THE NSA VERSUS "ISSUE-BASED EXTREMISTS"

The CBC has a Snowden-based story about how the NSA helped Canada's Communications Security Establishment Canada in advance of and during the G20 held in Toronto in 2010. That isn't all that surprising. As the story notes, it's consistent with other stories of NSA spying surrounding international diplomatic meetings.

But the story does note that the Snowden documents make it clear there was no specific al Qaeda threat. Instead, the "threat" to the meeting came from "issue-based extremists."

> Much of the secret G20 document is devoted to security details at the summit, although it notes: "The intelligence community assesses there is no specific, credible information that al-Qa'ida or other Islamic extremists are targeting" the event.
>
> No matter. The NSA warns the more likely security threat would come from "issue-based extremists" conducting acts of vandalism.

The comment reminds me of a paragraph in testimony Alberto Gonzales and Robert Mueller gave to the Senate Intelligence Committee in 2005, in advance of the first PATRIOT Act reauthorization. The testimony is notable for Gonzales and Mueller's silence about the use of Pen Registers to collect a significant chunk of all the Internet-based metadata in the US (NSA had already been caught collecting "metadata" that was really "content" by then), even while he emphasized the "relevant to" language that had been added to Pen Registers in 2001.

> Sensibly, Section 214 of the USA PATRIOT Act simplified the standard that the

> government must meet in order to obtain pen/trap data in national security cases. Now, in order to obtain a national security pen/trap order, the applicant must certify "that the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an investigation to protect against international terrorism or clandestine intelligence activities." Importantly, the law requires that such an investigation of a United States person may not be conducted solely upon the basis of activities protected by the First Amendment to the Constitution.
>
> Section 214 should not be permitted to expire and return us to the days when it was more difficult to obtain pen/trap authority in important national security cases than in normal criminal cases. This is especially true when the law already includes provisions that adequately protect the civil liberties of Americans. I urge you to reauthorize section 214.

Over the course of the reauthorization process, of course, Congress added that "relevance" language to Section 215, which served as the basis for the phone dragnet of all American's phone calls.

But the paragraph of the Gonzales/Mueller testimony that stuck out at me described how PATRIOT Section 203 – which permitted the sharing of Grand Jury, wiretap, and other criminal investigation information with intelligence professionals – had authorized information sharing at similar high profile meetings. After 8 bullet point examples showing how this information sharing had supported terrorism (or Iraqi) investigations, the testimony then revealed it had been used to authorize information sharing during 2004's G-8 and Presidential Conventions.

> In addition, last year, during a series of high-profile events – the G-8 Summit in Georgia, the Democratic Convention in Boston and the Republican Convention in New York, the November 2004 presidential election and other events – a task force used the information sharing provisions under Section 203(d) as part and parcel of performing its critical duties. The 2004 Threat Task Force was a successful inter-agency effort where there was a robust sharing of information at all levels of government.

Now perhaps these big meetings faced an Al Qaeda threat in 2004 that the G-20 didn't face in 2010. But I'm cognizant that PATRIOT defines "foreign intelligence information" to include "sabotage," which might be used to treat legitimate "issue-based extremists" as terrorists.

We already know that anti-war protestors (the kind of "single-issue extremists" who protested in big numbers in 2004) were investigated as terrorists as early as 2002, though DOJ professed to be unable to connect all the investigations together. Indeed, precisely that kind of "criminal" investigation started in local FBI offices is the kind of information that might be shared under PATRIOT 203(d) with a Task Force facing protestors.

We don't know, from this one paragraph, what kind of information the government shared in 2004 in the name of "foreign intelligence." But the 2010 Canadian example suggests the government is still (or was, as recently as 2010) treating legitimate protestors as outside infiltrators. Which makes it likely that the US did the same back during the height of anti-Iraq War protests.