



Written by [Joe Wolverton, II, J.D.](#) on August 16, 2013

## Obama “Will Not” Appoint DNI Clapper to Head NSA Transparency Board

Under pressure from the public and media, it appears that President Obama has decided not to appoint Director of National Intelligence James Clapper (shown) to head an “independent” group tasked with reviewing practices at the National Security Agency (NSA).



[In a statement to \*The Hill\*](#), White House spokeswoman Caitlin Hayden said, “Director Clapper will not be a part of the group, and is not leading or directing the group’s efforts.” “The White House is selecting the members of the Review Group, consulting appropriately with the Intelligence Community,” she added.

[The memo issued by President Obama](#) on Monday claims he wants to bring greater transparency to the NSA’s surveillance activities and thus “maintain the public trust” in the federal government.

Although it now appears that he has changed his mind, it is telling that the president’s purported first step toward transparency was originally to hire the man (Clapper) who lied to Congress about the scope of the surveillance to shine the light of disclosure into the shadowy recesses of NSA record collection and monitoring.

During a March 2013 hearing, for example, Clapper told Senator Ron Wyden (D-Ore.) that the NSA does not “wittingly” collect data on the electronic communications of “millions or hundreds of millions of Americans.”

Two months later, however, revelations resulting from the documents leaked by former NSA contractor Edward Snowden proved that Clapper lied. When confronted about his potential perjury, Clapper said he gave the “least untruthful” answer he could think of at the time and later apologized to Senator Dianne Feinstein (D-Calif.) for his “clear erroneous” statement in his testimony.

One can imagine the chaos that would be created if the “least untruthful” standard was adopted in courtrooms around the country. Unlike common criminals, however, Clapper will not be held accountable for his crimes.

Clapper’s mealy-mouthed *mea culpa*, calling an outright lie an “erroneous” statement, is typical of the confused babble that is the lingua franca of Washington, D.C. That said, there is no reason that Americans should sit idly by while their federal representatives let Clapper skate.

And, in truth, apart from the statement made to *The Hill*, there is no hard evidence that the president has repented of naming Clapper as the fibbing fox asked to guard the constitutional henhouse.



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In the memo calling for the creation of the review panel, President Obama wrote:

The Review Group will assess whether, in light of advancements in communications technologies, the United States employs its technical collection capabilities in a manner that optimally protects our national security and advances our foreign policy while appropriately accounting for other policy considerations, such as the risk of unauthorized disclosure and our need to maintain the public trust. Within 60 days of its establishment, the Review Group will brief their interim findings to me through the Director of National Intelligence (DNI), and the Review Group will provide a final report and recommendations to me through the DNI no later than December 15, 2013.

In [a press conference held last Friday](#), President Obama told reporters that he would work to reform Section 215 of the Patriot Act, a primary legislative justification for the NSA's warrantless wiretapping and surveillance of Americans' phone calls.

Very little is likely to be done to reform this process, however.

In July, the House of Representatives narrowly defeated an amendment to the defense appropriations sponsored by Republican Congressman Justin Amash of Michigan and Democratic Congressman John Conyers, also of Michigan.

The [Amash Amendment](#) would have revoked authority "for the blanket collection of records under the Patriot Act. It would also bar the NSA and other agencies from using Section 215 of the Patriot Act to collect records, including telephone call records, that pertain to persons who are not subject to an investigation under Section 215" of the Patriot Act.

Despite the threat to the establishment (or perhaps because of it), Amash's measure failed by a vote of 205-217.

At his press conference, rather than address the critical issue of his overseeing of a rapid and reprehensible expansion of the unconstitutional surveillance of Americans not suspected of committing any crime, the president took time to continue the persecution of Edward Snowden.

"No, I don't think Mr. Snowden was a patriot," President Obama said. "I called for a thorough review of our surveillance operations before Mr. Snowden made these leaks. My preference, and I think the American people's preference, would have been for a lawful, orderly examination of these laws. A thoughtful, fact-based debate that would then lead us to a better place."

"So the fact is that Mr. Snowden has been charged with three felonies," he added. "If in fact he believes that what he did was right, then like every American citizen he can come here, appear before a court with a lawyer and make his case. If the concern was that somehow this was the only way to get this information out to the public, I signed an executive order well before Mr. Snowden leaked this information that provided whistleblower protection to the intelligence community for the first time. So there were other avenues available for someone whose conscious was stirred."

By focusing on Snowden, President Obama demonstrates the typical trope employed by all clever magicians: misdirection.

Snowden isn't the story, however.

The story is the indisputable fact that the Obama administration unapologetically carries on unconstitutional surveillance of millions of Americans in open and hostile violation of the Fourth Amendment to the Constitution.



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[The Fourth Amendment](#) states that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Speaking of the threat to the Constitution and to the fundamental liberties it protects, [on June 12, Senator Rand Paul \(R-Ky.\) wrote](#):

In the United States, we are supposed to have a government that is limited with its parameters established by our Constitution. This notion that the federal government can monitor everyone’s phone data is a major departure from how Americans have traditionally viewed the role of government.

If this is acceptable practice, as the White House and many in both parties now say it is, then there are literally no constitutional protections that can be guaranteed anymore to citizens.

In the name of security, say our leaders, the Constitution has become negotiable.

He continues:

But those who continue to defend the National Security Agency’s actions are essentially saying that something that would be controversial even as an exception — blanket phone trolling by the government — is now the new rule. They are saying it’s OK to spy on citizens’ phone data without a warrant, not just one time or a few times, but all the time.

They are saying that suspending the Bill of Rights is now the new normal.

In my world, the Constitution still applies.

If the Constitution is to continue to apply, citizens must maintain their close watch on the eyes of government whose sleight of hand is making our rights no more than an illusion.

Regardless of whether Clapper is held accountable for his lies to Congress or whether the president withdraws his appointment of him to head the NSA surveillance “Review Board,” the fact is that in the memo he issued on August 12, President Obama made clear that he considers the Bill of Rights and the Constitution to be nothing more than one of many “policy considerations” that must be dealt with in the course of converting this constitutional republic into a gulag and converting citizens into suspects.

*Photo of Director of National Intelligence James Clapper: AP Images*

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