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Policy Response to Intelligence Re...

## Secrecy News

# Policy Response to Intelligence Revelations Lags

Posted on Sep.11, 2013 in Intelligence (<https://fas.org/category/intelligence/>), Oversight (<https://fas.org/category/oversight/>) by Steven Aftergood (<https://fas.org/author/steven-aftergood/>)

The end of the government's fiscal year 2013 is just weeks away, but an intelligence authorization bill for fiscal year 2014 is nowhere in sight. In past years, the House and Senate Intelligence Committees typically reported intelligence bills in late spring or early summer for House-Senate conference and floor action later in the year. But this year, nothing.

On its homepage (<http://www.intelligence.senate.gov/index.html>), the Senate Intelligence Committee website cites the Committee's report on the fiscal year 2012 intelligence bill under the heading "recent action." But that report was issued in August 2011. (The Committee website also offers a current compilation (<http://www.intelligence.senate.gov/syriavideo.html>) of YouTube videos that appear to reflect the use of chemical weapons in Syria.)

Though 2013 has become the most momentous year for intelligence policy in a generation, the Senate Intelligence Committee has not held any public hearings (<http://www.intelligence.senate.gov/hearings.cfm>) since a March threat briefing, and none at all on surveillance policy. Americans seeking insight into the meaning of current intelligence controversies must look elsewhere.

Meanwhile, the House and Senate Judiciary Committees have each held stimulating ([http://judiciary.house.gov/hearings/113th/hear\\_07172013.html](http://judiciary.house.gov/hearings/113th/hear_07172013.html)) hearings (<http://www.judiciary.senate.gov/hearings/hearing.cfm?id=0d93f03188977d0d41065d3fa041decd>) on intelligence surveillance, while the House Intelligence Committee offered a one-sided forum (<https://intelligence.house.gov/hearing/how-disclosed-nsa-programs-protect-americans-and-why-disclosure-aids-our-adversaries>) for government officials only.

Up to now, the machinery of intelligence policymaking has seemed poorly suited to coping with the Snowden-derived revelations that continue to emerge (<https://www.theguardian.com/world/2013/sep/11/nsa-americans-personal-data-israel-documents>).

Confusingly, both the Privacy and Civil Liberties Oversight Board (<https://www.pclob.gov/>) (PCLOB) and the ad hoc Review Group on Intelligence and Communications Technologies (<https://www.whitehouse.gov/the-press-office/2013/08/12/presidential-memorandum-reviewing-our-global-signals-intelligence-collec>) are delving into the privacy implications of intelligence surveillance, among other topics, and each has independently sought (<https://www.pclob.gov/newsroom>) to engage (<http://icontherecord.tumblr.com/post/60783008798/review-group-on-intelligence-and-communications>) interested members of the public. But neither body has policymaking power or authority, and it is unclear how their findings and recommendations might eventually shape policy.

My initial comments to the Review Group are available here (</sgp/news/2013/09/sa-revgroup.pdf>).

The Director of National Intelligence yesterday released (<http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>) several newly declassified opinions of the Foreign Intelligence Surveillance Court in response to FOIA lawsuits from the Electronic Frontier Foundation (<https://www.eff.org/deeplinks/2013/09/government-releases-nsa-surveillance-docs-and-previously-secret-fisa-court>) and the ACLU (<https://www.aclu.org/national-security/secret-nsa-documents-released-response-aclu-lawsuit>). The voluminous materials shed new light on interactions between the FISA Court and the intelligence community, including what one

Court opinion

([http://www.dni.gov/files/documents/section/pub\\_Sept%2025%202009%20Order%20Regarding%20Further%20Compliance%20Incidents.pdf](http://www.dni.gov/files/documents/section/pub_Sept%2025%202009%20Order%20Regarding%20Further%20Compliance%20Incidents.pdf)) described as a "history of serious and widespread compliance problems."

Yesterday, Chief Justice John Roberts appointed Judge William C. Bryson (<http://www.cafc.uscourts.gov/judges/william-c-bryson-circuit-judge.html>) to succeed Judge Morris Arnold as the Presiding Judge of the U.S. Foreign Intelligence Surveillance Court of Review, following Judge Arnold's retirement on August 31. Judge José A. Cabranes (<https://www.nytimes.com/2013/08/21/us/roberts-varies-pattern-in-choice-for-spy-court.html>) was appointed to the Court of Review on August 9, 2013. The appointment of a third judge to the Court is pending.

The Court of Review, which hears government appeals of unfavorable opinions from the Foreign Intelligence Surveillance Court (</irp/agency/doj/fisa/court2013.html>), only rarely has occasion to meet. It could not immediately be learned when the Court was last presented with a case. The Rules of the Court of Review may be found in FISCR Order No. 1 (</irp/agency/doj/fisa/fiscr-rules.pdf>), January 22, 1980.

← The Security Clearance Process, and More from CRS (<https://fas.org/blogs/secretcy/2013/09/crs-clearance/>)

Securing Diplomatic Facilities, and More from CRS → (<https://fas.org/blogs/secretcy/2013/09/securing-diplo/>)

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