

Federalist Society Teleforum
“An Update On Foreign Intelligence Surveillance Act Renewal”

Featuring:

Hon. Bob Goodlatte, Former Congressman, United States House of Representatives

Moderator: Matthew R. A. Heiman, Senior Fellow and Associate Director for Global Security, National Security Institute

Host:

Welcome to the Federalist Society's Practice Group Podcast. The following podcast hosted by the Federalist Society's International and National Security Law Practice Group was recorded on Wednesday, February 26th, 2020 during a live Teleforum conference call held exclusively for Federalist Society members.

Micah Wallen:

Welcome to the Federalist Society's Teleforum conference call. This afternoon's topic is titled An Update On Foreign Intelligence Surveillance Act Renewal. My name is Micah Wallen and I'm the assistant director of Practice Groups at the Federalist Society. As always, please note that all expressions of opinion are those of the experts on today's call.

Micah Wallen:

Today we are fortunate to have with us the honorable Congressman Bob Goodlatte, who's a former Congressman and former Chairman Of The House Judiciary Committee for six years of the United States House Of Representatives. We also have our moderator, Matthew Heiman, who is a senior fellow and Associate Director For Global Security at the National Security Institute. After our speakers give their opening remarks, we will then go to audience Q&A. Thank you all for sharing with us today. Matthew, the floor is yours.

Matthew R. A. Heiman:

Thanks Micah. And Bob, thanks for joining us today. I'm looking forward to this conversation. I thought we'd begin with maybe some background for the benefit of our audience. First piece is just talking about the Foreign Intelligence Surveillance Act and why are we talking about it again? It seems like we talk about this act seemingly every couple of years. And I'm just wondering, Bob, if maybe you could just in a very broad way, kind of explain to our audience why are we talking about this act yet again?

Bob Goodlatte:

So we're talking about this act right now for several reasons. But the primary one is that three provisions of the USA Patriot Act are expiring on March 15th. They were originally set to expire on December 15th but the Congress in all of the matters they were tied up with in the fall didn't get around to it. So they agreed between the House and Senate and the white house to grant a 90 day extension to March 15. And those three provisions are what's called the Roving Wiretap Provision, which deals with the ability of law enforcement to get a wiretap in the modern era that allows for getting more than one device and in more than one jurisdiction. Other words, people in the old days had a telephone in their place of business or their home. That's what you get in order to tap that device. That doesn't work with

smartphones in this modern era. It doesn't work when people are changing phones and phone numbers rapidly. So that's an important provision that I think there's not universal support, but a lot of support for reauthorizing.

Bob Goodlatte:

The second one is called the Lone Wolf Provision. That's a provision that's designed to aid law enforcement in the investigation of individuals who are not engaged in, no evidence of their being engaged in a conspiracy that would make them a part of a terrorist organization since it's only one individual. To my knowledge, that provision has never been used. In any event, it is controversial with some but not with most. And the organization that I represent called The Project For Privacy And Surveillance Accountability is fine with the reauthorization of that probation as well.

Bob Goodlatte:

The third one is called Section 115 Business Records. And this is the one that generates quite a lot of controversy because business records as people know them have changed very dramatically over the last couple of decades. Today, virtually anything that you store with a third party is considered by law enforcement, by the FBI and by others, to be a business record that they can gain access to without a warrant. While that may have been acceptable in times past, today it includes everything from the DNA you send to ancestry.com to your Ring video doorbell, your Google searches and the list goes on and on. Things that are stored with third parties that people I don't think even contemplate as being business records. As the public becomes more aware of this, I think there's a strong desire to impose some new restrictions on that.

Bob Goodlatte:

All of that is overlaid by things that occurred over the last couple of years. First of all, you have the whole investigation by the Federal Bureau into people involved with the Donald Trump reelection campaign in 2016 and a lot of issues coming out of that, including the report by the Department Of Justice Inspector General Horowitz, who found a number of errors, some would call them very serious errors. Secondly, you have a response by the FISA court, which I think was alarmed by how that matter was handled and the revelation that they were not provided all the information they should have been provided. Therefore, there is a strong demand for reforms of the court as well.

Bob Goodlatte:

Now, in that, the director of the FBI, Christopher Ray, and the attorney general Bill Barr would like to see these programs simply reauthorized. Dan Coats, when he was leaving The White House as the National Director Of National Security, he called for a permanent reauthorization. The Congress is in a very different place and while there's not agreement on exactly how to reform them, there is widespread bipartisan agreement that these programs need to be reformed. And while we're happy that Director Ray has instituted some reforms in the department and we're happy that the court is taking a new look at this as well, we think there's a need for legislative reform as well.

Matthew R. A. Heiman:

Thanks for the summary, Bob. You sort of put a lot on the table. So let's maybe unpack a little bit of that. First if we talk about Section 215 and in particular the Business Records Provision, and I'll come back to Carter Page because I think we can both agree, and just for the sake of the audience, I've got a little experience in this area. I spent three years at the Department Of Justice working on FISA matters. And

so just so we're in agreement, I think we both agree that Section 215 and calls for reform of that, that is a separate issue, wouldn't you agree, from what happened with Carter Page? In other words, there wasn't a Section 215 issue in the Carter Page applications. There were other very serious concerns there, but we agree these are two separate pieces of the FISA puzzle. Is that fair?

Bob Goodlatte:

I think that is largely a fair description. But as you know, the opportunity for the Congress to be in a situation where they have some leverage because programs are expiring is a time when they look at what other reforms they'd like to make. And there are many in the Congress and outside the Congress who would like to see other reforms to FISA, particularly section 702 of the law, which did apply to Carter Page. But that, as you know, is not up for reauthorization until 2023.

Matthew R. A. Heiman:

Right. Well, maybe before we get into 215, I just want to ask a question. And that is with regard to many of these provisions, whether we're talking 702, section 215, FISA seems to be in a special space when it comes to Congress routinely insisting on these sunset provisions in this law, which is why we talk about different parts of FISA seemingly every couple of years. It's almost like the winter and summer Olympics. It's always coming around the corner, some renewal period. Is there something about FISA, Bob, that in your mind and in the mind of your former colleagues warrants the imposition of these sunsets separate apart from all the other laws we have that authorize different intelligence activities?

Bob Goodlatte:

Yeah. I think where it comes from is that this process necessarily is not transparent. In other words, on a day to day basis, we expect the FISA court to be reviewing and in the large majority of cases approving applications by the intelligence community, by the department of justice, by the FBI to conduct surveillance on foreign nationals.

Bob Goodlatte:

However, because foreign nationals are often communicating with US citizens or it's not known where the initial information that they detained, whether the person is a US citizen or not, there's no real process here for an advocate on the part of the individual being surveilled, take Carter Page, to have their rights, their fourth amendment and other rights to protected in the court. And so I think there is an ongoing desire to continue to do oversight of this process. There are some who argue that the process shouldn't exist at all. There are some who argue that it's even unconstitutional. But I think it's a good process that injects an article three judge into this process to look at it, but it's still not the usual adversarial process that people are used to seeing in our court system where there's an advocate on each side. And therefore there's a constant effort to make sure that this is going correctly.

Bob Goodlatte:

And then things pop up on a regular basis. You had the Edward Snowden revelations of several years ago that led to some reforms back then. It ended what was called the Telephone Metadata. In fact, it ended all metadata gathering by the intelligence community under a law that was adopted back then. And now we have new revelations and new reports from Inspector General Horowitz that indicates that because you didn't have any advocate in the court representing the interests, not of the individual being surveilled because they're not entitled to have an attorney in a [inaudible 00:09:39] of necessity because it's about gathering intelligence is secret, but the American people are entitled to have someone there

making sure their fourth amendment rights are protected. And in this case there was no such thing and lots of things went off the rails as a result of that.

Bob Goodlatte:

That is separate from Section 215, which I would argue needs reform simply because business records as we know them today are extremely different than they were say 20 years ago when most of the information that is now a business record either didn't exist at all or it was kept by individuals in their homes and not stored by a third party like a bank or a hospital.

Matthew R. A. Heiman:

Yeah. I want to come back to the point you were making about not having an advocate for the foreign intelligence surveillance court on behalf of those that might be sort of caught up in the surveillance, but I did want to get your concerns around Section 215 and in particular the Business Records Provision. Can you talk a little bit more about what those specific concerns are in terms of the FBI's ability to get a warrant from the court to obtain business records that might be relevant, either in an investigation of a foreign country or something related to international terrorism or something related to clandestine intelligence activities? Those are the criteria that the FBI has to show before it gets this business records warrants. So can you talk a little bit about what your concerns are in that space?

Bob Goodlatte:

Well, first of all, when it comes to surveilling activities by foreign government activities, by international terrorist organizations, so on, I have little concerns. There are some who would like to apply greater standards even in those cases. My concerns are regarding protection of United States citizens. And that's also the interest of PPSA, the Project For Privacy And Surveillance Accountability. They want to have greater assurance that the standards of the fourth amendment are being fairly and properly applied when it comes to the government getting access to information about them that's held by a third party. And in the old days if it were your number that you dialed or it was some information regarding a bank account or a hotel that you stayed at, it was controversial but not nearly as controversial as it is today where law enforcement with a lower standard can get access to almost anything about everyone's personal lives without having to go through the full warrant process to obtain that.

Bob Goodlatte:

So we keep pushing for reforms. Will I think see some reforms come out of this process, but there will probably be still called for more reform of that simply because of the nature of how business records have changed. And the private sector has responded to this very clearly as well. Again, companies like Google and Facebook, they now, when they're approached by a law enforcement for information, they're now insisting that if you want that information from us, you need to produce a warrant. And on separate tracks, not Section 215, but on separate tracks, this case law is evolving. There's now a circuit court opinion that basically agrees that when you're dealing with electronic communications, that you need to get a warrant or Facebook or Google are not going to provide that information to you.

Bob Goodlatte:

That's not recognized by the Department Of Justice, but there's never been an appeal of that decision to the US Supreme Court. Congress has made it very clear that they agree with the position of Facebook and Google and have twice passed the reform of the Electronic Communications Privacy Act, a 1980s

law. Communications have changed a little bit since the 1980s. And twice the House has unanimously passed reforms that have never made it all the way through the US Senate to address another aspect of it. So this is an effort to apply that same kind of standard to Section 215.

Matthew R. A. Heiman:

And so just to kind of fill in some of the details as you talk about this, are you advocating for the FBI having to show a probable cause standard that is identical to what they would have to show in the criminal context if they were wanting to collect records related to an international terrorism investigation that involved a US person? Is that the position you're taking?

Bob Goodlatte:

That's certainly a position that I would take. I don't expect to see that. That to me would be an ideal result here because if you're talking about a US citizen, I think you need to have a higher standard. And again, the investigations that are conducted in a matter like the Trump campaign raise a whole series of questions about what standard they are having to abide by. So while I don't think I'll see that, there have been discussion about amendments being offered to accomplish that in this process. I do think that would be a good solution, but there are other things that can be done short of that that would also help, in my opinion, improve the standard by which they can get information under Section 215.

Matthew R. A. Heiman:

And so when you take that position, and you know this as well as I do, when the Supreme Court has looked at executive authority to collect foreign intelligence over the years, there's not a ton of cases on this topic, but to the extent that there are cases, the court has always sort of been careful to say, "In the context of collecting foreign intelligence information, we don't take the view that the fourth amendment applies the same way it does to a US person that might be the subject of what you call a Title III Criminal Wiretap Order." I'm hearing you say you'd like those standards to be the same. Is it your view that the Supreme Court today might take a different position than it has historically on the Constitutional requirements around that?

Bob Goodlatte:

I don't know whether they would or not, but I do know that if Congress took legislative action in that regard, the court would pay attention to that. If the Congress limited the ability of law enforcement and the intelligence community to go through the massive amounts of information that are now held by third parties about people, I think you'd see that. And there are over time some changes in interpretation of the law. I think you will see language in the bill introduced by-

PART 1 OF 3 ENDS [00:16:04]

Chairman Goodlatte:

I think you will see language in the bill introduced by Chairman Nadler, Chairman of the Judiciary Committee to attempt to... I'm looking for the language here right now. For example, there's a proposal to prohibit the use of the business records provision to obtain geolocation information. There are other similar roles and I think there's language in here that says that if it's otherwise prohibited in other sections of the law that can't use it in section 2.15 as well.

Matthew R. A. Heiman:

It seems to me that as we hear the critics, and I know you count yourself among them, although I know your criticism is certainly different from other groups, it seems that the general push among a lot of critics is to sort of level the approach that we take to collection of information in the criminal context with the approach that we take in the intelligence context. And I'm just wondering as we kind of think back to 9/11, which is almost 19 years ago, I think in the wake of that event there was a feeling that the critical risk that terrorism and spying and nation threats posed to the US should be treated differently from criminal information collection. I'm just wondering, is it your view that maybe that threat has receded or is it your view that we got it wrong back then and only now are we trying to get to a more balanced point?

Chairman Goodlatte:

No, it's neither one of those two Matthew, it's the fact that what constitutes information about people has changed so dramatically in terms of what is held by a third party. If it's information that they're seeking is held by the individual as opposed to by a third party, don't think there's any question that that standard would apply. So the issue now becomes if in fact you can get virtually anything about anyone by going to a third party to get it, rather than going directly to the individual, then the matter needs to be reviewed and I think a higher standard needs to be applied. And there's obviously need to be exceptions for emergencies. There need to be exceptions when you can't tell whether the person's a US citizen. There need to be exceptions where time is of the essence, sort of like an emergency.

Chairman Goodlatte:

But clearly the abuse that has taken place in terms of people gathering information and we're now waiting to see an audit by Inspector General Horowitz, which we may not see for a while, and I think when that occurs we'll see another round of debate on this issue, calls for a stricter standard than to simply say that because the information is held by a third party, we get access to it with a not very high threshold for getting the information.

Matthew R. A. Heiman:

Let's change gears and come back to something you mentioned a moment ago and I know it's something that your organization, The Project for Privacy and Surveillance Accountability, has argued for is one of the criticisms is that the amicus program that exists within the foreign surveillance court is insufficient or inadequate, and you commented on that a couple of minutes ago. Maybe best for the audience to talk about how it works today and how you'd like to see it change.

Chairman Goodlatte:

Sure. Well, first of all, this amicus program grew out of the Edward Snowden revelations. In that case, the court seemed to indicate to law makers at that time that they felt like they didn't necessarily have the technical expertise to respond to an intelligence community request for the kind of massive surveillance program that was put in place with the gathering of metadata, which included gathering huge quantities of information about telephone numbers dialed and telephone calls received and stored in a large server farm. Chairman Sensenbrenner, who was chairman at the time the USA Patriot Act was written in the wake of 9/11 and good things came out of that, like the roving wiretap provision, for example.

Chairman Goodlatte:

We both agreed... I was chairman when the Snowden revelations occurred. We both agreed that we had never intended to allow the intelligence community to gather and store huge quantities of information about virtually all Americans, and so we looked at the situation. It was apparent that the court needed some help in this area. Our original proposal was actually broader than just that, but the law was changed to give the court, the opportunity to call upon experts who would come in, they'd have security clearances, they would be friends of the court. They would not be representing any individual. They would simply be representing the interests of the American people, but they could advise the court, well, the way that the intelligence community says they have to gather this information is not correct. There are other ways to do it, which in fact was the case back then.

Chairman Goodlatte:

And there have been lots of desire since then to have an amici in more of these cases. And the Carter Page case is a good example of that. That had nothing to do with the technical capabilities of intelligence gathering that had everything to do with should the court have approved the warrant application, the FISA application, submitted and then renewed three times after that for the surveillance of Carter Page. It's my belief, it's the opinion of a lot of people that if there had been an amicus in the court, advising the judge in that case that the 17 errors that were later, much later identified by Michael Horowitz, probably many of them would have been exposed at the time and the court probably would not have approved surveillance.

Chairman Goodlatte:

Just to use one example, an attorney with the Department of Justice apparently change one word in the evidence that's submitted to the court to make it appear that Carter Page was not cooperating with the intelligence community, when in fact he was cooperating with them and I think that would have raised a great deal of concern on the part of the court as to why they need to surveil this individual who was cooperating with the intelligence community. So that's why these provision should be expanded.

Matthew R. A. Heiman:

As a former DOJ attorney, I was horrified by what I read in the Inspector General's report, and to be fair, I think that attorney you're referring to was an FBI lawyer, not a DOJ attorney, but you're point is-

Chairman Goodlatte:

Fair enough.

Matthew R. A. Heiman:

... it's still taken and it had to do with changing some wording in an email that was attached to one of the applications, but all your other facts were correct. I'm wondering as I think about oversight for this process, we have, obviously Congress plays an important role, so those that run these FISA programs are answerable to your former committee, the Judiciary Committee, as well as the permanent select committee on intelligence. Those are the House side committees and then there are the two counterparts on the Senate side. We've got the PCLOB, the Civil Liberties and Oversight Board, which is sort of a quasi-independent, a creature of the executive branch that looks in on it. There are inspector generals like Michael Horowitz. There's executive branch oversight and then obviously the court is playing a role in oversight.

Matthew R. A. Heiman:

And I'm just wondering, it's a lot of layers of oversight. You have all three branches involved in this process and yet we still see these breakdowns in terms of the execution of these authorities and I know in the late 70s when the original FISA was proposed and being debated in Congress, Judge Bork wrote an article saying he was concerned that injecting all these different actors into the process would ultimately undermine accountability of that executive branch official in this case, the Attorney General, because everyone can kind of point to the other as having some responsibility, but nobody truly owning it and sort of being on point to answer for it. I'm just wondering in your view and having sat where you sat for the number of years you have, is there any reason to think that maybe Judge Bork was right because we so dispersed oversight of this process that no one really owns it and I'm just wondering sort of is there any validity to that charge?

Chairman Goodlatte:

Well, that's the position that's still taken by some people and from very disparate points of view about the fourth amendment and about privacy rights that the FISA court shouldn't exist at all. I don't think that's a good idea. And I'll tell you my perspective comes from having been Chairman of the Judiciary Committee. You're right, there are two committees in the House that have oversight responsibility for this court. One is the Intelligence Committee because of its intelligence gathering that is the primary purpose of the court reviewing these things. But did Judiciary Committee actually has primary jurisdiction over the laws that were written that are carried out by the court and by the court itself, just because of our jurisdiction over article three issues.

Chairman Goodlatte:

And my effort to conduct oversight following the 2016 election for two years, along with Trey Gowdy, who was Chairman of the Oversight Investigations Committee at the same time, and requesting documents was like pulling teeth. I mean, I think we got more cooperation from the Department of Justice and the FBI than most congresses get. I'll give them credit for that. But it was still very difficult to see everything we needed to see. And in fact, we didn't see everything we needed to see. And sometimes it was because well, we're going to provide that to the people we want to provide it to in the Congress and not to the committee of primary jurisdiction.

Chairman Goodlatte:

Then you overlay that with the fact that you have different people serving these roles as chairman of committees could take different attitudes, have a very different attitude toward what their oversight responsibilities are. So it's, in my opinion, very haphazard for the Congress on a day to day basis to conduct the kind of oversight that's necessary to fulfill our constitutional responsibility. So I came to the conclusion, and still have the opinion, that having a judge look at each case on a case by case basis is a good thing.

Chairman Goodlatte:

But it is entirely a concern that the volume, and I think there are many thousands of cases that go through that court each year, that the volume may result in not much time being spent on each case. So it's our thought that if you highlighted certain types of cases and said that the presumption that the judge still have discretion about whether they need an amicus, an amici present in the court. The fact of the matter is if they have that discretion but have to say, "No, we're not going to have one," it's more likely we're going to see that probation use. I think in the last several years since it went into effect, it's only been used maybe a dozen times.

Chairman Goodlatte:

So the fact of the matter is there are more cases, including in my opinion the Carter Page case, an investigation of someone who was on the periphery of a presidential campaign, calls for somebody to be in the court asking questions and offering legal opinions to the court separate and apart from the government, which is seeking to get the order to do the surveillance. I think that reform is a better way to go than to eliminate the court.

Matthew R. A. Heiman:

Your argument would be making it sort of, the default would be the court gets an amicus unless it affirmatively says, "No, we don't need it for this type of case or this case in particular."

Chairman Goodlatte:

Yeah. Ideally it would apply in cases where there's a known US person involved. There are a lot of cases where you don't know and a lot of cases where you do know that there's not a US citizen person, but there is a small minority of cases but certainly a bigger subset than the dozen or so cases where an amici's has been appointed in the past where you, I think, should have court looking at it and saying, "Do we need an amici in this case?" Unless they say, "No, we don't," then an amici is brought in.

Chairman Goodlatte:

And there would be, of course, exceptions for emergency. There would be exceptions for circumstances where in the opinion in the court matters our routine that would not require that. But I think there could be a lot of increased trust in this process if the court were to use another party who is adversarial to the government and a friend to the court that would raise questions, like the Carter Page example where I think many of those 17 errors that were uncovered by the Inspector General would have likely been uncovered if you had somebody in there doing that. And even the Carter Page case, if you read as I was able to do. It was classified, but if you read the entire application, you're not necessarily going to uncover that simply by reading that application. There are questions that are raised in other places. You need to look to find out whether what's being represented to the court is indeed accurate.

Matthew R. A. Heiman:

And I'm just wondering, do you see any disconnect between having that model where the amicus or the amici is acting for the court in the context of a FISA warrant request and the absence of that and the title three requests in a criminal investigation? In other words, there's no amicus process to get a title three wiretap. From my own perspective, it seems odd that we would make the standard higher in an inborn intelligence collection effort than we would in a criminal context.

Chairman Goodlatte:

Well when it comes time to reviewing other laws may see that applied in other places, but the fact of the matter is in a criminal case, and this is another issue that comes up here in the legislation that and the amendments being offered today and the legislation that's before the House Judiciary Committee. In a criminal case, the appropriateness of the wiretap is eventually going to be revealed. In an intelligence case, there's no requirement that anybody ever find out that they were surveilled. There's a proposal to change that in this law as well.

Matthew R. A. Heiman:

Again, drawing on my own experience. I think in a lot of cases it's probably a good thing that these matters are kept confidential, because as you well know, sometimes people are targeted for investigations, be they criminal or intelligence, and ultimately it's determine that there is no basis to pursue them further or they're not the center of action for whatever nefarious activity may have gone on and the fact that their names are kept confidential is, in those cases, may well be a good thing because they don't live with that taint for the rest of their lives of having once been targeted by the government. I'm just wondering are the benefits of the confidentiality of the process?

Chairman Goodlatte:

There are ways to let an individual know without it being made public that they were, and then they can choose themselves whether they want to make an issue of that. But again, I would only apply this standard to US citizens. I'm certainly happy... I'm sure members of Congress are happy to look at exceptions and limitations on when it would apply.

Chairman Goodlatte:

But the idea that you can go into the court, nobody is asking any questions other than the judge and seek to get whatever it is you want and then no one ever find out is not a good thing. So I'm pleased that the Inspector General is conducting an audit of more of these cases so we don't base it just on Carter Page. But I do believe that to assure the trust of the American people in our judicial system and in our law enforcement system, it's important that some greater accountability be imposed in a situation where it's admittedly difficult to impose it because of the secretive nature in which this court has to operate.

Matthew R. A. Heiman:

Well, with that, I think this might be a good time to open it up for questions from our audience. So we have two questions popping in the lines right away. So without further ado, we'll go ahead and move to that first question.

Mike Daugherty:

Good afternoon, Chairman Goodlatte. We last met at [inaudible 00:31:55] I believe. This is Mike Daugherty, CE of LabMD, who worked with Darrel Issa a lot on the data, FTC Tiversa matter. I was curious in the matter of.

PART 2 OF 3 ENDS [00:32:04]

Speaker 2:

FTC diverse in matter. I was curious in the matter of Carter Page, do you ever see all this background machination going on with the Pfizer Court and this death by a thousand cuts of what these people are doing, abusing their discretion and how they file things, of any sort of civil type of accountability for this, even though it's cloaked under an investigation type of shroud for what they really were doing so that there would be a Federal Tort Claims Act type of remediation or something to call this for what it is and get the practice stopped?

Bob Goodlatte:

That's a great question, and Matthew, you may know more about this than I do, but my understanding is that Carter Page himself has brought an action. I don't know what's under the Federal Tort Claims Act or what, but I think that very issue may be being litigated right now.

Matthew R. A. Heiman:

Yeah, he has brought a lawsuit and I don't know the exact counts in the lawsuit or what it's based on, but I think his lawsuit will be interesting. I'm just wondering though, to build on that point, clearly in the Carter Page situation, we had an FBI lawyer and other elements of the FBI just clearly didn't do the job. Not only didn't do their job, but affirmatively made misrepresentations to the court. If you were back in Congress, Bob, would you be thinking about maybe beefing up sanctions and punishment for civil servants that engage in this kind of behavior?

Bob Goodlatte:

Well, I think you're going to see today the bill offered by chairman Nadler, the democratic chairman of the judiciary committee today. I don't think there is anything there with regard to that, but I do think you're going to see amendments from some of the members of the committee, particularly Republican members, who do look at doing that. And I think that as long as they don't go overboard, that that's appropriate. Obviously, there needs to be willfulness standards, there needs to be proof that this wasn't simply, as you described earlier, going down an alley that proved to be a blind alley and then pulling back up and going in a different direction. But if there's deliberate changing of evidence or some of the other "errors" that were identified by inspector Horowitz, then I think there should be some liability, at least on the part of the government.

Speaker 3:

I think Carter sued the DNC. I don't think he's going after [inaudible 00:34:24] the government.

Bob Goodlatte:

I don't know the details of that, but I will say that I think there will be a debate this afternoon. The markup starts at 2:30 and you can stream it on the House Judiciary Committee's website and I think there'll be a debate on that very issue.

Matthew R. A. Heiman:

We'll go ahead and move to the next caller.

Carter Page:

Hi, it's actually Carter page. So, good timing in the queue here. Actually on the question of FTCA. I think it really speaks to the point that Congressman Goodlatte talked about in terms of Amicus, et cetera. The issue has been, and similar to what then chairman Goodlatte had to deal with back in the day in 2018 and the months before, was just complete liars at DOJ. There were many false pleadings related to a case that I had, an initial FTCA case. There's all kinds of foot dragging going on. And so, I think generally speaking front page of the Wall Street Journal today is talking about the attorney general promising "New quality control mechanisms," but it's a garbage in garbage out situation.

Carter Page:

Going back to the idea about an Amicus, I think we have gone through this with this David Chris character who's a [inaudible 00:35:41] blogger and a complete anti-Trump guy. So, it's just complete disconnect from reality. But let me just ask a quick related question and I think this goes back to what you've been talking about with respect to Congress taking a more proactive role. And I was wondering, the concept I've been working on is similar to what we've seen during the Reagan administration, what I would call Civil Rights Act of 2020, which is the follow up to the Civil Liberties Act of 1988, which was a follow up on the [inaudible 00:36:16] and reparations for Japanese Americans who had their civil liberties violated.

Carter Page:

And the problem is just the complete lack of any accountability within DOJ. I was wondering whether you think it might, in terms of actually writing these wrongs against President Trump, so many of his supporters were just in complete disconnect and lack of justice thus far. Do you think any proactive steps by Congress addressing the election interference of 2016 more broadly might be a step in the right direction in terms of fixing this massive problem, which has really not been fully addressed?

Carter Page:

And again, I think just generally speaking, yeah, there was a lot of bad stuff in the IG report, what I call the Horowitz Dossier, but it's really very incomplete. What actually happened is much worse. So, I'm just curious of more broadly looking at it from your vantage point of having served on the committee and any possibility. And it may actually be outside of judiciary's jurisdiction, but steps to address this election interference, which happened.

Bob Goodlatte:

You're thinking in terms of rather than a private right of action, actually some kind of legislation that would provide reparations for you and others [crosstalk 00:37:41] had their rights abused.

Carter Page:

Well, look, the last four years have just... And whether it's General Flynn or countless other people, and there's various litigation going on about that. And I think even the president had said this over the last week or so, possibly him filing some lawsuits related to these criminal activities. So, I think the problem is we have already been through so much in terms of... Again, the quote from your introduction about death by a thousand cuts, when you've been raked over the coals for 40 plus hours by the FBI, the Muller Democrats, and all these other cast of characters, not including Senator Warner in Virginia and his lovely committee Senate intelligence, who, by the way, is also leaking a lot of these things, their former security director who's now a convicted felon related to the disinformation campaign.

Carter Page:

So, yeah, I think reparations... We've already been through so much. I think going through and just thinking through the scope of litigation and just how many more years it would take. And here's the other problem, is Attorney General Barr, if he makes one statement, you look at what happened with the sentencing for Stone. He just had a huge backlash. So, any minor steps to create some fair justice system in an article two context have been highly limited to say the least.

Speaker 2:

Congressman Goodlatte, you think there's a political willingness or appetite in Congress to take broader steps to right the wrongs that the caller was just identifying?

Bob Goodlatte:

Right now, I think his recourse is going to be primarily through the courts and maybe there'll be an effort here, this legislative process to try to expand the rights in the future. But with regard to these individuals, I think more has to take place and maybe more time has to elapse before Congress fully recognizes the extent of the damage that some people went through in this process, like Mr. Page himself, and getting that passed through the Congress right now would be difficult to say the least.

Bob Goodlatte:

However, I am hopeful that we're going to see more from the attorney general and from US Attorney Durham, whose investigation is ongoing. That's an investigation more of a criminal nature than it is with regard to additional civil proceedings or civil relief, if you will. But nonetheless, I think that all helps to assure the American people that this is going to be completely examined and I hope that when all the facts are out, those people who violated the civil liberties of people and who may have broken the law are shown the justice that they deserve.

Matthew R. A. Heiman:

There is another question in the queue.

Maryann Grail:

This is Maryann Grail, an attorney in Washington. I actually practiced before the Pfizer Court for about a year. I was very interested in the PPSA. I just went online and checked it out. Am I correct that there is a proposal on the table or that PPSA is advocating the introduction of a special master into this process?

Bob Goodlatte:

I'm not aware of that. I think I would be if PPSA were involved, and if someone else is pushing for that, I'm not aware of it. But that would be a way to look at the complaint just raised by Mr. Page, that if the Congress at some point concluded that action needed to be taken to redress the circumstances some people found themselves in with their reputations damaged, with enormous legal costs for where they did nothing wrong, I think that that's, again, going to have to await time and revelation of more details that we'll see maybe with further action taken by the inspector general and with the investigation by Mr. Durham.

Matthew R. A. Heiman:

We did have another question pop up. We'll go ahead and move to that next caller.

Sam Wright:

Yes. Good morning. I'm Sam Wright, an attorney. I live in Texas now. I just looked up the Federal Tort Claims Act. There's was an exclusion of any kind of claim arising out of false imprisonment, false arrest, et cetera. But I just realized that that was amended in 1974 to allow claims under the Federal Tort Claims Act for that kind of claim. So, maybe that's the proper remedy, the proper forum for Mr. Page's complaint.

Speaker 2:

It's not my specialty either, but Mr. Page is still listening. He may want to relay that negative information to his counsel.

Matthew R. A. Heiman:

Another question just popped up. So, we'll go ahead and move to that caller.

Carter Page:

Hi, it's Carter Page. Just on that last point real quick, there is also another clause in terms of the exceptions for FTCA, and that is abuse of process, which I think we have quite clear evidence of abuse of process. But again, this is another example where similar to the Amicus where just garbage in, garbage out, wrong information pleaded by the US Department of Justice leads to these continued problems. So, unfortunately, there hasn't been not much to address that as of yet.

Matthew R. A. Heiman:

All right, thank you. Thanks for your call. We have arrived at the end of the questions. So, I will toss it back over to you.

Speaker 2:

Great. Well, Bob Goodlatte, thank you so much for the conversation. It is certainly timely. As you mentioned, the markup's happening this afternoon. I think for folks that are watching this issue closely, there's going to be a flurry of activity between now and the 15th as we approach this deadline. And Bob, I don't know if you have any last words you want to share with us before we pray?

Bob Goodlatte:

Yeah, I think it's important, and we've had both you and one of our callers done work in the Department of Justice. I think it's important to say that I think, and I'm sure you agree, that the overwhelming majority of people who work the Department of Justice, in the Federal Bureau of Investigation, are great, outstanding people that work hard every day to keep us safe, to fight crime, to investigate terrorist attacks, keep us safe. This is not about them, and we have to be careful as we do this to make sure that we don't impede their ability to do their jobs correctly.

Bob Goodlatte:

This is about the kind of abuse that we've seen here in recent times and making sure that those kinds of things don't happen again in an environment where it's difficult to know what's going on because of the very nature of intelligence gathering. So, I think the reforms that we're proposing, the reforms you'll see debated this afternoon are very well intentioned and I'm hoping that some good product comes out of it, but at the same time, that we are able to continue to allow law enforcement and the intelligence community to gather the information they need to fight crime and keep us safe and prevent terrorist attacks.

Speaker 2:

Yeah, I will agree with you in part in the sense that I share your sentiments about the men and women that do this work. They are, by and large, patriots that work very hard, that care very much about the national security of the country. And so, I agree with you, it is not about them. To the extent that people

such as yourself are proposing reforms, I'm just very concerned to the extent that reforms are put in place, we don't put reforms in that compromise our ability to collect this information because, as you well know, having sat where you sat, Bob, some of the information that's collected through this process is absolutely vital to national security, whether we're talking about international terrorism or competition from countries like Russia and China and Iran.

Speaker 2:

This information has been incredibly valuable over the years and I would hate for us and our leadership in Congress to do anything that would jeopardize our ability to get the information we need when we need it. So, I hope that's also on everyone's mind as we work our way through this process.

Bob Goodlatte:

And I think our goal should be to have, and I think we can achieve a goal of having a very high level of protection, of national security protection, and a very high level of exercising of our civil liberties. That is what the Congress will struggle with here in the next few weeks and months on this issue.

Matthew R. A. Heiman:

Well, that's a great place to stop. Thanks again to Bob Goodlatte for joining us today. And with that, Micah, I will turn it over to you to close this out.

Micah:

All right. Well, on behalf of the Federal Society, I'd like to thank both of our experts for the benefit of their valuable time and expertise today. We welcome listener feedback by email at info@fedsoc.org. Thank you all for joining us. We are adjourned.

Speaker 4:

Thank you for listening. We hope you enjoyed this Practice Group podcast. For materials related to this podcast and other Federal Society multimedia, please visit the Federal Society's website at fedsoc.org/multimedia.

PART 3 OF 3 ENDS [00:46:51]