

WORKING THREAD, NSA IG REPORT

This will be a working threat on the March 24, 2009 Draft NSA IG Report on PSP. Page numbers below are hardcopy pages.

P1: The Authorization on October 4 has never been mentioned in any FOIAs (there was an OLC memo that was).

P1: The track change suggests the author of this either didn't know who got delegated the October 4, 2001 authority, or wasn't sure what that person's title stood for.

P2: The January 17, 2007 end date to this report, while legally mandated, seems convenient. Go back to check FOIA to see if it was jimmied in the legislative process.

P3: "The Counsel to the Vice President used this information to draft the Presidential authorization that established the PSP." Welp, David Addington always did want to blow up FISA.

P3: Note under FISA, Hayden had 15 days after declaration of a war to wiretap without authorization. Hayden started on the day the AUMF passed Congress, not when it was signed. They also don't note whether this was legally conducted under the 15 day window. Instead, they say it was under 12333. Remember, John Yoo pixie dusted that to be able to wiretap Americans overseas.

P4: Note there's no mention in the HPSCI briefing of Pelosi's concerns about minimization. Also, other sources say this briefing was October 1.

P4: "General Hayden said that these discussions were not documented." Of both informing the President and asking about what could be improved. What are the chances, really, that Libby, who documented everything wasn't involved in this?

P4: I wonder if what says "international gap" here ever said "wall"?

P5: "First, it believed that because of technological advances, the jurisdiction of the FISC went beyond the original intent of the statute." The "it" here is supposed to be NSA, not Addington.

P6: Note HPSCI's effort to amend FOIA, and no response from Gonzales.

P7: Hayden surprised authorization approved.

P8: Addington tells Hayden he can collect domestic, Hayden says NSA won't do that.

P8: "On 28 March 2003, the DCI determined that, based on then current intelligence, the Iraqi Intelligence service was engaged in terrorist activities and presented a threat to U.S. interests in the United States and abroad." (And this carried over to torture as well; we tortured a lot of IIS people.)

P10: A vendor diverts servers to serve as STELLERWIND's computers. Ha!

P12: Note Chief of CT Product Line ran PSP for a while in 2004. When it was illegal?

P14: Note advent of automatic chaining alerts. Wonder if those still exist in the phone metadata.

P15: "If a report was not published, documentation was not retained. Counterterrorism personnel manually updated information in a computer tracking system to reflect the disposition of chaining requests."

P15: Note the numbers on collection. This says not that many reports for many queries.

P17: Note the reporting paragraph which gets to minimization.

P18:

Initially, NSA responded to FBI and CIA information requests in encrypted email.

These initial reports, sometimes called, "Tippers" or "Snippets," were "hidden in plain sight," meaning the information in the report did not reveal the source of the information. Later, FBI and CIA wanted to understand how NSA knew certain information that could not be provided in normal reporting channels. Eventually, "tear line" reporting was established. Tear lines are used regularly by NSA as a way to report SIGINT-derived information and sanitized information in the same report to appropriately cleared individuals. The sanitized "tear line" information conveys the same basic facts as the COMINT-controlled information while hiding the COMINT as the source.

P 18: Note that other orgs might request info, but it would go to FBI, CIA. I presume this includes high level officials, as happened w/the CAU program. It also says DOJ attorneys can do a search.

P18:

NSA searches only databases of reported intelligence and does not search databases of acquired but not processed information (e.g., raw traffic) or acquired and processed but not reported or disseminated information/communications (e.g., gists). NSA would include in its search applicable disseminated foreign intelligence derived from PSP.

P19: Apparently you can run an illegal wiretap program for 5 years for \$146M.

P21: NSA provided access to Goldsmith's opinion. By January 2007, 3,000 people briefed on PSP. (What good is that date, since it had been in the press for over a year?)

P21: NSA GC asks to read OLC memo, denied, "Vice

President's Counsel read a few paragraphs of the opinion to him over the classified telephone line."

P21: December 8, 2003: NSA's IG and Deputy GC ask Pat Philbin to see OLC memo. "The Counsel to the Vice President, who unexpectedly attended the meeting, denied the request and said that any request had to come directly from General Hayden." Note, by the time this happened, there had been 8 memos written to people besides Alberto Gonzales, 2 to Gonzales. (One was to "another agency GC," so it's possible NSA GC had one.)

P21: NSA claims they only got input into memo 2 days before it was finished on May 6, 2004.

P24: Note this doesn't name Pete Hoekstra as read into program at first, though next page does. Note too it suggests Bush was "cleared into" the program w/in first 30 days.

P29: Alexander: "If the relationships with these companies were ever terminated, the U.S. SIGINT system would be irrevocably damaged, because NSA would have sacrificed America's home field advantage as the primary hub for worldwide telecommunication.

P29: Company B (Verizon?) approaches NSA with suspicious records, get sent to FBI.

P31: First letter to telecoms October 16, 2001.

General Hayden stated that the National Security Agency and Federal Bureau of Investigation required their assistance "to collect intelligence vital to the national security arising from the events of 11 September 2001," and specifically requested that they "provide survey, tasking and collection against international traffic, some of which terminates in the United States; provide aggregated call record information; and supply computer to computer data which can be used to determine the communicants." Their

assistance was "needed to identify members of international terrorist cells in the United States and prevent future terrorist attacks against the United States." These first letters also stated that the request was authorized by the President with the legal concurrence of the Attorney General, pursuant to Article II of the Constitution.

P31: IN 2003 wording revised. (Iraq?)

P33: COMPANIES A,B, and C provided access to the content of Al Qaeda and Al Qaeda-affiliate email from communication links they owned and operated. NSA received email content from COMPANY A as early as October 2001 until 17 January 2007, from Company B beginning February-March 2002 through 17 January 2007, and from COMPANY C from April 2005 until 17 January 2007. From April 2003 through November 2003, COMPANY D provided a limited amount of email content under the PSP. [note this must be Iraq]

P34: COMPANY A began providing PSP IP metadata collection as early as November 2001. Although COMPANY B began providing CD-ROMs of PSP IP metadata in October 2001, an automated transfer of data was not available until February-March 2002. The Presidential authority to collect IP metadata was terminated in March 2004. COMPANY A and COMPANY B IP metadata collection resumed after the FISC Pen Register/Trap & Trace (PR/TT) Order authorizing this activity was signed on 15 July 2004. Company C provided IP metadata beginning in April 2005.

P36: This sort of ignores Addington and Yoo babysitting Olson at FISCR.

General Hayden stated that from the start of the PSP, he and other NSA leaders recognized the importance of keeping all three branches of the Government informed of the Program and pressed the White House to do so.

In all of its interactions, neither NSA

or DoJ presented before the FISC the factual and legal issues arising from the PSP in any case or controversy. Therefore, the FISC did not express any view or comment on the legality or illegality of the PSP.

PR 38: NSA leadership,, including OGC lawyers and the IG, interpreted the terms of the Authorization to allow NSA to obtain bulk Internet metadata for analysis because NSA did not actually “acquire” communications until specific communications were selected.

PR 38: Bulk internet becomes PR/TT; phone bc BR, and there’s also Foreign content, Domestic content.

PR 40: In addition to the telephony metadata that NSA was receiving from private sector companies as business records, it was also receiving “live” telephony metadata from its own SIGINT collection sources. It continued until mid-2005. (**We will include a reference to the corresponding notice here.**)

PR41: describes FISC order “wherein traditional FISA definition of a ‘facility’ as a specific telephone number or email address was changed to encompass the gateway or cable head that foreign targets use for communications.”

P42: Foreign selectors dropped by 73%, from 11,000 to 3,000

P44: IG notifications of PSP problems went to “President’s Counsel”

PG45: IG not read in until August 2002. Hayden finally delegates in March 4, 2003 (so people know the rules). Hayden first notices President of violations in March 2003.