

NSA CAUGHT ILLEGALLY SPYING ON AMERICANS AND KEITH ALEXANDER'S ANSWER IS A GROUP HUG

Kevin Gosztola had a superb post yesterday on a letter NSA Deputy Director John Inglis and DIRNSA Keith Alexander sent to family members of NSA employees to make them feel better about the dragnet. It's a two page letter attempting to convince the family members of our SIGINT spies that their mission is noble and their actions within the scope of the law.

I'm particularly interested in the timing of it. As Kevin notes, the letter cites a typically obsequious post from Ben Wittes on how the Administration should have responded to WaPo's disclosure of an internal review (just as one example, Ben claims to have read the report closely but somehow misses that 9 to 20% of violations consist of analysts breaking rules they know).

Inglis and Alexander write,

There are some in the media who are taking the time to actually study the leaked material, and they have drawn conclusions that are very different from those who are in it for a quick headline. One such legal scholar wrote that we should have made our case more forcefully by responding,

Shameful as it is that these documents were leaked, they actually should give the public great confidence both in NSA's internal oversight mechanisms and in the executive and judicial oversight mechanisms outside the agency. They show no

evidence of any intentional spying on Americans or abuse of civil liberties. They show a low rate of the sort of errors any complex system of technical collection will inevitably yield. They show robust compliance procedures on the part of the NSA.

We couldn't agree more.

I wonder if NSA would like to send family members my way, given that I have taken even more time than Ben studying these revelations and find he's frequently engaging in spin?

Hmm. Probably not.

But what's most fascinating by this citation is the timing.

Ben wrote that post on August 18, in the midst of a slew of disclosures by WaPo and the Guardian.

But Inglis and Alexander wrote this letter on September 13 – last Friday – at the end of a month when all of the major US-based disclosures (save that NSA has deliberately made all of us more vulnerable to hackers) have come from the government. In the month leading up to this letter, we learned the NSA:

- Was intentionally collecting up to 55,000 entirely domestic communications at the telecom switches (and had been for more than 4 years)
- Started (and some other agency had already been) searching incidentally collection US person

communications in an uncounted (and therefore unmonitored) backdoor use of Section 702

- Kept all the “features” of Dick Cheney’s illegal program in the phone dragnet program when it moved under Court sanction in 2006, and only 2.5 years later told the FISA Court about them, calling them “bugs;” this included CIA and FBI accessing a database of all US phone records directly

At the end of 2008, the NSA had authorized contact chaining off of 27,090 identifiers and analysts could go four hops deep into the data, which effectively would allow them to create a relationship map of the entire country. And they used it not just to find “terrorists,” but also people they could coerce to inform on targets.

A system the Stasi would envy!

And FISA Court judges had deemed some of the first and third practices illegal. One threatened criminal referral and the other even shut down at least part the program for a period.

In short, whereas the first two months of disclosures leading up to Ben’s post exposed the NSA doing things that might be deemed outrageous, the last month of **government disclosures** (albeit forced by ACLU and EFF FOIAs) have made it clear the NSA broke the law by spying on Americans.

Ben’s claim that, “They show no evidence of any intentional spying on Americans or abuse of civil liberties,” seems quaint in retrospect.

And this last month of disclosures, it seems, is

what convinced Inglis and Alexander to give their extended family a great big group hug.

Perhaps unsurprisingly, Inglis and Alexander actually cut Ben's proposed response to these disclosures short, leaving out this bit.

And they show an earnest, ongoing dialog with the FISA Court over the parameters of the agency's legal authority and a commitment both to keeping the court informed of activities and to complying with its judgments on their legality. While it took a criminal act to make this record public, we are deeply proud of this record and make no apologies for it.

"Strains credulity," Reggie Walton said of NSA's claims they were too stupid to know they had continued the features of Dick Cheney's illegal program. "The third instance in less than three years in which the government has disclosed a substantial misrepresentation," John Bates said in apparent exasperation.

And even after Bates dangled criminal referral, the NSA still wanted to continue doing what it was doing (in fact claiming the law didn't apply). Even after Walton shut down at least part of the Section 215 collection because the NSA was sharing freely within NSA and had permitted other agencies to access it directly, the NSA continued to use other means to distribute query information (they didn't officially tell the Court, either).

We've also learned in the last month that the most shocking disclosure from that original WaPo story – that an analyst tried to pull up Egypt's calls but got DC's instead – had never been disclosed to the FISC, not even as part of the long series of disclosures in 2009. Indeed, that "mistake" suggests that NSA's claims of ignorance were utterly false.

The interim month of disclosures has made it clear that the NSA has been anything but

forthcoming about its illegal spying on Americans and violations of measures to protect their privacy.

Inglis and Alexander appear worried about what will come next.

Over the coming weeks and months, more stories will appear.

Remember, we haven't yet seen the "misrepresentation" that came between 2009 and 2011. It likely pertains to the Internet metadata dragnet program. Ron Wyden and Mark Udall have warned "some significant information – particularly about violations pertaining to the bulk email records collection program – remains classified."

Is Inglis and Alexander's group hug just an attempt to steel NSA family members for still more alarming – government released – revelations about illegal spying on Americans?