

DID OBAMA FLIP-FLOP ON FISA TO PROTECT JOHN BRENNAN?

Aside from his career of moderate political stances, the earliest clue that progressives were going to be disappointed with Barack Obama came last July, when he flip-flopped on his previous promises to oppose retroactive immunity on FISA. Yesterday's IG Report may reveal the source of Obama's flip-flop and subsequent reversal of his stance that Bush's domestic surveillance program was illegal: John Brennan.

Brennan, you see, appears to have been a key figure in the illegal surveillance program from at least May 2003 through December 2005—precisely the period when the program was such an object of controversy internally.

While it was apparent from the Scope of the IG Report released in March and the various declarations in support of State Secrets that the Intelligence Community provided threat assessments that were used in the program, the IG Report provides a great deal of new detail on this process and—more importantly—a chronology describing which element of the IC conducted the threat assessments. The chronology is:

October 2001 to May 2003: DCI Chief of Staff (then John Moseman)

May 2003 to August 2004: Terrorist Threat Integration Center

August 2004 to April 2005: National CounterTerrorism Center

April 2005 to January 2007: ODNI

Now look at John Brennan's career path (these dates are somewhat vague, but accurate to the best of my knowledge):

March 2001 to May 2003: Deputy Executive

Director, CIA

May 2003 to August 2004: Director,
Terrorist Threat Integration Center

August 2004 to December 2005: Interim
Director, National CounterTerrorism
Center (including ODNI after April 2005)

While Spencer is right that John Brennan was **not** the guy who compiled these assessments when the program first began (that is, John Brennan was no longer DCI COS), Brennan appears to have overseen the units that conducted the threat assessments that were a key part of the illegal program from May 2003 at least until August 2004, and possibly up until he left ODNI in December 2005, just days before the NYT broke this story.

For at least a year and possibly two, John Brennan appears to have been the guy inventing "reasonable cause" to wiretap people in the United States. John Brennan was also likely the guy who put together the list of groups considered al Qaeda affiliates (including al-Haramain) that could be wiretapped.

And John Brennan was consulting with candidate Obama last year when Obama flip-flopped.

And John Brennan remains a key national security advisor for Obama as the President has cowardly refused to prosecute a program he himself once called illegal.

Are Obama and Eric Holder refusing to prosecute illegal domestic surveillance because they're protecting a key member of Obama's Administration? Are they sustaining Bush's State Secrets invocations to protect one of their own?

Update: Here's John Brennan in March 2008, aggressively pushing for telecom immunity.

Update: And from an interview with Shane Harris, on reasonable cause to wiretap—precisely what Brennan appears to have overseen.

Brennan: There are many types of scenarios for signals [for example, telephone calls and e-mails] to be accessed. But whenever this happens, there needs to be some substantive predicate, a probable cause, that someone is being targeted appropriately. There is an important issue about timeliness. And even though you can go through the FISA process, particularly when you're dealing with terrorism issues, there needs to be an understanding that intelligence agencies can move quickly if certain predicates are met. We shouldn't be held hostage to a complicated, globalized [information technology] structure that puts up obstacles to that timely collection. I think there are some very, very sensible people on both sides of the partisan divide trying to make this happen. And it's unfortunate that it's become embroiled now in a partisan debate in some quarters. But I think that's expected in any election year, especially one like this.

[snip]

Q: You know that one big debate about FISA is the question of balancing security and privacy and civil liberties. Speaking as someone who has spent your life in counterterrorism, what do the terms "privacy" and "civil liberties" mean to you, and what is that balance?

Brennan: First of all, privacy and civil liberties mean so many different things to different people. There are people on one end of the spectrum that don't want to have any government interference or insight into what you're doing.

To me, I think the government does have the right and the obligation to ensure the security and safety of its citizens.

If there is probable cause, reasonable suspicion, about the involvement of a U.S. person in something, the government needs to have the ability to understand what the nature of that involvement is. The threshold for that type of government access can be high or can be low, and it needs to be somewhere in the middle.

It really gets back to that issue of what is the substantive predicate. ... If we know there's a terrorist overseas that has been involved in activities, but he's also an import-export dealer, and he reaches out to Shane Harris because you happen to be an importer of stuff – you're a U.S. citizen – and we can see there's contact going on there, well, is that sufficient to give us reasonable suspicion that Shane Harris is involved in something? And Shane Harris happens to be in touch with somebody in his neighborhood that has a past record in engagement in some type of things. So there is going to be a judgment call here.