MIKE ROGERS: AS CONFUSED ABOUT TELECOM SURVEILLANCE AS HE IS ABOUT DRONE STRIKES

Congressman Mike Rogers, like most members of the ranking Gang of Four members of the Intelligence Committees, has long made obviously false claims about the drone program, such as that public reports of civilian casualties (which were being misreported in intelligence reports) were overstated.

That's just one of the many reasons I was dubious about this report, claiming that, well … it's not entirely clear what it claimed. Here's the lead two paragraphs:

> A secret U.S. intelligence program to collect emails that is at the heart of an uproar over government surveillance helped foil an Islamist militant plot to bomb the New York City subway system in 2009, U.S. government sources said on Friday.
>
> The sources said Representative Mike Rogers, chairman of the House of Representatives Intelligence Committee, was talking about a plot hatched by Najibullah Zazi, an Afghan-born U.S. resident, when he said on Thursday that such surveillance had helped thwart a significant terrorist plot in recent years.

These paragraphs suggest that we found Najibullah Zazi — pretty clearly the most successful effort to prevent a known terrorist attack since 9/11 — because of one of the programs the Guardian (and WaPo) broke over the last few days.

Some paragraphs down, the piece explains the program in question was the "one that collected email data on foreign intelligence suspects." Which is weird, because we've learned about a program to collect email data on **everyone in the United States**, not "foreign intelligence suspects." And a program to collect a range of telecom content on known foreign intelligence suspects and their associates. Already, Reuters' sources seemed confused.

The next paragraph describes the PRISM program by name.

> The Washington Post and Britain's Guardian newspaper on Thursday published top-secret information from inside NSA that described how the agency gathered masses of email data from prominent Internet firms, including Google, Facebook and Apple under the PRISM program.

And the rest of the report traces what former Agent and now FBI mouthpiece CBS pundit John Miller had to say.

All of that might lead you to believe this is a story reporting that we had foiled Zazi's plot using PRISM, the program that involves the NSA accessing bulk data on everything these foreign targets were doing. But even that is problematic, since Zazi is a US person, whose communications are supposedly excluded from this program.

Then there are the problems with the actual content of this.

Dianne Feinstein, who unlike Rogers, was on the Gang of Four in 2009 and therefore privy to the most comprehensive intelligence, and who is pretty systematic about boasting how the intelligence programs she has approved have netted terrorists, has (as far as I'm aware) never made such a claim. As far as I'm aware, she has never, not even during the FISA Amendments Act extension, boasted that it got

Zazi (she usually vaguely points to a list of 100 people we've caught and vaguely said some of them were caught using FAA). Mind you, DiFi **has** boasted about how central Section 215 was to the ongoing investigation into Zazi several months after he was caught. Even assuming that wasn't just surveillance re-approval season bluster, that's the other program we're talking about, Section 215, not PRISM. Furthermore, it's possible that she was so intent on tying 215 to Zazi solely so FBI could identify more entirely innocent people to interrogate, as they had 3 apparently innocent people already.

Then there's the public reporting that contradicts what I assume to be Mike Rogers' staffers' claim. This NPR piece, obviously designed to showcase all the new surveillance tools used to nab Zazi, makes no mention of anything beyond roving NSA wiretaps.

> The wiretap used on Zazi was different. In his case, officials tell NPR they asked a judge for what's called a roving FISA wire tap. (FISA stands for Foreign Intelligence Surveillance Act.)
>
> [snip]
>
> FISA wiretaps are meant to be aimed at foreign targets — people who work for or are representing a foreign entity. FISA wiretaps used to be all about espionage, but, according to former FBI Assistant Director Tom Fuentes, that changed to include terrorism. The foreign entity in this case would be a group like al-Qaida.

In fact, NPR attributed our discovery of Zazi to a tip from Pakistan.

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But that's not all. This NPR piece bragging about all the new toys deployed to catch Zazi makes it clear that the first tip-off came from Pakistan.

> Sources say officials acted after Pakistani intelligence allegedly told them that Zazi had met with al-Qaida operatives there.

The AP's Adam Goldman says even that is not right. The tip came from the Brits, not Pakistan.

> Let's be clear Operation Pathway in London uncovered email that thwarted Najibullah Zazi plot in 2009. Public docs available….
>
> Brits got this email –sana_pakhtana@yahoo.com – and gave it to USG. Zazi sent urgent message to that email. Alarms went off. See PACER

This was not PRISM identifying associations. It was the Brits identifying the email of a Pakistani bomber, which we then tracked right to Zazi's desperate requests for bomb-making help.

But there's one more problem with Mike Rogers' story about Zazi. Look at that second paragraph again.

> The sources said Representative Mike Rogers, chairman of the House of Representatives Intelligence Committee, was talking about a plot hatched by Najibullah Zazi, an Afghan-born U.S. resident, **when he said on Thursday** that such surveillance had helped thwart a significant terrorist plot in recent years.

This is a reference to when, sometime well before 2PM on Thursday, Rogers said the Section 215 dragnet collection of US call data had thwarted a plot. PRISM wasn't broken until a number of hours later.

So this article suggests (though not consistently—Rogers' anonymous sources seem confused!) that PRISM busted Zazi, when chronologically, it must be Section 215 he's thinking of.

The record doesn't appear to support that either. More likely, he's remembering that when the Intelligence Committees renewed the PATRIOT Act in 2009, the FBI and others boasted that they were using Section 215 in interesting ways.

But again—the public record doesn't necessarily suggest that was anything more than 3 innocent Muslims buying haircare products.

Maybe there's more to this. But until there is, the record suggests that 1) Rogers' staffers (or Reuters' other sources) are hopelessly confused, and can't keep these programs separate and 2) that Rogers has a fundamentally different understanding of what happened than even DOJ suggested in their court filings.

Rogers is confused. And he's what counts as oversight on these dragnet programs.

Update: Thanks to Ben Smith for doing the legwork to prove how silly Rogers' claims are.

> The path to his capture, according to the public records, began in April 2009, when British authorities arrested several suspected terrorists. According to a 2010 rulingfrom Britain's Special Immigration Appeals Commission, one of the suspects' computers included email correspondence with an address in Pakistan.
>
> > The open case is founded upon a series of emails exchanged between a Pakistani registered

> > email account sana_pakhtana@yahoo.com and an email account admittedly used by Naseer humaonion@yahoo.com between 30 November 2008 and 3 April 2009. The Security Service's assessment is that the user of the sana_pakhtana account was an Al Qaeda associate…"
>
> "For reasons which are wholly set out in the closed judgment, we are sure satisfied to the criminal standard that the user of the sana_pakhtana account was an Al Qaeda associate," the British court wrote.
>
> Later that year, according to a transcript of Zazi's July, 2011 trial, Zazi emailed his al Qaeda handler in Pakistan for help with the recipe for his bombs. He sent his inquiry to the same email address: sana_pakhtana@yahoo.com.
>
> An FBI agent, Eric Jurgenson, testified, "I was notified, I should say. My office was in receipt of several e-mail messages, e-mail communications." Those emails — from Zazi to the same sana_pakhtana@yahoo.com — "led to the investigation," he testified.

Update: Go figure. NYT has a story that, like Reuters, conflates 215 and PRISM and then, without apparently mastering the difference between the two or known facts of Zazi's case, declares "Victory!." After mentioning stockpiling of email, it says,

> To defenders of the N.S.A., the Zazi case underscores how the agency's Internet surveillance system, called Prism, which was set up over the past decade to collect data from online

> providers of e-mail and chat services, has yielded concrete results.
>
> "We were able to glean critical information," said a senior intelligence official, who spoke on the condition of anonymity. "It was through an e-mail correspondence that we had access to only through Prism."

Except we know the email correspondance could have been available via FISA under the rules in place in 1998. Did they use fancy software? Maybe, but they certainly didn't need it.

Later, it admits it doesn't know which program, if any, foiled which plot, if any.

> An administration official said Friday that agencies were evaluating whether they could publicly identify particular terrorism cases that came to the government's attention through the telephone or Internet programs.
>
> Representative Mike Rogers, the Michigan Republican who is chairman of the House intelligence committee, said Thursday that the program "was used to stop a terrorist attack." He did not identify the plot, or explain whether the call logs in the case would have been unavailable by ordinary subpoenas.

Then, later, it cites DiFi's (also dubious) list of plots foiled by FAA. Zazi's plot is not included.