

AFTER LYING IN A CLOSED SURVEILLANCE BRIEFING IN 2011, INTELLIGENCE COMMUNITY PLANS ANOTHER CLOSED BRIEFING

On May 18, 2011, 48 members of the House (mostly Republicans, but also including MI's Hansen Clarke) attended a closed briefing given by FBI Director Robert Mueller and General Counsel Valerie Caproni on the USA PATRIOT Act authorities up for reauthorization. The hearing would serve as the sole opportunity for newly elected members to learn about the phone and Internet dragnets conducted under the PATRIOT Act, given Mike Rogers' decision not to distribute the letter provided by DOJ to inform members on the secret dragnets they were about to reauthorize.

During the hearing, someone asked,

Russ Feingold said that Section 215 authorities have been abused. How does the FBI respond to that accusation?

One of the briefers – the summary released under FOIA does not say who – responded,

To the FBI's knowledge, those authorities have not been abused.

As a reminder, hearing witness Robert Mueller had to write and sign a declaration for the FISC two years earlier to justify resuming full authorization for the phone dragnet because, as Judge Reggie Walton had discovered, the NSA had conducted "daily violations of the minimization procedures" for over two years. "The

minimization procedures proposed by the government in each successive application and approved and adopted as binding by the orders of the FISC have been so frequently and systemically violated that it can fairly be said that this critical element of the overall BR regime has never functioned effectively," Walton wrote in March 2009.

Now, I can imagine that whichever FBI witness claimed the FBI didn't know about any "abuses" rationalized the answer to him or herself using the same claim the government has repeatedly made – that these were not willful abuses. But Walton stated then – and more evidence released since has made clear he was right since – that the government simply chose to subject the vast amount of US person data collected under the PATRIOT Act to EO 12333 standards, not more stringent PATRIOT Act ones. That is, the NSA, operating under FBI authorizations, made a willful choice to ignore the minimization procedures imposed by the 2006 reauthorization of the Act.

Whoever answered that question in 2011 lied, and lied all the more egregiously given that the questioner had no way of phrasing it to get an honest answer about violations of minimization procedures.

Which is why the House Judiciary Committee should pointedly refuse to permit the Intelligence Committee to conduct another such closed briefing, as they plan to do on Section 702 on February 2. Holding a hearing in secret permits the IC to lie to Congress, not to mention disinform some members in a venue where their colleagues can not correct the record (as Feingold might have done in 2011 had he learned what the FBI witnesses said in that briefing).

I mean, maybe HJC Chair Bob Goodlatte *wants* to be lied to? Otherwise, there's no sound explanation for scheduling this entire hearing in closed session.