

Congress of the United States

Washington, D.C. 20515

December 19, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Attorney General Holder,

Congressional oversight depends on truthful testimony—witnesses cannot be allowed to lie to Congress. Accordingly, we request you investigate Director of National Intelligence James Clapper's "erroneous" statements to the Senate Select Committee on Intelligence earlier this year.

At a March 12, 2013 Committee hearing, Senator Ron Wyden asked, "Does the N.S.A. collect any type of data at all on millions or hundreds of millions of Americans?" Director Clapper answered, "No, Sir." Wyden pressed, "It does not?" Clapper replied, "There are cases where they could inadvertently perhaps collect, but not wittingly."^[1]

Senator Wyden had warned Director Clapper prior to the hearing that he would ask the question. Following the hearing, Wyden privately offered Clapper an opportunity to correct the record. Clapper declined. Four months later, in June 2013, after the Snowden leaks publicly exposed Clapper's testimony as false, Clapper finally retracted his remarks. Clapper wrote, "My response was clearly erroneous — for which I apologize."^[2]

Senator Dianne Feinstein, who as chair of the Intelligence Committee knew Clapper's testimony was false, told the *New Yorker* she "was startled by the answer."^[3] Senator Wyden said, "[t]he answer was obviously misleading, false."^[4]

18 U.S.C. § 1001 makes it a crime to "knowingly and willfully" make any "materially false" statement in the course of any "investigation or review, conducted pursuant to the authority of any committee."^[5] One of the hallmarks of American democracy is that no one is above the law. In 1990, National Security Advisor John Poindexter was charged and convicted under 18 U.S.C. § 1001 for lying to Congress about the Iran Contra affair.^[6] In 2011, the D.C. Circuit upheld the conviction of David Safavian for false statements to the Senate Indian Affairs Committee while he was Chief of Staff of the General Services Administration administrator. Vice President Cheney's Chief of Staff Scooter Libby was convicted under 18 U.S.C. § 1001. Martha Stewart was jailed under the same statute.

^[1] Testimony of Director of National Intelligence James Clapper, *Current and Projected National Security Threats to the United States*, United States Senate Select Committee on Intelligence (March 12, 2013).

^[2] Letter, James Clapper to Senate Intelligence Committee Chairman Dianne Feinstein (June 21, 2013).

^[3] Ryan Lizza, *State of Deception*, the *New Yorker* (December 16, 2013), available at http://www.newyorker.com/reporting/2013/12/16/131216fa_fact_lizza?currentPage=2

^[4] *Id.*

^[5] 18 U.S.C. § 1001.

^[6] The conviction was reversed on other grounds.

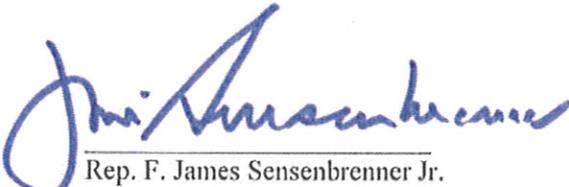
Director Clapper has served his country with distinction, and we have no doubt he believed he was acting in its best interest. Nevertheless, the law is clear. He was asked a question and he was obligated to answer truthfully. He could have declined to answer. He could have offered to answer in a classified setting. He could have corrected himself immediately following the hearing. He did none of these things despite advance warning that the question was coming.

The country's interests are best served when its leaders deal truthfully with its citizens. The mutual sense of good faith it fosters permits compromise and concessions in those cases that warrant it. Director Clapper's willful lie under oath fuels the unhealthy cynicism and distrust that citizens feel toward their government and undermines Congress's ability to perform its Constitutional function.

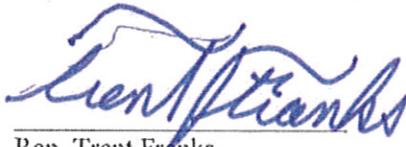
There are differences of opinion about the propriety of the NSA's data collection programs. There can be no disagreement, however, on the basic premise that congressional witnesses must answer truthfully.

This is a matter of the highest priority, and therefore, we respectfully request a response by January 10, 2014.

Sincerely,

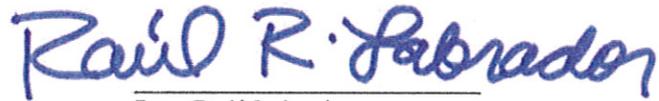

Rep. F. James Sensenbrenner Jr.

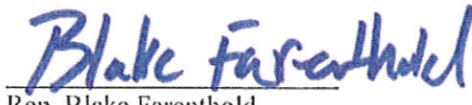

Rep. Darrell Issa


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