

IF SNOWDEN DOESN'T KNOW PRIVACY PROTECTIONS OF 702, THAT'S A PROBLEM WITH NSA TRAINING

The House Intelligence Committee just released a report – ostensibly done to insist President Obama not pardon Snowden – that is instead surely designed as a rebuttal to the Snowden movie coming out in general release tomorrow. Why HPSCI sees it as their job to refute Hollywood I don't know, especially since they didn't make the same effort when Zero Dark Thirty came out, which suggests they are serving as handmaidens of the Intelligence Community, not an oversight committee.

There will be lots of debates about the validity of the report. In some ways, HPSCI admits they're being as inflammatory as possible, as when they note that the IC only did a damage assessment of what they think Snowden took, whereas DOD did a damage assessment of every single thing he touched. HPSCI's claims are all based on the latter.

There are things that HPSCI apparently doesn't realize makes them and the IC look bad – not Snowden – such as the claim that he never obtained a high school equivalent degree; apparently people can just fake basic credentials and the CIA and NSA are incapable of identifying that. The report even admits a previously unknown contact between Snowden and CIA's IG, regarding the training of IT specialists. BREAKING: Snowden did try to report something through an official channel!

It concerns me the "Intelligence Committee" can't distinguish between details that help and hurt their case.

Meanwhile, Snowden has a bunch of rebuttals

here, which extends the game of he says they say, but doesn't help clarity much.

On one issue, however, I'm particularly concerned: with the HPSCI claim that Snowden may not understand the privacy impact of the programs he leaked because he failed Section 702 training:

It is also not clear Snowden understood the numerous privacy protections that govern the activities of the IC. He failed basic annual training for NSA employees on Section 702 of the Foreign Intelligence Surveillance Act (FISA) and complained the training was rigged to be overly difficult. This training included explanations of the privacy protections related to the PRISM program that Snowden would later disclose.

There are several implications about this allegation. First, the passage suggests that Snowden never passed 702 training. But he did. The Chief of the SIGINT Compliance Division said this in an email written on the low side (and as such, probably written with knowledge it would be released publicly). "He said he had failed it multiple times (I'd have to check with ADET on that). He did pass the course at some point." Even in the middle of a big to-do over this training, the NSA knew one thing for certain: Snowden did pass the test (even if they weren't sure whether he had really failed it).

The passage also suggests the training program was really basic. But a Lieutenant Colonel who clearly worked with a lot of 702 analysts at some point had this to say about it: "It is not a gentleman's course; *I* failed it once, the first time I had to renew."

The passage also suggests that the training was worthwhile. Except *days* before the conflict, NSA's IG reissued an IG Report that revealed problems with this and related training – including that NSA still had outdated materials

pertaining to the Protect America Act available as the “current” standard operating procedures available online.

There’s evidence the NSA’s training materials and courses at the time had significant errors. A revised Inspector General **report** on Section 702 of FISA, reissued just days before Snowden returned to Maryland for training on the program in 2013, found that the Standard Operating Procedures (SOPs) posted on the NSA’s internal website, purportedly telling analysts how to operate under the FISA Amendments Act passed in 2008, actually referenced a temporary law passed a year earlier, the Protect America Act.

“It is unclear whether some of the guidance is current,” the report stated, “because it refers only to the PAA,” a law that had expired years before. A key difference between the two laws pertains to whether the NSA can wiretap an American overseas under EO 12333 with approval from the attorney general rather than a judge in a FISA Court. If the SOPs remained on the website when Snowden was training, it would present a clear case in which NSA guidance permitted actions under EO 12333 that were no longer permitted under the law that had been passed in 2008.

Similarly, a key FISA Amendments Act training course (not the one described in the face-to-face exchange, but another one that would become mandatory for analysts) didn’t explain “the reasonable belief standard,” which refers to how certain an analyst must be that their target was not an American or a foreigner in the US – a key theme of Snowden’s disclosures. While some work on both these problems had clearly been completed between the time of the

report's initial release and its reissue just days before Snowden showed up in Maryland, both these findings remained open and had been assigned revised target completion dates in the reissued report, suggesting the IG had not yet confirmed they had been fixed.

Perhaps most troubling, to me, is that HPSCI repeats as true a story that should not be treated as such by anyone – because the story has a number of problems, and the person who told it almost certainly didn't write it down for a full year after it happened, and then, only in response to Snowden's claims about the interaction. I don't know whether she was telling the truth or Snowden (or, most likely, both were shading the truth), but given the circumstances of the evidence, neither one should be assumed to be credible. But this report treats it, perhaps unaware of the many problems and inconsistencies with the story, as credible.

Ultimately, though, if Snowden didn't fully appreciate the privacy protections of PRISM, you can't attribute that to the training program, because he took and passed it.

Remarkably, this dodgy claim is the only evidence HPSCI has to claim that Snowden didn't understand the privacy implications of what he was looking at. I'm fully willing to admit that reporting (that is, second-hand from Snowden) has made errors. But if NSA's overseers can't assess Snowden's public comments about the programs they allegedly oversee, then they're not doing their job.

Unless their job extends only to running PR for the agencies they are supposed to oversee.