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FIFTH DISTRICT, WISCONSIN
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
CRIME, TERRORISM, AND
HOMELAND SECURITY
CHAIRMAN
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Congress of the United States
House of Representatives
Washington, DC 20515-4905
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The Honorable Deputy Attorney General James Cole
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Deputy Attorney General Cole,

At the House Judiciary Committee hearing on February 4, Congressman Issa asked whether the National Security Agency (NSA) collected information on call records from Congressional offices. You responded, "We probably do, Mr. Congressman, but we're not allowed to look at any of those, however, unless we have reasonable, articulable suspicion that those numbers are related to a known terrorist threat."¹

Executive Branch surveillance of the Congress is by itself troubling, but your statement was not entirely accurate, and we ask that you provide clarification for the record.

As described in public and declassified materials, prior to the President's announced changes to the program on January 17, the NSA's collection process comprised four steps: (1) collection, (2) query, (3) analysis with up to 3 hops, and (4) retention. The agency began by collecting and storing data from certain service providers in the United States. The NSA would query that data when it determined unilaterally that there was a "reasonable, articulable suspicion" that the number was related to terrorism.

The NSA would then compile a dataset of up to three "hops" from this first number. In other words, the agency gathered the records of (1) people in contact with the seed number; (2) people in contact with the people in contact with the seed number; and (3) people in contact with the people in contact with the people in contact with the seed number. Finally, after collecting and analyzing these call records, the NSA would transfer the results to the so-called "corporate store," a separate database that analysts were permitted to search without any showing of particularized suspicion.

In ruling that this bulk collection program was likely unconstitutional, Judge Leon of the Federal District Court for the District of Columbia described just how many records may be implicated in a single search:

Suppose, for instance, that there is a person living in New York City who has a phone number that meets the RAS standard and is approved as a "seed." And suppose this person, who may or may not actually be associated with any terrorist organization, calls or receives calls from 100 unique numbers, as in my example. But now suppose that one of the numbers he calls is his neighborhood Domino's Pizza shop. The Court won't hazard a guess as to how many different

¹ Testimony of Deputy Attorney General James Cole, House Judiciary Committee (February 4, 2014).

phone numbers might dial a given Domino's Pizza outlet in New York City in a five-year period, but to take a page from the Government's book of understatement, it's "substantially larger" than the 100 in the second hop of my example, and would therefore most likely result in exponential growth in the scope of the query and lead to millions of records being captured by the third hop.²

In your testimony, you indicated that the Administration would look only at call records from a Member of Congress if it had a reasonable, articulable suspicion that the number was related to terrorism. That is not accurate. The NSA looks at individual numbers when it has low level, particularized suspicion, but it looks at millions more with no suspicion of wrongdoing whatsoever, some of whom may well be Members of Congress.

As applied to all United States citizens, this program likely violates our Fourth Amendment right to privacy and chills our First Amendment right to free association. As applied to Members of Congress, it also raises grave Separation of Powers concerns for the executive branch to interfere with the private communications of the legislative branch without congressional knowledge.

We must insist on as much transparency and clarity as possible consistent with national security. We therefore urge you to clarify your testimony and fully disclose all of the ways in which the government conducts or may possibly conduct surveillance on Members of Congress.

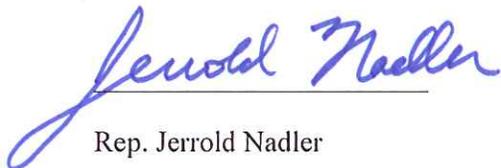
Sincerely,



Rep. F. James Sensenbrenner



Rep. Darrell Issa



Rep. Jerrold Nadler

² *Klayman v. Obama*, 2013 WL 6571596 (D.D.C. 2013).