



## Two years after Snowden, Congress still legislating in the dark

By Patrick G. Eddington

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Nearly two years after Edward Snowden's sensational revelations about the U.S. government's mass surveillance programs aimed at American citizens, the top lawyer for America's Intelligence Community has admitted that no comprehensive review of the nation's post-9/11 surveillance activities has ever been conducted.

Robert Litt, chief counsel for the Office of the Director of National Intelligence, made the statement in response to a question I posed at a [government transparency panel](#) on Capitol Hill last week.

I asked Litt whether the Intelligence Community Inspector General, either alone or in coordination with other IGs, had conducted a comprehensive compliance review of all post-9/11 surveillance programs operating under the PATRIOT Act, the FISA Amendments Act, or Executive Order 12333.

Litt's response: "No."

He went on to claim that the task was being carried out by "others," including the Privacy and Civil Liberties Oversight Board. Anyone familiar with the PCLOB knows that its shoe-string budget and tiny staff are not remotely up to the task of the kind of review in question. Litt also stated that "resource implications" made such a review by the ODNI and the agency IGs "impractical"—not a credible answer in light of the tens of billions of dollars thrown at the U.S. Intelligence Community in the post-9/11 era.

Litt's admission that there has been no comprehensive examination of all IC post-9/11 surveillance collection activities is significant for three reasons:

- 1) It means that the ODNI has not self-initiated such a review
- 2) It means Congress has not requested such a review
- 3) It also means that Congress, on the eve of reauthorizing a program that demonstrably [does not work](#), does not feel the need to determine whether all other post 9/11 intelligence collection

programs authorized under the these three authorities are operationally effective and compliant with the Constitution

What we do know is that when the inspectors general of the Intelligence Community involved in auditing the previously secret and once-illegal STELLAR WIND program—exposed by the [New York Times](#) in 2005—conducted a real review of it in 2009, they found it wanting.

When the Department of Justice [examined](#) the efficacy of STELLAR WIND, it found that “...the program had not specifically uncovered evidence of preparations for [terrorist] attacks.”

Analysts at the National Counterterrorism Center “...could not recall specific examples where [STELLAR WIND] information provided what they considered actionable intelligence...”

CIA personnel who were actually aware of STELLAR WIND (and there weren't many) told the IG that much STELLAR WIND reporting “...was vague or without context, which led analysts and targeting officers to rely more heavily on other information sources and analytic tools, which were more easily accessed and timely than the [STELLAR WIND].”

And this was the program that then-President George W. Bush claimed had “saved lives.”

The Sec. 215 metadata program and STELLAR WIND as a whole have proven to be the surveillance equivalent of the infamous “Bridge to Nowhere.” Yet Congress stands ready to continue the former and appears willing to avoid any comprehensive examination of other programs to see if they are as useless as these two programs. The IGs that examined STELLAR WIND clearly felt that ongoing examination of the U.S. government's post-9/11 surveillance programs was essential:

“The collection activities pursued under [STELLAR WIND], and under FISA following the activities' transition to operation under that authority, as described in this report, resulted in unprecedented collection of communications content and metadata. We believe the retention and use by IC organizations of information collected under [STELLAR WIND] and FISA, particularly information on U.S. persons, should be carefully monitored.”

And therein lies the problem, as indicated by the chief counsel for the Office of the Director of National Intelligence, Robert Litt. Congress cannot “carefully monitor” programs it refuses to investigate.

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