

BRENNAN WAS PROBABLY TALKING ABOUT THE TELEGRAM PRISM GAP AS MUCH AS ENCRYPTION

I noted the other day that at a pre-scheduled appearance Monday, Josh Rogin cued John Brennan to explain how the Paris attack happened without warning. In my opinion, the comment has been badly misreported as an indictment solely of Edward Snowden (though it is that) and encryption. I've put the entire exchange below but the key exchange was this:

And as I mentioned, there are a lot of technological capabilities that are available right now that make it exceptionally difficult, both technically as well as legally, for intelligence and security services to have the insight they need to uncover it. And I do think this is a time for particularly Europe, as well as here in the United States, for us to take a look and see whether or not there have been some inadvertent or intentional gaps that have been created in the ability of intelligence and security services to protect the people that they are asked to serve. And in the past several years because of a number of unauthorized disclosures and a lot of handwringing over the government's role in the effort to try to uncover these terrorists, there have been some policy and legal and other actions that are taken that make our ability collectively internationally to find these terrorists much more challenging. And I do hope that this is going to be a wake-up call, particularly in areas of Europe where I think there has been a misrepresentation

of what the intelligence security services are doing by some quarters that are designed to undercut those capabilities.

Brennan talks about technology that makes it difficult technically and legally to uncover plots. Encryption is a technical problem – one the NSA has proven its ability to overcome – that might be called a legal one if you ignore that NSA has the ability to overcome the lack of a legal requirement to provide back doors. But I agree this passage speaks to encryption, if not other issues.

In the next sentence, though, he talks about inadvertent or intentional gaps created “particularly in Europe.” He talks about *plural* unauthorized disclosures – as I noted, Josh Rogin’s own disclosure that the US had broken AQAP’s online conferencing technique may have been more directly damaging than most of Snowden’s leaks – *and* “handwringing.” Those have led to “policy and legal and other actions” that have made it harder to find terrorists. In the next sentence, Brennan again emphasizes that “particularly in areas of Europe,” there needs to be a “wake-up call” because “there has been a misrepresentation” of what the spooks are doing, which he suggests was deliberately “designed to undercut those capabilities.”

So the paragraph where he speaks of these problems, he twice emphasizes that Europe in particular needs to adjust its approach.

Last I checked, Europe didn’t pass USA Freedom Act (which would not, in any way, have restricted review of Parisian targeters). Some countries in Europe are more vigorously considering limits on encryption, but those would be just as ineffective as eliminating the code that’s already out there.

What Europe has done, however, is make it harder for our PRISM providers to share data back and forth between Europe (and with providers

considering moving servers to Europe, it will raise new questions about the applicability of PRISM for that data). And Europe (not just Europe, but definitely including Europe) has created a market need for US tech companies to distance themselves from the government.

And in the case of Germany, politicians have been investigating how much its BND has done for NSA, and especially which impermissible German people and companies were targeted as part of the relationship. I noted that Brennan raised similar issues just days after the BND investigation turned scandalous in March, and recent revelations have raised new pressure on BND.

With that in mind, in particular, consider what one of the more responsible reports on Brennan's speech, that of Shane Harris, focused on – terrorists' use of Berlin headquartered social messaging app Telegram. If terrorists were using WhatsApp (which a lot of the fearmongering focused on), the metadata, at least, would be available via Facebook. But since Telegram is not a US company, it cannot be obliged under Section 702 of FISA, and that surely creates just the kind of gap Brennan was talking about.

Since Brennan's speech, Telegram has started deleting the special channels set up by ISIS to communicate.

I'm sure Brennan is complaining about encryption and if he can get Congress to force domestic back doors, I'm sure he will (though ISIS reportedly shies away from Apple products, so forcing Apple to give up its encrypted iMessage won't help track down ISIS). But his speech seemed focused much more intently on ways in which, in the aftermath of the Snowden leaks, Europeans have opportunistically localized data and, in the process, made that data far less accessible to the NSA. Brennan, as I made clear in March, definitely would prefer the Europeans rely on Americans for their SIGINT (and in the process agree to some inappropriate spying in their home country), and the gap created by

terrorists' reliance on Telegram is one way to exert pressure on that point.

Q: Good morning. My name is Josh Rogin. I'm a reporter with Bloomberg View.

Director Brennan, thank you for your time today and thank you for your service.

The Paris attacks, the blame, of course, lies primarily at the feet of the terrorists. But I think I give voice to the question a lot of us have in this room and around the country when I ask: How was this allowed to happen? We're talking about an attack that involved dozens of people communicating from multiple countries, planning for perhaps weeks or months, and yet the world's leading intelligence agencies didn't even catch a whiff of it as far as we're to understand. Is that right? What went wrong? And what needs to be done now to make sure this never happens again? Thank you.

MR. BRENNAN: Well, first of all, as I mentioned in my remarks, many of these terrorist operations are uncovered and thwarted before they're able to be carried out. And when I think about what happened in Paris, clearly there was a(n) effort that underway for quite some time, that was fairly sophisticated because of the nature of the attacks in terms of their simultaneous nature.

We work very, very closely with our French partners. I have an exceptionally strong relationship with the heads of the external and internal services. A lot of our partners right now in Europe are facing a lot of challenges in terms of the numbers of individuals who have traveled to Syria and Iraq and back again, and so their ability to monitor and surveil these individuals is under strain.

Now, I know the French are going to be looking at what might have slipped through the cracks. But I can tell you that it's not a surprise that

this attack was carried out from the standpoint of we did have strategic warning. We knew that these plans or plotting by ISIL was underway, looking at Europe in particular as the venue for carrying out these attacks. But I must say that there has been a significant increase in the operational security of a number of these operatives and terrorist networks as they have gone to school on what it is that they need to do in order to keep their activities concealed from the authorities.

And as I mentioned, there are a lot of technological capabilities that are available right now that make it exceptionally difficult, both technically as well as legally, for intelligence and security services to have the insight they need to uncover it. And I do think this is a time for particularly Europe, as well as here in the United States, for us to take a look and see whether or not there have been some inadvertent or intentional gaps that have been created in the ability of intelligence and security services to protect the people that they are asked to serve. And in the past several years because of a number of unauthorized disclosures and a lot of handwringing over the government's role in the effort to try to uncover these terrorists, there have been some policy and legal and other actions that are taken that make our ability collectively internationally to find these terrorists much more challenging. And I do hope that this is going to be a wake-up call, particularly in areas of Europe where I think there has been a misrepresentation of what the intelligence security services are doing by some quarters that are designed to undercut those capabilities