

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
PUBLIC MEETING

Report on the Surveillance Program
Operated Pursuant to Section 702 of the
Foreign Intelligence Surveillance Act

July 2, 2014

The public meeting was held at J.W. Marriott, 1331
Pennsylvania Avenue, NW, Washington, D.C. 20004,
commencing at 10:00 a.m.

Reported by: Lynne Livingston

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<p>1 BOARD MEMBERS</p> <p>2</p> <p>3 David Medine, Chairman</p> <p>4 Rachel Brand</p> <p>5 Patricia Wald</p> <p>6 James Dempsey</p> <p>7 Elisebeth Collins Cook</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 will not be having a press conference but the</p> <p>2 individual members of the Board will be available</p> <p>3 to meet with the press.</p> <p>4 The Board is convening today to formally</p> <p>5 adopt its report on the surveillance program</p> <p>6 operated pursuant to Section 702 of the Foreign</p> <p>7 Intelligence Surveillance Act.</p> <p>8 Section 702 permits the Attorney General</p> <p>9 and the Director of National Intelligence to</p> <p>10 jointly authorize surveillance of targeted persons</p> <p>11 who are not U.S. persons, who are reasonably</p> <p>12 believed to be outside of the United States, with</p> <p>13 compelled assistance of electronic communication</p> <p>14 service providers in order to obtain foreign</p> <p>15 intelligence information.</p> <p>16 Although U.S. persons may not be targeted</p> <p>17 under Section 702, communications however</p> <p>18 concerning U.S. persons may be acquired.</p> <p>19 The Section 702 program is extremely</p> <p>20 complex. It involves multiple agencies collecting</p> <p>21 multiple types of information for multiple</p> <p>22 purposes.</p>
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<p>1 PROCEEDINGS</p> <p>2 MR. MEDINE: Good morning and welcome to a</p> <p>3 meeting of the Privacy and Civil Liberties</p> <p>4 Oversight Board.</p> <p>5 It is 10:00 a.m., and the date is July</p> <p>6 2nd, 2014. We are at the J.W. Marriott at 1331</p> <p>7 Pennsylvania Avenue, N.W., Washington, D.C. This</p> <p>8 hearing was announced in the Federal Register on</p> <p>9 June 20th, 2014.</p> <p>10 As chairman of the Privacy and Civil</p> <p>11 Liberties Oversight Board, I will be the presiding</p> <p>12 officer. All five Board members are present.</p> <p>13 There is a quorum.</p> <p>14 The Board members are Rachel Brand,</p> <p>15 Elisebeth Collins Cook, James Dempsey, and Patricia</p> <p>16 Wald.</p> <p>17 I will now call the hearing to order. All</p> <p>18 in favor of opening the meeting, please say aye.</p> <p>19 (Aye)</p> <p>20 MR. MEDINE: On receiving unanimous</p> <p>21 consent to proceed, we will now proceed.</p> <p>22 After the meeting has been adjourned, we</p>	<p>1 Overall, the Board has found that the</p> <p>2 information the program collects has been valuable</p> <p>3 effective in protecting the national security and</p> <p>4 producing valuable foreign intelligence</p> <p>5 information.</p> <p>6 The program is operated under a statute</p> <p>7 that was publicly debated and the text of the</p> <p>8 statute outlines the basic structure of the</p> <p>9 program.</p> <p>10 The operation of the Section 702 program</p> <p>11 has been subject to judicial oversight and</p> <p>12 extensive internal supervision and the Board has</p> <p>13 found no indication of intentional abuse.</p> <p>14 Outside of this fundamental core, certain</p> <p>15 aspects of the Section 702 program do raise privacy</p> <p>16 concerns and push the program close to the line of</p> <p>17 constitutional reasonableness.</p> <p>18 Such aspects include the scope of</p> <p>19 incidental collection of U.S. persons'</p> <p>20 communications, the use of about communications</p> <p>21 acquired through the Internet that are neither to</p> <p>22 or from the target of the surveillance, and the use</p>

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<p>1 of such queries to search information collected</p> <p>2 under the program for the communications of certain</p> <p>3 U.S. persons.</p> <p>4 With these concerns in mind, the report</p> <p>5 that we are voting on today offers a set of policy</p> <p>6 proposals that should strike a better balance</p> <p>7 between privacy and civil liberties and national</p> <p>8 security, and are designed to push the program more</p> <p>9 comfortably into the sphere of reasonableness,</p> <p>10 ensuring that the program remains tied to its</p> <p>11 constitutionally legitimate core.</p> <p>12 A key goal of our study is to improve</p> <p>13 public understanding of how the program operates.</p> <p>14 Therefore, before discussing our proposals I want</p> <p>15 to start by dispelling some incorrect notions about</p> <p>16 the program's operation.</p> <p>17 First, it is not a bulk collection</p> <p>18 program. Instead, the program only targets</p> <p>19 communications of particular persons. Last year</p> <p>20 approximately 90,000 targets were assigned in the</p> <p>21 program, but it is not a widespread collection of</p> <p>22 information, other than for those who are targeted</p>	<p>1 An important mission of the Board is to</p> <p>2 educate the public and enhance public debate by</p> <p>3 making the operation of counterterrorism programs</p> <p>4 public consistent with national security concerns.</p> <p>5 During the process of preparing this</p> <p>6 report we sought and obtained declassification of</p> <p>7 facts about this still highly classified program in</p> <p>8 order to allow us to put in context how the program</p> <p>9 operates and clarify some public misconceptions.</p> <p>10 As a result, over one hundred new facts</p> <p>11 were declassified by the government to provide</p> <p>12 needed context for the program's operation.</p> <p>13 I want to extend the Board's appreciation</p> <p>14 to the personnel at the Office of the Director of</p> <p>15 National Intelligence, Department of Justice, NSA,</p> <p>16 FBI, and CIA, who worked constructively with the</p> <p>17 Board in this process.</p> <p>18 The result is the most comprehensive</p> <p>19 public description of how the Section 702 program</p> <p>20 operates, and we believe that this description will</p> <p>21 substantially advance the public's understanding of</p> <p>22 the program.</p>
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<p>1 based on the belief that they are non-U.S. persons</p> <p>2 outside the United States with foreign intelligence</p> <p>3 value.</p> <p>4 Second, non-U.S. persons are not targeted</p> <p>5 when the program, the government has only a belief,</p> <p>6 a 51 percent likelihood that they are non-U.S.</p> <p>7 persons and overseas. There is no 51 percent test.</p> <p>8 The government's obligated to exercise a</p> <p>9 standard of due diligence in making determinations</p> <p>10 based on a totality of the circumstances.</p> <p>11 If there is conflicting information</p> <p>12 indicating whether a person is located in the</p> <p>13 United States or is a U.S. person, that conflict</p> <p>14 must be resolved and the user must be determined to</p> <p>15 be a non-U.S. person in order to be targeted.</p> <p>16 Third, American's emails are not searched</p> <p>17 for key words that may be used, such as Osama bin</p> <p>18 Laden, that would gather emails that were</p> <p>19 discussing things of contemporary events, as</p> <p>20 opposed to matters of foreign intelligence. Only</p> <p>21 specific selectors such as email addresses may be</p> <p>22 used.</p>	<p>1 Turning back to the report, the Board's</p> <p>2 factual and legal analysis was adopted unanimously.</p> <p>3 The Board also unanimously offers ten</p> <p>4 recommendations to strengthen privacy safeguards</p> <p>5 and to address these concerns. They are in a</p> <p>6 number of categories.</p> <p>7 First is the targeting process. The Board</p> <p>8 calls for the government to clearly articulate the</p> <p>9 foreign intelligence basis for its targeting</p> <p>10 decisions.</p> <p>11 Second regards the role of the Foreign</p> <p>12 Intelligence Surveillance Court, and the Board</p> <p>13 calls for the government to submit a sample of</p> <p>14 tasking sheets and query terms so the court can</p> <p>15 consider them in approving the continued operation</p> <p>16 of the program.</p> <p>17 In the parts of the program known as</p> <p>18 upstream or about, the Board calls for a periodic</p> <p>19 assessment to make sure that the best technology is</p> <p>20 being used to filter out purely domestic</p> <p>21 communications and urges the development of</p> <p>22 technology that would permit policy decisions to be</p>

10	<p>1 made concerning whether so-called about collections 2 should be limited.</p> <p>3 In the area of accountability and 4 transparency, the Board calls for declassification 5 consistent with national security of FBI, CIA, and 6 NSA minimization procedures and have the government 7 provide more insight into the extent to which it 8 acquires and utilizes communications of U.S. 9 persons.</p> <p>10 With regard to efficacy, the Board asks 11 the government to develop a comprehensive 12 methodology for assessing the efficacy of 13 counterterrorism programs, unless they are with 14 regard to U.S. person queries, that is queries 15 using U.S. person selectors of data collected 16 through the 702 program.</p> <p>17 In the case of U.S. person queries 18 conducted by the FBI, the Board agreed that the FBI 19 should update its minimization procedures to make 20 it clear that in criminal matters its agents 21 routinely query the database for Section 702 22 information.</p>	12	<p>1 recommendations that were not adopted by a majority 2 of the Board.</p> <p>3 The first is designed to ensure that 4 communications by Americans are properly purged if 5 they do not have foreign intelligence value or 6 constitute evidence of a crimes.</p> <p>7 The second is that foreign intelligence 8 queries using American's identifiers should only be 9 made with court approval.</p> <p>10 Board members Brand and Cook take the 11 position that oversight of such queries is already 12 rigorous and that judicial review is not necessary 13 or appropriate.</p> <p>14 Again, all of the Board's recommendations 15 are based on policy grounds. In our view none of 16 them require legislation to be implemented.</p> <p>17 As part of this study we conducted two 18 public hearings and one public workshop and the 19 Board also solicited public comments through 20 www.regulations.gov. Dozens of comments were 21 received and the Board has reviewed all of those 22 comments. So we appreciate the public input that</p>
11	<p>1 The Board also agreed that limits should 2 be imposed on the FBI's ability to use and disclose 3 702 data.</p> <p>4 Three additional statements are included 5 in the Board's report representing different Board 6 members' approaches to limiting the FBI's use and 7 dissemination of Section 702 information.</p> <p>8 One position is that there should be 9 enhanced internal review of that process. Another 10 that this question, while not pressing now, should 11 be addressed before it becomes urgent. And the 12 third, that such queries should be subject to court 13 approval before being made.</p> <p>14 The Board takes the position that the NSA 15 and CIA should be permitted to query Section 702 16 data for foreign intelligence purposes using U.S. 17 person identifiers only based on a statement of 18 facts that the query is reasonably likely to return 19 foreign intelligence information as defined in the 20 Foreign Intelligence Surveillance Act.</p> <p>21 Judge Wald and I would have gone further, 22 and we have separately proposed two additional</p>	13	<p>1 were valuable to the production of this report.</p> <p>2 At every step of the way the Board has 3 received full cooperation of the intelligence 4 community. While the Board's report was subject to 5 classification review, none of the changes that 6 resulted from that process affected our analysis or 7 recommendations.</p> <p>8 The entire report that the Board is going 9 to vote on today is unclassified. There is no 10 classified appendix.</p> <p>11 Pursuant to the Board's statutory duty to 12 advise the President and elements of the executive 13 branch and Congress, the Board briefed staff from 14 the House and Senate Intelligence and Judiciary 15 Committees on June 2nd regarding the Board's 16 tentative conclusions, and senior White House staff 17 on June 17th.</p> <p>18 As I've indicated previously but I also 19 want to reiterate, in the course of conducting this 20 study and also our study of the 215 program, we've 21 found nothing but hardworking men and women in the 22 intelligence community who are dedicated to</p>

14	<p>1 protecting this country and we've seen no evidence 2 of misconduct.</p> <p>3 The 215 and 702 reports fit into the 4 Board's broader mandate to balance national 5 security with privacy and civil liberties in 6 overseeing existing programs and providing advice 7 on new programs.</p> <p>8 It's not our institutional job to always 9 oppose or critique counterterrorism programs but to 10 objectively analyze them.</p> <p>11 We'll soon be holding a public meeting to 12 discuss where the Board goes from here in the near- 13 term and get input from the public on the Board's 14 long-term agenda.</p> <p>15 The Board now has sufficient staff to work 16 on more than one project at a time and we're 17 looking forward to both expanding our oversight 18 function, but also our advice function as well.</p> <p>19 I want to thank Board staff who were 20 invaluable in preparing this report and worked 21 tirelessly, both to study the programs, to analyze 22 them and to make sure that the classification</p>	16	<p>1 slight changes at the margins of the program.</p> <p>2 First and foremost, our recommendations as 3 to queries using U.S. person's identifiers and 4 about collection are not driven by a concern that 5 U.S. person's rights are being violated.</p> <p>6 Instead, the recommendations are designed 7 to prevent the Section 702 program from 8 transforming over time from a foreign 9 intelligence program to a means of effectively 10 surveilling U.S. persons. We have seen no evidence 11 of a back door so our recommendations are designed 12 to make sure one is not built.</p> <p>13 Second, the current requirements for the 14 foreign intelligence purpose of the targeting 15 rationale are the natural byproduct of the 16 statutory structure, as well as the historical 17 underpinnings of the Section 702 program.</p> <p>18 Section 702 was designed to move away from 19 requiring the extensive justification necessary for 20 a traditional FISA, and for good reason. We are 21 not recommending a return to a full, traditional 22 FISA packet, just a statement of facts which will</p>
15	<p>1 process went smoothly.</p> <p>2 I'll now give individual Board members an 3 opportunity to address themselves, starting with 4 Ms. Cook.</p> <p>5 MS. COLLINS COOK: Thank you, David. I 6 wanted to also start with thanks to the incredible 7 work of the staff. For all intents and purposes, 8 we have been building this airplane as we have been 9 flying it and it takes extraordinary skill and 10 dedication to do that. So thank you.</p> <p>11 I would also commend the chairman, and in 12 particular our executive director for, again, at 13 the risk of flying this metaphor too far, their 14 remarkable work piloting the plane.</p> <p>15 I wanted to take this opportunity to 16 briefly discuss some of the recommendations we have 17 made. We concluded that the Section 702 program is 18 legal, valuable and subject to intense oversight.</p> <p>19 Our recommendations should not be viewed 20 as an indication of concern about the current 21 operation of the program. Instead, they are 22 targeted and focused recommendations for relatively</p>	17	<p>1 have the effect of increasing the rigor of the 2 analyst's approach and the oversight process.</p> <p>3 I also wanted to emphasize the Board's 4 conclusion as to the value of the program for the 5 government's counterterrorism efforts, to say 6 nothing of its larger foreign intelligence 7 benefits.</p> <p>8 This program has assisted the government's 9 efforts to learn more systematically about the 10 membership, leadership structure, priorities, 11 tactics and plans of international terrorist 12 organizations. It has enabled the discovery of 13 previously unknown terrorist operatives, provided 14 the locations and movements of known suspects and 15 allowed the discovery and disruption of plots 16 directed against the United States and foreign 17 countries.</p> <p>18 A program can have value, have substantial 19 value separate and apart from plots thwarted, and 20 the Section 702 program is an example of that.</p> <p>21 Finally, I believe the greatest value of 22 the Board's report may very well be in dispelling</p>

18	<p>1 the misunderstandings and misconceptions about the</p> <p>2 Section 702 program, rather than the</p> <p>3 recommendations themselves. Restoring public trust</p> <p>4 and confidence can be a matter of education and</p> <p>5 transparency and does not always require a change</p> <p>6 in the government's operations.</p> <p>7 I hope we will now focus on building out</p> <p>8 our advisory capacity. The last year has been</p> <p>9 largely devoted to oversight but our mandate is</p> <p>10 twofold. As we continue to build the permanent,</p> <p>11 meaningful federal agency envisioned by the 9/11</p> <p>12 Commission and Congress, we have the opportunity to</p> <p>13 really think about how best to protect privacy and</p> <p>14 civil liberties in light of the need for</p> <p>15 counterterrorism programs, and I look forward to</p> <p>16 that process.</p> <p>17 MR. MEDINE: Judge Wald.</p> <p>18 MS. WALD: Thank you. I too thank</p> <p>19 everybody who was engaged in getting this fairly</p> <p>20 mammoth and complex report out in record time.</p> <p>21 I want to take just a few minutes to put</p> <p>22 in context why the Chair and I wrote an additional</p>	20	<p>1 However, the fact is that in the vast</p> <p>2 scope the numbers of communications of U.S. persons</p> <p>3 that are collected without their knowing it in this</p> <p>4 process, there will be much private and</p> <p>5 confidential information, which under normal rules</p> <p>6 would be protected as privacy, and with an aura of</p> <p>7 Fourth Amendment, whereas these are policy</p> <p>8 recommendations. The fact is that everybody, and</p> <p>9 this is in the main body of the report, recognized</p> <p>10 that Americans have a Fourth Amendment, some Fourth</p> <p>11 Amendment interest, protected interest in their</p> <p>12 private communications.</p> <p>13 So to cut to the chase, the two</p> <p>14 recommendations that we felt were needed</p> <p>15 additionally were, one, right now these, when U.S.</p> <p>16 person's communications come in, they may contain a</p> <p>17 lot, could contain a lot of private, confidential</p> <p>18 information which is not at all relevant to foreign</p> <p>19 intelligence.</p> <p>20 At the current practice those are not</p> <p>21 purged in any regularized fashion. The</p> <p>22 minimization requirements which we propose be made</p>
19	<p>1 statement dealing with U.S. person queries.</p> <p>2 As diligent readers of the report will</p> <p>3 recognize, this is a very complex program and its</p> <p>4 main thrust is to be able to collect the</p> <p>5 communications of foreign non-U.S. persons who are</p> <p>6 based abroad.</p> <p>7 In that process however. The</p> <p>8 communications of U.S. persons may, and are,</p> <p>9 collected where they are communicating with the</p> <p>10 foreign target.</p> <p>11 In many cases the U.S. person may well not</p> <p>12 know, probably in most cases may well not know that</p> <p>13 they are communicating with a foreign target.</p> <p>14 Since we are a privacy oversight Board,</p> <p>15 our focus was on the privacy of the U.S. persons</p> <p>16 who communicate with targets, in many cases not</p> <p>17 knowing that they are targets.</p> <p>18 Now if those communications themselves on</p> <p>19 their face contain foreign intelligence it seemed</p> <p>20 to us quite reasonable, as well as to the other</p> <p>21 members of the Board, that the government be able</p> <p>22 to use, have access to that foreign intelligence.</p>	21	<p>1 more restrictive say that the analyst, upon review,</p> <p>2 but there's no duty to review ever, should be</p> <p>3 purged, taken out, but only if clearly they cannot</p> <p>4 be of any foreign intelligence value.</p> <p>5 And the standard, and this is in the</p> <p>6 regular report, the standard that's used is what we</p> <p>7 call kind of mosaic standard. The analyst has to</p> <p>8 decide that even if right now there appears to be</p> <p>9 no foreign intelligence value, is it conceivable</p> <p>10 that in some distant future, or some other analyst</p> <p>11 or somehow it might become relevant, we don't think</p> <p>12 that should be the standard.</p> <p>13 We believe that there should be a duty to,</p> <p>14 at the point any query is made of U.S. interests,</p> <p>15 U.S. person's interests, that there should be a</p> <p>16 purging process going on which takes out the</p> <p>17 information which is not of foreign</p> <p>18 intelligence value.</p> <p>19 And we think, as set out in our statement,</p> <p>20 that's what the original definitions in the FISA</p> <p>21 legislation that still applies to 702, and the</p> <p>22 thoughts of the original drafters meant to happen.</p>

22	<p>1 So aside from the purging process, very</p> <p>2 quickly, the other recommendations we had were for</p> <p>3 some kind of judicial oversight. And in this case,</p> <p>4 it has to be FISA because there is no access to</p> <p>5 regular district courts for individual</p> <p>6 applications.</p> <p>7 We think that the FISA court should have</p> <p>8 to approve a query as being of potential foreign</p> <p>9 intelligence value.</p> <p>10 The same thing would be true in the case</p> <p>11 of the FBI when they send these things through to</p> <p>12 see if there's any evidence, when they're making an</p> <p>13 assessment or investigation of a regular crime,</p> <p>14 there ought to be some judicial approval of the</p> <p>15 fact that it's reasonably likely to come up with</p> <p>16 foreign intelligence value.</p> <p>17 Perhaps it's my own experience as a judge,</p> <p>18 but I do feel that some kind of outside</p> <p>19 non-involved approval ought to be necessary before</p> <p>20 the private information of the U.S. persons, which</p> <p>21 is not of intelligence value, should be made</p> <p>22 accessible in these queries.</p>	24	<p>1 recent months.</p> <p>2 First, as our report made clear, and as</p> <p>3 Chairman Medine has already said, this is not a</p> <p>4 bulk collection program or a dragnet. I don't</p> <p>5 think we can stress that often enough because that</p> <p>6 has been such a common misconception.</p> <p>7 Under Section 702, the government may only</p> <p>8 target individual, non-U.S. persons located outside</p> <p>9 the United States whom the government believes will</p> <p>10 have foreign intelligence information.</p> <p>11 So to impact that, the government may</p> <p>12 never target Americans for surveillance under</p> <p>13 Section 702, no matter where they're located in the</p> <p>14 world. The government may never target anyone</p> <p>15 located inside the United States.</p> <p>16 The government must select specific</p> <p>17 targets for surveillance and collect only the</p> <p>18 communications of those targets, and even when</p> <p>19 selecting a particular foreigner abroad, the</p> <p>20 government must believe that he or she is likely to</p> <p>21 possess foreign intelligence information.</p> <p>22 Second, I'd like to dispel any notion that</p>
23	<p>1 MR. MEDINE: Ms. Brand.</p> <p>2 MS. BRAND: Thank you, Mr. Chairman. I</p> <p>3 echo your thanks to our staff who tirelessly worked</p> <p>4 to write this report and to shepherd it through the</p> <p>5 pre-classification, pre-clearance review process.</p> <p>6 Turning to the substance of the report, I</p> <p>7 think it's significant that the Board, with our</p> <p>8 varied backgrounds and perspectives, unanimously</p> <p>9 concluded that this program at its core is</p> <p>10 statutorily authorized, constitutional and highly</p> <p>11 effective.</p> <p>12 I believe that our targeted</p> <p>13 recommendations for changes to the program will</p> <p>14 further protect civil liberties and privacy without</p> <p>15 impacting the effectiveness of the program.</p> <p>16 I don't plan this morning to address the</p> <p>17 separate statement of Chairman Medine and Judge</p> <p>18 Wald. I would encourage you to read the separate</p> <p>19 statement that Ms. Cook and I published.</p> <p>20 But I do want to make two very brief</p> <p>21 points this morning to dispel some of the common</p> <p>22 misconceptions that have surrounded this program in</p>	25	<p>1 this program is likely to give the government a</p> <p>2 complete or even a significant picture of an</p> <p>3 American's private life.</p> <p>4 Our report discusses incidental collection</p> <p>5 under Section 702, and Chairman Medine already</p> <p>6 referenced this. This is the fact that if a</p> <p>7 targeted foreigner abroad communicates with a U.S.</p> <p>8 person that communication will be collected.</p> <p>9 That's an aspect of the program that was understood</p> <p>10 by Congress when it enacted Section 702, and it's</p> <p>11 unavoidable under the program.</p> <p>12 Concerns have been raised about the extent</p> <p>13 of incidental collection. We spent a lot of time</p> <p>14 as a Board looking at that. But the fact is that</p> <p>15 the government doesn't know exactly how many U.S.</p> <p>16 person communications are collected under Section</p> <p>17 702.</p> <p>18 So to address that, we've made</p> <p>19 recommendations that the government take measures</p> <p>20 to assess the extent of incidental collection, try</p> <p>21 to determine the number of U.S. person</p> <p>22 communications collected.</p>

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<p>1 We look fording to seeing the results of</p> <p>2 that inquiry and deciding whether any additional</p> <p>3 recommendations to the program should be made on</p> <p>4 that basis.</p> <p>5 But it's already clear based on what we do</p> <p>6 know that the chance that any given American will</p> <p>7 have any of his or her communications collected</p> <p>8 under Section 702, much less a significant number</p> <p>9 of them, is remote.</p> <p>10 If the individual is in communication with</p> <p>11 a particular foreigner abroad who has been targeted</p> <p>12 for surveillance under Section 702, then yes, his</p> <p>13 communications with that individual will be</p> <p>14 collected, but none of his other communications.</p> <p>15 And if an individual is regularly in</p> <p>16 contact with a number of targeted foreigners</p> <p>17 abroad, such that a significant number of his</p> <p>18 communications were being incidentally collected,</p> <p>19 then that connection could be very important for</p> <p>20 the government to know.</p> <p>21 Examples such as the Zazi case discussed</p> <p>22 in our report demonstrate the value of discovering</p>	<p>1 explain this program that we were not able to say.</p> <p>2 And in the process of producing the report</p> <p>3 and pushing it through an interagency review</p> <p>4 process of classification, as the chairman said,</p> <p>5 one hundred additional discrete facts about the</p> <p>6 program were declassified for release.</p> <p>7 And I think there's a very important</p> <p>8 lesson there about intelligence and national</p> <p>9 security in the post 9/11 world, that our</p> <p>10 government, any government I believe, but our</p> <p>11 government can talk about programs of this nature</p> <p>12 of this importance and that it can be done in an</p> <p>13 unclassified way.</p> <p>14 Secondly, the report unanimously finds</p> <p>15 that the program fits within the statutory</p> <p>16 framework that was publicly adopted by Congress.</p> <p>17 In this way there's a major contrast between this</p> <p>18 program and the 215 telephony metadata program,</p> <p>19 which a majority of the Board concluded was not</p> <p>20 statutorily authorized.</p> <p>21 This program is the program that was</p> <p>22 debated by Congress and written into the statute.</p>
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<p>1 domestic connections to FISA investigations where</p> <p>2 they exist.</p> <p>3 So I hope that these facts and the rest of</p> <p>4 the Board's report will dispel some of the</p> <p>5 misconceptions about the program, and I look</p> <p>6 forward to working with the government to implement</p> <p>7 the recommendations that we've made.</p> <p>8 MR. MEDINE: Mr. Dempsey.</p> <p>9 MR. DEMPSEY: Thank you, Mr. Chairman.</p> <p>10 Obviously echoing and supporting the comments of</p> <p>11 all the Board members, both about the work of our</p> <p>12 staff in getting this report to conclusion, I would</p> <p>13 say as a person who sort of values his weekends,</p> <p>14 there were far too many weekend and evening emails</p> <p>15 associated with this report, but that's what it</p> <p>16 takes to produce something like this, and I</p> <p>17 appreciate the time that people put in on this.</p> <p>18 I think there are a couple of overarching</p> <p>19 points that are very important to recognize here.</p> <p>20 One, as the chairman said, everything we</p> <p>21 wanted to say is in this unclassified report.</p> <p>22 There's nothing that we really wanted to say to</p>	<p>1 And I think that as well carries a very important</p> <p>2 lesson about intelligence and national security in</p> <p>3 a democratic society, that the statute on the books</p> <p>4 can describe the governmental powers that are being</p> <p>5 exercised.</p> <p>6 Thirdly, as to constitutionality, I</p> <p>7 remember when Section 702 was being debated there</p> <p>8 was a lot of questions being raised about whether a</p> <p>9 program targeting non-U.S. persons overseas, people</p> <p>10 who under current court interpretations have no</p> <p>11 Fourth Amendment rights under our Constitution,</p> <p>12 whether a program targeting non-U.S. citizens</p> <p>13 abroad implicated the Constitution at all, even</p> <p>14 though it clearly was going to intercept some</p> <p>15 communications to and from people inside the United</p> <p>16 States.</p> <p>17 The government now recognizes -- that</p> <p>18 debate in my opinion is over with, whether this</p> <p>19 program implicates the Constitution. The</p> <p>20 government position is, yes, this program does</p> <p>21 implicate the Fourth Amendment rights of Americans</p> <p>22 that this program must be analyzed through a</p>

30	<p>1 constitutional lens.</p> <p>2 And our report is premised on analyzing</p> <p>3 this program through the lens of the Fourth</p> <p>4 Amendment insofar as the program collects</p> <p>5 communications to and from U.S. citizens and others</p> <p>6 in this country.</p> <p>7 And I would really urge anybody, including</p> <p>8 members of the public, I really think we tried in a</p> <p>9 pretty clear way to spell out the constitutional</p> <p>10 analysis by which a program like this should be</p> <p>11 analyzed and I think really provide a lot of</p> <p>12 important clarity to how to think about the</p> <p>13 application of the Fourth Amendment to the</p> <p>14 Constitution in the context of intelligence</p> <p>15 collection programs that collect communications to</p> <p>16 and from Americans.</p> <p>17 As to some of the controversial aspects of</p> <p>18 the program, among the most controversial aspects</p> <p>19 are the so-called abouts collection, and to</p> <p>20 somewhat a lesser extent the so-called</p> <p>21 multi-communication transactions or MCTs.</p> <p>22 On both of those the Board found after our</p>	32	<p>1 communications. Then you can have sort of the</p> <p>2 policy debate about how and under what criteria to</p> <p>3 do so.</p> <p>4 And finally, on queries, querying the</p> <p>5 database of collected 702 data looking for</p> <p>6 communications to or from Americans, U.S. persons,</p> <p>7 using the identifiers, again, the Board unanimously</p> <p>8 agreed that this clearly raises Fourth Amendment</p> <p>9 implications and policy implications, and clearly</p> <p>10 affects the rights of Americans.</p> <p>11 My own view was that trying to limit</p> <p>12 discovery of data in the database in the hands of</p> <p>13 the government is not the right way to go here,</p> <p>14 that discovery of the information should be</p> <p>15 permitted under a relatively, under criteria, but</p> <p>16 under a relatively flexible and agile and prompt</p> <p>17 process.</p> <p>18 I do believe that limits should be placed</p> <p>19 on the use of that data. And I referenced in my</p> <p>20 one paragraph on this issue the President's own</p> <p>21 policy directive in which he established limits on</p> <p>22 the use, limiting to national security matters the</p>
31	<p>1 really digging deep, deep, deep into this, that</p> <p>2 both of those involve almost technological</p> <p>3 necessities or byproducts of the way that the</p> <p>4 program is operated and the way the technology</p> <p>5 associated with the program operates.</p> <p>6 And we concluded as to both of them that</p> <p>7 as of now it is not possible to avoid,</p> <p>8 technologically speaking, not possible to avoid</p> <p>9 even abouts collection.</p> <p>10 We're not talking key words, we're not</p> <p>11 talking collections about an American in that</p> <p>12 sense. We're talking collection of communications</p> <p>13 that are about the selector that is being searched</p> <p>14 for, targeted.</p> <p>15 We spell all this out in great detail in</p> <p>16 the report. And I'd say that more work is needed</p> <p>17 to be done on the technology associated with abouts</p> <p>18 collection and with upstream collection in general,</p> <p>19 and we urge the government to work with</p> <p>20 telecommunication service providers and with other</p> <p>21 independent technologists to develop the technology</p> <p>22 that will at least allow us to segregate those</p>	33	<p>1 use of data collected about non-U.S. persons abroad</p> <p>2 in bulk collection scenarios. I thought that was a</p> <p>3 place to look.</p> <p>4 This issue will continue to be debated.</p> <p>5 Our report is one contribution to that. I think</p> <p>6 the Board will continue to be engaged on that</p> <p>7 issue, and I think there are a variety of ways in</p> <p>8 addition to those spelled out in the two separate</p> <p>9 statements by the Board members on that question.</p> <p>10 So again, thank you, Mr. Chairman. Thank</p> <p>11 you to the Board members. We spent a huge amount</p> <p>12 of time on this and debating among ourselves and</p> <p>13 the product is found in this unanimous report,</p> <p>14 which I do urge you all to read, just don't go for</p> <p>15 the headline, dig in on this report. It's, I</p> <p>16 think, a remarkable report.</p> <p>17 MR. MEDINE: Based on the Board's review</p> <p>18 of the Section 702 program operated under the</p> <p>19 Foreign Intelligence Surveillance Act, I now move</p> <p>20 that the Board approve its report and</p> <p>21 recommendations. All in favor say aye.</p> <p>22 (Aye)</p>

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<p>1 MR. MEDINE: The vote is unanimous and the</p> <p>2 report is now officially approved by the Board.</p> <p>3 I also wanted to indicate, as I mentioned</p> <p>4 earlier, that the Board will be holding a public</p> <p>5 meeting later this month to vote on the issuance of</p> <p>6 its semiannual report, to discuss the Board's</p> <p>7 short-term agenda and to seek public input on the</p> <p>8 Board's medium and long-term agenda.</p> <p>9 I now move that the Board approve the</p> <p>10 publication in the Federal Register of a notice</p> <p>11 announcing that meeting to be held on July 23rd at</p> <p>12 1:00 p.m. All in favor say aye.</p> <p>13 (Aye)</p> <p>14 MR. MEDINE: The vote is unanimous and the</p> <p>15 Federal Register notice for the July 23rd meeting</p> <p>16 will be published.</p> <p>17 The Board's activities for the day are now</p> <p>18 complete. The Board encourages all those who are</p> <p>19 interested in reviewing the report, as Mr. Dempsey</p> <p>20 said, to go to www.pclob.gov where our report can</p> <p>21 be reviewed and downloaded.</p> <p>22 A transcript of today's meeting will also</p>	<p>1 CERTIFICATION</p> <p>2</p> <p>3</p> <p>4 I, LYNNE LIVINGSTON, A Notary Public of</p> <p>5 the State of Maryland, Baltimore County, do hereby</p> <p>6 certify that the proceedings contained herein were</p> <p>7 recorded by me stenographically; that this</p> <p>8 transcript is a true record of the proceedings.</p> <p>9 I further certify that I am not of counsel</p> <p>10 to any of the parties, nor in any way interested in</p> <p>11 the outcome of this action.</p> <p>12 As witness my hand and notarial seal this</p> <p>13 _____ day of _____, 2014.</p> <p>14 _____</p> <p>15 Lynne Livingston</p> <p>16 Notary Public</p> <p>17 My commission expires: December 10, 2014</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 be posted on our website.</p> <p>2 All in favor of adjourning the meeting</p> <p>3 please say aye.</p> <p>4 (Aye)</p> <p>5 MR. MEDINE: Upon receiving unanimous</p> <p>6 consent to adjourn, we are now adjourned. The time</p> <p>7 is 10:35. Thank you.</p> <p>8 (Whereupon, at 10:35 a.m., the meeting was</p> <p>9 adjourned.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	

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