destroy Nixon himself unless all involved came clean immediately. The months of public hearings that followed and the damning revelations about Nixon's role in the break in and cover up culminated in Congress moving to excise the cancer Dean described through the impeachment process, which led to Nixon's resignation.

The documents smuggled out of the National Security Agency (NSA) by Snowden sparked the first real public debate about government surveillance powers employed in the post-9/11 era. But in contrast to Congress's aggressive and forceful reaction to the Watergate era revelations of executive branch criminality and overreach, the Congressional response to Snowden's revelations of government surveillance abuse has been dangerously anemic. And in the case of these surveillance abuses, we have a cancer not simply on one institution of government, but on the Constitution itself.

Compare the level of effort Congress expended investigating Watergate and the other surveillance-related scandals of the 1970s with that expended to date on Snowden's revelations. In the Watergate era, Congress set up entire special committees with literally dozens of staff to investigate not only the Nixon White House but the entire U.S. intelligence community, the latter through the select committee chaired by then-Senator Frank Church of Idaho (i.e., the Church Committee). Those investigations lasted years and included dozens of publicly televised hearings.

When the House Judiciary Committee considered the USA Freedom Act in May 2015—one of the few bills introduced in response to Snowden's revelations—committee chairman Rep. Bob Goodlatte of Virginia claimed the committee had conducted "aggressive" oversight of the issue through a total of three hearings.

As ProPublica [noted](#), Snowden exposed literally dozens of NSA programs and activities that have a direct impact on the constitutional rights of Americans living at home or abroad. The House Judiciary Committee's three hearings did not even scratch the surface of those programs.

The Senate Judiciary Committee under then-chairman Patrick Leahy of Vermont conducted a worthwhile examination of government surveillance programs in March 2013. It stands out for its singular moment in which Senator Ron Wyden caught Director of National Intelligence James Clapper in a [falsehood](#) about the scope of government surveillance against Americans. Snowden's revelations helped highlight just how disingenuous Clapper and other U.S. intelligence community officials had been on the issue, not just with Congress but with the [FISA court](#) as well.

Yet none of those revelations moved the Senate to create a select committee to investigate the full scope of post-9/11 surveillance programs, and the Senate Intelligence Committee has been far more a defender of these programs than an overseer of them. The House Intelligence Committee's public record on this issue is also dismal, with only a [single public hearing](#) in the months after Snowden's revelations that discussed almost purely cosmetic changes to U.S. surveillance authorities.

Indeed, when reform-minded House members not on the House Intelligence Committee have attempted to get information on these programs, they have been [blocked](#) from doing so—including in periods leading up to PATRIOT Act reauthorization votes. House reformers have also been stymied in their efforts to rein in or even end dubious surveillance activities, largely through the efforts of the House GOP leadership to [restrict](#) the terms and scope of the surveillance reform debate.

The House has seen fit to create a select committee to investigate the death of U.S. Ambassador to Libya Chris Stevens—a singular, tragic event already investigated by the State Department and the House Armed Services Committee. However, it has refused to create such a select committee to investigate Snowden's revelations, despite their magnitude and direct impact on the rights of Americans and the threat NSA's actions pose for American technology companies. That's a far cry from how the Watergate and Church Committees went about their business.

In the introduction to the Watergate Committee's final report, the authors noted the critical role the committee's open hearings had played in educating the public about the issues at stake:

Perhaps proof of the impact of the committee's hearings is found in the unprecedented public response to the firing of Special Prosecutor Cox on October 20, 1973. On that weekend alone, a half million telegrams came into the Congress. Hundreds of thousands of telegrams flowed in during the following days. The overwhelming sentiment of these telegrams was in opposition to the President's actions. It is doubtful that public sentiment would have been so aroused by the President's action had the public not been sensitized to the issues involved through the committee's hearings.

The failure of existing committees to properly probe Snowden's revelations, the active efforts by previous House Intelligence Committee leadership to impede inquiries by individual House members, and the efforts of House and Senate leaders to truncate any meaningful debate over these surveillance powers—all of these actions make it appear that Congressional leaders are engaged in a process designed to conceal the U.S. intelligence community's domestic spying transgressions rather than educate the public on them and their implications for our democracy.

And following Senator Rand Paul's 11-hour filibuster against attempts to extend the PATRIOT Act for five more years, we have more evidence of abuse of PATRIOT Act powers.

On May 21, 2015, the day after Paul's filibuster, the Department of Justice finally released a partially declassified version of the Sec. 215 PATRIOT Act [compliance report](#) covering the period from 2007 to 2009. That report found that the Federal Bureau of Investigation (FBI) violated the PATRIOT Act Sec. 215's privacy safeguard requirements for seven years. It also found that the Sec. 215 authority was used aggressively by the FBI to acquire huge volumes of information on U.S. citizens not the subject of any authorized investigation:

Section 215 authority is not limited to requesting information related to the known subjects of specific underlying investigations. The authority is also used in investigations of groups comprised of unknown members and to obtain information in bulk concerning persons who are not the subjects of or associated with any FBI investigation.

The government is vacuuming up the communications of you, your family, your neighbors, your coworkers. No probable cause and no connection to terrorists or foreign intelligence services required. And this is the surveillance dragnet law Congress is considering renewing.

As important as the debate over the Sec. 215 program is, it involves only one of many government surveillance programs that will continue after the current debate is over—and without Congress having taken the time to actually determine how many such programs even exist, much less whether they have violated Americans' rights or even been operationally effective. Meanwhile, the cancer on our Constitution grows.

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