

NSA LOST THE HOUSE JUDICIARY COMMITTEE DURING THE 2011 PATRIOT ACT REAUTHORIZATION

I want to put the two documents pertaining to the NSA's geolocation effort released last week into context. Because they show yet another instance where the Intelligence Community did not inform Congress about what they were doing.

The two documents make it clear NSA started considering collecting geolocation in February 2010, almost certainly before the February 26-27 one year reauthorization of PATRIOT Act that month. The December 2009 letter that provided notice to Congress – which wasn't shared with the rest of Congress until February 23-24 – provided no notice NSA was going to start testing on geolocation. So the NSA missed one opportunity to brief Congress that it was again expanding its interpretation of Section 215.

Then on February 2, 2011, Ronald Weich provided the Intelligence Chairs a second letter designed to inform Congress about the dragnet. Again, this letter also appears to make no mention of the geolocation testing. So NSA missed a second opportunity to brief Congress. Moreover, this is the letter that Mike Rogers did not pass onto members of the House.

It is unclear when NSA briefed the Intelligence Committees about the program, but a Senate Intelligence Committee staffer posed questions to NSA on March 7, but even those basic questions about legal support for the testing did not get answered until April 1.

The 4-year extension of the PATRIOT Act passed on May 26, 2011.

It took another three months before the House

Judiciary Committee would get notice of a geolocation program already in action.

In other words, this was a clear instance where NSA was expanding the dragnet during the entire 15 month period of PATRIOT Act reauthorization. But according to the public record, it didn't even inform the House Judiciary Committee – which the I Con insists always gets adequate briefing – until months after 4-year reauthorization of the PATRIOT Act.

NSA defenders are trying to use HJC member Jim Sensenbrenner's earlier prevarications to suggest he doesn't have reason to claim the NSA keeps secrets from Congress. Too bad the record – as it always tends to, once it becomes public – proves them wrong.

Here's what the timeline looks like (see here for a more detailed timeline that does not yet incorporate these new dates).

December 14, 2009: Ronald Weich letter to Intelligence Committees notifying about the dragnet.

February 2010: DOJ advises NSA it may proceed with geolocation testing.

February 23, 24, 2010: Feinstein and Reyes notify members of Weich letter.

February 27, 2010: Congress passes one year extension to PATRIOT Act.

April 26, 2010: NSA uses this phone dragnet feed from this day for testing geolocation.

February 2, 2011: Ronald Weich letter to Intelligence Chairs notifying Congress about 2 dragnet programs; while much remains redacted, it doesn't appear to provide specific notice of geolocation testing.

February 8, 2011: Feinstein notifies Congress of Weich letter; Rogers provides no such notice.

February 25, 2011: After having failed an

initial vote in the House, Congress passes and President Obama signs a 3-month extension of the PATRIOT Act.

February 28, 2011: Valerie Caproni and others (including someone from the Director of National Intelligence Office) brief SJC members in closed session (Pat Leahy, Chuck Grassley, John Cornyn, Richard Blumenthal, Sheldon Whitehouse, Dianne Feinstein, Orrin Hatch, and Mike Lee are listed attendees).

March 7, 2011: SSCI staffer asks NSA about details of NSA's geolocation efforts, including regarding the legal basis for it.

March 17, 2011: FBI Executive Assistant Director (now Deputy Director) Sean Joyce, Acting Assistant Attorney General Todd Hinnen, and unnamed others, brief House Intelligence Members on expiring PATRIOT provisions.

April 1, 2011: NSA responds to March 7, 2011 questions.

May 26, 2011: Congress passes and Obama signs a 4-year extension of the PATRIOT Act.

September 1, 2011: NSA provides official notice to House Judiciary Committee regarding geolocation collection.