THE LAPSES IN DRAGNET NOTICE TO CONGRESS

I'm at a great conference on national security and civil liberties. Unfortunately, speakers have repeatedly claimed that NSA fully informs Congress on its programs.

Even setting aside Dianne Feinstein's admission that the intelligence committees exercise less oversight over programs conducted under EO 12333, there are a number of public documents that show the Executive failing to fully inform Congress:

April 27, 2005: Alberto Gonzales and Robert Mueller brief SSCI on PATRIOT Authorities in advance of reauthorization. They make no mention of the use of PR/TT to gather Internet metadata, much less the violations of Colleen Kollar-Kotelly limits on the kind of data collected during the first period of its use.

October 21, 2009: A Michael Leiter and NSA Associate Deputy Director briefing to the House Intelligence Committee pointed to the September 3, 2009 phone dragnet reauthorization as proof that NSA had regained FISC's confidence, without mentioning further violations on September 21 and 23 — violations that NSA did not inform FISC about.

August 16, 2010: DOJ did not provide the Intelligence and Judiciary Committees with some of the pre-July 10, 2008 FISC rulings providing significant constructions of FISA pertaining to — at a minimum — Section 215 until after the first PATRIOT Reauthorization.

February 2, 2011: House Intelligence Chair Mike Rogers did not invite members of Congress to read the 2011 notice about the phone and Internet dragnets. Approximately 86 freshmen members — 65 of whom voted to reauthorize the PATRIOT Act, a sufficient number to tip the vote — had no opportunity to read that notice.

May 13, 2011: In a briefing by Robert Mueller and Valerie Caproni designed to substitute for the Executive's notice to Congressmen about the phone and Internet dragnets, the following exchange took place.

> Comment – Russ Feingold said that Section 215 authorities have been abused. How does the FBI respond to that accusation?
>
> A – To the FBI's knowledge, those authorities have not been abused.

While the balance of the briefing remains redacted, this seems to suggest the FBI did not brief House Republicans about the dragnet violations.

September 1, 2011: NSA did not provide notice to the House Judiciary Committee about its testing of geolocation data under Section 215 until after the reauthorization of PATRIOT Act, in spite of the fact that it had been conducting such tests throughout the 2010 and 2011 debates on the PATRIOT Act.