THE SPOOKS WILL NEVER HAVE THEIR SOFTWARE SELF-SPYING WORKING

Mark Hosenball seems to have gotten as obsessed with the Intelligence Community's inability or unwillingness to implement the automated Insider Threat tracking software mandated by Congress (see here and here). After reporting last week that the Hawaii NAS location where Edward Snowden worked didn't have insider threat detection software installed because of bandwidth problems, he reported earlier this week that DOD will miss the new Congressionally mandated deadlines to have it working, again partly for bandwidth reasons.

> But the intelligence agencies have already missed an October 1 deadline for having the software fully in use, and are warning of further delays.
>
> Officials responsible for tightening data security say insider threat-detection software, which logs events such as unusually large downloads of material or attempts at unauthorized access, is expensive to adopt.
>
> It also takes up considerable computing and communications bandwidth, degrading the performance of systems on which it is installed, they said.
>
> [snip]
>
> The latest law requires the agencies to have the new security measures' basic "initial operating capability" installed by this month and to have the systems fully operational by October 1, 2014.
>
> But U.S. officials acknowledged it was unlikely agencies would be able to meet even that deadline, and Congress would

> likely have to extend it further. One official said intelligence agencies had already asked Congress to extend the deadline beyond October 2014 but that legislators had so far refused.

If the Intelligence Committees were unable to get the IC to take this mandate seriously after the Chelsea Manning leaks, I don't see any reason they'll show more focus on doing so after Edward Snowden. They seem either unable to back off their spying bandwidth draw far enough to implement the security to avoid another giant leak, or unwilling to subject their workers (or themselves?) to this kind of scrutiny.

This is why I made the Ozymandias joke the other day. Parallel with our headlong rush toward destruction via climate change, the IC doesn't seem able to reverse the manic demand for more data long enough to protect the collection systems they've got, or at least the mission critical ones. That is not a sign of an organization that can survive long.

SURVEILLANCE LOGIC: SNOWDEN IS BAD BECAUSE AQAP CONFERENCE CALL LEAK WAS

McClatchy did an interview with former national security official Ken Wainstein. He focuses on leaks, explaining how sometimes the "good leaks" don't get prosecuted and admitting that overclassification is a problem.

But in response to McClatchy's suggestion that Edward Snowden's leaks are good, Wainstein

responds in a bizarre fashion — by bringing up an entirely different leak.

> Q: Do you weigh the public's interest in the information that was leaked and whether it served the public good? For example, would you weigh whether Snowden's actions triggered a broader debate about classified programs that the public should have known more about?
>
> A: I think prosecutors would look at the intent of the leaker and what that person was intending to do.
>
> But you wouldn't have consensus that (the Snowden leak) was the best way to bring about this debate and that there hasn't been damage. Just last week, for example, there was talk about how al Qaeda has shut down some of its communications because of aleak. I wouldn't say it's a given that it's in the public interest that these disclosures are out there.

Wainstein's talking, of course, of the NYT report that the public reports about the AQAP conference call story caused the terrorists to start using other communication methods.

But there are several problems with his claim. First, as I've pointed out, there's a significant likelihood the leak in question came from AQAP sympathizers in the Yemeni government; in any case the leak was sourced to a broadly known fact in Yemen, not the US.

More importantly, the entire point of the story was that that AQAP leak had done more damage than all of Edward Snowden's leaks. In fact, when criticized for the story, NYT's editor pointed to that comparative fact as the entire point of the story.

> He also said that many of the critics of the story "are missing part of the news here — that Snowden has not given away

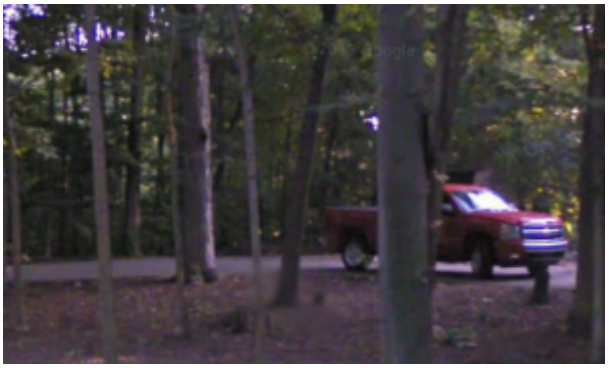
> the store" in terms of harming national security or counterterrorism efforts.
>
> The article, Mr. Hamilton said, "told an important and surprising story given the focus on Edward Snowden and the N.S.A. leaks. It had the kind of detail about terrorist operations that only reporters with long experience in national security coverage — and sources they can trust — can uncover."

In other words, in response to a suggestion that Snowden's leak did more harm than good, Wainstein points to a story that, even if the emphasis was wrong, pointed out that Snowden hadn't done much damage.

Maybe Wainstein brought it up to suggest that McClatchy had better watch out; the AQAP story was also a McClatchy story. He'd be better off thanking McClatchy for making it clear someone in Yemen doesn't keep our secrets very well.

But I guess that would ruin his entire scold about Edward Snowden.

THE KIDDIE PORN AND THE UNDIEBOMB



I was at a funeral Monday and Tuesday. So when I heard the FBI had busted the guy who leaked the UndieBomb 2.0 story, I assumed they had finally arrested John Brennan.

But, as bmaz emphasized in his post on Donald Sachtleben's plea agreement, there's no hint of prosecuting Brennan, who leaked Top Secret details about the British/Saudi double agent into AQAP, even while they're imprisoning Donald Sachtleben, who is only accused of leaking details he knew to be Secret.

> A law enforcement official indicated that the case has not been officially closed but the charges against Sachtleben are the only ones expected.

(Sure, the evidence that Sachtleben was involved with kiddie porn seems solid, but then Brennan drone-killed children, so he's not above reproach for his treatment of children either.)

But that is by no means the weirdest thing about the government's treatment of the UndieBomb 2.0 leak investigation.

The entire premise of the FBI narrative is that they exercised greater care with a kiddie porn accusee they had dead to rights than they did the 100 or so AP reporters who got sucked up in their overbroad dragnet. They would have you believe that, even after seizing a CD holding a November 2, 2006 SECRET CIA intelligence report at Sachtleben's house in May 2012 pursuant to a kiddie porn warrant (which they have not produced in the docket), they just sat on his devices for almost a year until they obtained the phone records for 20 AP phone lines, in a seizure far more intrusive into journalism than any recent known subpoena.

> Sachtleben was identified as a suspect in the case of this unauthorized disclosure only after toll records for phone numbers related to the reporter were obtained through a subpoena and compared to other evidence collected during the leak investigation. This allowed investigators to obtain a search warrant authorizing a more exhaustive search of Sachtleben's cell phone,

> computer, and other electronic media, which were in the possession of federal investigators due to the child pornography investigation.

(I may be mistaken, but I don't think the FBI made this claim in any court document, so I assume it is bullshit, especially since they had had to do extensive forensic searches of Sachtleben's computer and he had already signed a plea deal forfeiting it.)

They would also have you believe the AP had no inkling of the UndieBomb plot until ABC reported inflammatory claims about cavity bombs on April 30, 2012, even in spite of ABC's reference to TSA head John Pistole's earlier fear-mongering about it and in spite of additional reporting about broad Air Marshall mobilization. DOJ goes to great lengths to make you believe AP first texted Sachtleben on April 30 and not, say, on April 28 (which would mean the kiddie porn investigation accelerated after such contact), though there's no reason to believe that's true and the AP call records DOJ obtained apparently go back to well before April 30. They also suggest AP was asking Sachtleben about an Asiri bomb, though the first text they include is an assertion — not a question — that Asiri has been busy.

They would have you believe that two Pulitzer Prize winners would defy White House and CIA wishes with a story sourced to a single source who, just a day earlier, had provided a mistaken guess about the excitement. They would have you believe that Adam Goldman (probably) would be added as a byline to a Matt Apuzzo story for shits and giggles, not for reporting beyond the few text messages and 2-minute phone call they depict Apuzzo (probably) as having had. In short, they would have you believe they caught the single solitary guy behind this story (though if it were true it'd make it all the more clear that the real damage was done by Brennan and not Sachtleben), even while the AP story makes it clear there were multiple

sources, some discussing topics not depicted in the FBI's account.

They would also have you believe that they arrested Sachtleben (after tailing him in the airport) for what they claim they had evidence to be a small collection of kiddie porn the minute they executed a search of his house and did an initial triage of his computer (they would ultimately find more), but let Jason Nicoson, the guy through whom they claim to have found Sachtleben, a guy they believed to have far more porn, wander free for 8 more months (though Nicoson's magistrate docket appears to be sealed so there may be an earlier arrest).

And they would have you believe that they would arrest a guy who had been working in the immediate vicinity of the UndieBomb in between the time the government learned of the imminent story and its publication, seize his devices, as well as a SECRET November 2, 2006 CIA intelligence report, but that that arrest had nothing to do with **nor led to** suspicions he was also the leaker.

It's an interesting tale, but so much of it doesn't make sense no one should believe it.

Which is not to say I know what happened. It could be it happened just like they said it did, but it looks so weird because the embarrassment of having an ex-FBIer caught with kiddie porn made every one squeamish. It could be the FBI already knew about Sachtleben's proclivities (perhaps back to the September 2011 noted in their narrative), but only decided to bust him when they realized he was leaking to journalists (and there's no reason to assume he talked just to the AP). It could be the FBI loaded up the porn when he was in Quantico — after all **he had his laptop with him** (!!) on that trip (who brings a laptop full of kiddie porn into Quantico or anywhere close?). It could be they discovered Sacthleben was a minor source for the story because of things they found as part of the May 11 search — but not the source tying the operation more closely to Fahd al-Quso — but

didn't bust him for it until they decided he would be the one and only (public) scapegoat for the story.

But the seizure of that CIA report and the placement of Sachtleben in the UndieBomb examination room and the ability to get Sachtleben's contact records without a warrant would have provided the FBI reasonable suspicion to get a warrant to search the rest of his devices long before DOJ seized AP's phone records. Had they wanted to investigate Sachtleben for his potential role in leaking to the AP in 2012, they had the means to do so.

Which seems to indicate two things. This story is meant to provide closure to the leak investigation the GOP demanded as well as a public excuse for seizing 100 journalists' metadata they didn't need to find the ultimate sole public culprit. (It helps, too, that DC US Attorney Ronald Machen was able to shunt this matter off to Indiana, so DC reporters couldn't look for any sealed underlying dockets in DC.)

When DOJ released its "new" reporters guidelines, they made it clear they intended to deal with leakers internally now.

> The Department will work with others in the Administration to explore ways in which the intelligence agencies themselves, in the first instance, can address leaks internally through administrative means, such as the withdrawal of security clearances and the imposition of other sanctions.

Intelligence Community Inspector General Charles McCullough was already working on hundreds of such investigations going back to November 2011 (see also this post). It's likely we're already seeing the new mode of dealing with leaks — at least for favored sources leaking to favored reporters — in the stripping of James Cartwright's security clearance.

But DOJ has long had it in for Apuzzo and

Goldman. DOJ twice before investigated their sources (for this story and this one). And with Sachtleben, they had the means to conduct a breathtaking seizure of AP call records (making those internal investigations into AP's other sources far easier), with a means to tie the most rudimentary part of this leak to a sleazy kiddie porn prosecution.

A timeline of these two purportedly parallel investigations is below. You tell me whether FBI's claims don't seem ridiculous?

1993: Sachtleben works on aftermath of first World Trade Center bombing

1998: Sacthleben works on aftermath of African Embassy bombings

2000: Sacthleben works on aftermath of Cole bombing

2001: Sacthleben works on aftermath of 9/11 attack

November 2, 2006: Date of CIA intelligence report specifically charged

2008: Sachtleben retires from FBI, begins contracting on same or closely related work

Fall 2009: Sachtleben starts serving as source for Matt Apuzzo or Adam Goldman (probably the former, as he was already covering DOJ)

January 2010: Sachtleben provides AP information on terrorist plots, presumably (especially given text referring to Ibrahim al-Asiri) UndieBomb 1.0

September 12, 2010: Special Agent finds images tied to pedodad36569 (AKA Jason Nicoson)

September 2011: Paragraph 29 of Kiddie Porn charges dates back to September 2011—why? New laptop?

October 7, 2011: Obama orders Insider Threat Detection program

October 25.2011: pedodave69 (AKA Sachtleben) emails pedodad36569 offering to share porn; this is FBI's explanation for the investigation into Sachtleben

December 27, 2011: Sprint identifies pedodad36569 as Jason Nicoson

Undated: FBI searches Nicoson's email account, finds October 25, 2011 email from pedodave69 [I've placed this in different position than government because something must have justified the Nicoson warrant and there must be some reason DOJ doesn't give this date — it may well be even earlier]

January 9, 2012: FBI searches Nicoson's house; he admits to trading kiddie porn

February 20, 2012: Last use of pedodave69 email "observed"

March 29, 2012: FBI serves administrative subpoena on AT&T for pedodave69's IP

April 1, 2012: Possible start date for seizure of AP records

April 11, 2012: AT&T informs FBI pedodave69's IP belongs to Donald Sachtleben

Around April 20, 2012: UndieBomb recovered

April 24, 2012: Robert Mueller reportedly in Yemen

April 30, 2012: FBI conducts wireless survey of Sachtleben's vicinity and finds his secure wireless; an NCIC search comes back negative, an open source check reveals Sachtleben lives there, **search of "law enforcement sensitive database" reveals he lives there**

April 30, 2012, 6:30PM: ABC reports on cavity bombs

April 30, 2012, 7:14PM: AP journo and Sachtleben started texting. [Note, the statement of offense says they got this from Sachtleben's devices.]

> AP: Al-Asiri is up to his old tricks. I

> wonder if ur boys got a hold of a cavity bomb. :)
>
> Sacthleben: Yikes. Remind me to bring sum purell to the lab
>
> AP: Not totally sure though

May 1, 2012, AM: AP journo and Sachtleben continue texting.

> Sachtleben: Hmm. Methinks the 10am news conf may be related. 9:48AM
>
> AP: Ah! 9:51AM
>
> Sachtleben: Just abt to take off. Will be curious to c coverage when I land at dulles. Hope that tsa doesnt get out the rubber gloves and ky 9:52AM

May 1, 2012: **Search of (apparently) same law enforcement sensitive database** reconfirms Sacthleben lives there (?)

May 1, 2012, 10:00AM: At press conference, FBI announces arrest of 5 Occupy-tied activists in bombing plot

May 1, 2012, 12:49PM: Sachtleben corrects his earlier guess.

> Sachtleben: Got that one wrong. A lil surprised they r wrkin 24 hr shifts cuz of those mutts. **Still mght b sumthin else brewin. Will find out tomorrow** [emphasis FBI's]

May 2, 2012, 8:39AM: Sachtleben goes to work at Quantico. He's working in Explosives Unit, which is where they are investigating the UndieBomb. He accesses the room where they are investigating it (the documents don't say whether he was supposed to be working on it, though given his earlier probable work on UndieBomb 1.0 you'd think he'd at least be consulted).

May 2, 2012, 10:25AM: Sachtleben calls AP, speaks for 2 minutes. Discloses information he believes to be at least Secret and presumably involves the CIA.

> FBI was then engaged in an ongoing, secretive, and sensitive analysis of the bomb; analysis which involved other parts of the United States government besides the FBI.

May 2, 2012, approximately 1PM: AP calls "multiple United States Government officials" and stated,

1. US had intercepted a bomb from Yemen
2. FBI was analyzing the bomb
3. They believed AQAP's bombmaker Ibrahim al-Asiri linked to bomb

Government asks AP to delay reporting UndieBomb 2.0 story.

May 2, 2012: FBI claims to conduct physical surveillance of Sachtleben's house and sees same red pickup viewed in Google view (see above; h/t William Ockham)

May 3, 2012: FBI obtains search warrant (it doesn't appear in Sachtleben's docket)

May 6, 2012: Fahd al-Quso killed

May 7, 2012: Government tells AP national security concerns have been allayed; AP publishes story including the following additional details:

- The bomb was an upgraded design from UndieBomb 1.0 (sourced to "US officials") that did not contain metal and might not be IDed by Rapiscan machines

- The bomber had not yet picked a flight (this has always suggested that the AP did not yet know the plot was a Saudi-sting)
- White House and DHS officials said they knew of no Osama bin Laden raid anniversary attacks (see this post)
- AP learned about plot "last week" but held off on request from White House and CIA; concerns now allayed
- Details from Caitlin Hayden statement
- "Authorities" suspect al-Asiri made the bomb
- Fahd al-Quso killed

Note, several of these details are not specifically sourced; the anonymous ones that are are sourced to "US government officials" and "authorities"—both plural.

May 7, 2012: John Brennan briefs former CT Czars, indicates we had inside source, which leads to disclosure of British/Saudi infiltrator

May 8, 2012: ABC reveals UndieBomb inside job

May 10, 2012: Peter King calls for investigation of AP's (but not ABC's) sources (he also claims Speaker Boehner hadn't been briefed and "very few in the FBI" knew about it)

May 11, 2012: Sachtleben returns to Indianapolis from Quantico; FBI Special Agents observed him carrying a laptop as he arrived at the airport, suggesting they were tailing him already; he drives his Chevy Surburban (not the red truck in the Google surveillance) from the airport; FBI and local law enforcement execute the May 3

search warrant as he arrives; FBI did a “limited on scene triage” of the computer and found images tying him to pedodad36569; Sachtleben’s contract with FBI terminated; (presumably same date) FBI also seizes November 2, 2006 SECRET/NOFORN CIA intelligence report charged in leak case

May 7 to May 15, 2012 (presumably): Sachtleben continues to provide AP information on UndieBomb

May 15, 2012: CBS reports Sachtleben’s Kiddie Porn arrest

May 17, 2012: At bail hearing, government introduces two sealed exhibits supporting continued detention, but magistrate releases Sachleben on bail

May 21, 2012: Peter King formally asks Robert Mueller to investigate UndieBomb 2.0

May 23, 2012: Patrick Fitzgerald resigns (Nicoson investigation was in NDIL, western district)

June 11, 2012: Government files for extension on indictment with Sacthleben agreement

July 19, 2012: DOD rolls out Insider Threat program

August 7, 2012: Jason Nicoson indicted

August 10, 2012: Information in lieu of indictment

September 5, 2012: Status hearing

October 1, 2012: Continuance of trial

November 7, 2012: Motion to change plea, extend time, anticipating plea by December

Around February 9, 2013: DOJ obtains AP records

April 3, 2013: Status hearing set for April 23

April 18, 2013: Status hearing vacated

May 10, 2013: Ronald Machen informs AP it took 20 phone lines worth of call records; the

seizure was probably 90 days earlier

May 13, 2013: Plea agreement on kiddie porn; AP reveals DOJ phone record seizure

May 20, 2013: Jason Nicoson plea agreement

July 7, 2013: Because of his attorney's scheduling conflict, Sachtleben asks to continue plea and sentencing to August 13

July 9, 2013: Sachtleben stops possessing classified documents at his house (no search warrant described)

Between August 7 and 28, 2013: Government submits two motions (one is for revocation of pretrial release) that are sealed on August 28

August 30, 2013: In hearing, government argues for change of conditions of release; filed under separate (now sealed) order

September 4, 2013: Superseding plea agreement on kiddie porn also requires guilty plea on leak

September 23, 2013: Leak plea agreement

FURTHER IMPLICATIONS OF UNDIEBOMB II LEAKER GUILTY PLEA

As you have likely heard by now, a former FBI agent has agreed to plead guilty to leaking material about the second underwear bomb attempt to reporters in May of 2012. Charlie Savage of the New York Times has the primary rundown:

> A former Federal Bureau of Investigation agent has agreed to plead guilty to leaking classified information to The Associated Press about a foiled bomb plot in Yemen last year, the Justice Department announced on Monday. Federal

> investigators said they identified him after obtaining phone logs of Associated Press reporters.
>
> The retired agent, a former bomb technician named Donald Sachtleben, has agreed to serve 43 months in prison, the Justice Department said. The case brings to eight the number of leak-related prosecutions brought under President Obama's administration; under all previous presidents, there were three such cases.
>
> "This prosecution demonstrates our deep resolve to hold accountable anyone who would violate their solemn duty to protect our nation's secrets and to prevent future, potentially devastating leaks by those who would wantonly ignore their obligations to safeguard classified information," said Ronald C. Machen Jr., the United States attorney for the District of Columbia, who was assigned to lead the investigation by Attorney General Eric H. Holder Jr.
>
> In a twist, Mr. Sachtleben, 55, of Carmel, Ind., was already the subject of a separate F.B.I. investigation for distributing child pornography, and has separately agreed to plead guilty in that matter and serve 97 months. His total sentence for both sets of offenses, should the plea deal be accepted by a judge, is 140 months.

Here is the DOJ Press Release on the case.

Here is the information filed in SDIN (Southern District of Indiana). And here is the factual basis for the guilty plea on the child porn charges Sachtleben is also pleading guilty to.

So Sachtleben is the leaker, he's going to plead guilty and this all has a nice beautiful bow on it! Yay! Except that there are several troubling issues presented by all this tidy wonderful case

wrap up.

First off, the information on the leak charges refers only to “Reporter A”, “Reporter A’s news organization” and “another reporter from Reporter A’s news organization”. Now while the DOJ may be coy about the identities, it has long been clear that the “news organization” is the AP and “Reporter A” and “another reporter” are AP national security reporters Matt Apuzzo and Adam Goldman (I’d hazard a guess probably in that order) and the subject article for the leak is this AP report from May 7, 2012.

What is notable about who the reporters are, and which story is involved, is that this is the exact matter that was the subject of the infamous AP phone records subpoenas that were incredibly broad – over 20 business and personal phone lines. These subpoenas, along with those in the *US v. Steven Kim* case collected against James Rosen and Fox News, caused a major uproar about the sanctity of First Amendment press and government intrusion thereon.

The issue here is that Attorney General Eric Holder and the DOJ, as a result of the uproar over the AP and Fox News discovery abuse, grudgingly announced new guidelines in a glossy six page document released on July 12, 2013 to much fanfare. The DOJ promised to, in the future:

> …utilize such tools only as a last resort, after all reasonable alternative investigative steps have been taken, and when the information sought is essential to a successful investigation or prosecution.

However the sentiment so proudly expressed by DOJ in July seems more than a little faint with the emphasis they placed yesterday on only being able to solve the UndieBomber II leak case because:

> Sachtleben was identified as a suspect in the case of this unauthorized

> disclosure only after toll records for phone numbers related to the reporter were obtained through a subpoena and compared to other evidence collected during the leak investigation.

Hard to see how such pointed braggadocio is not a not so subtle notice that DOJ considers anything they deem a "national security" related leak, which is about everything to the Obama Administration, to be fair game for investigation and discovery of reporters and news organizations, both on a business and personal level, as was done here with respect to Apuzzo, Goldman and the AP. Once again, the Obama Administration PR show belies what it is doing, and will do in practice.

The second thing of note about yesterday's announcement is that it has all the markings of finality, and I am informed that indeed such is the case and no further charges are forthcoming. Now, as to Sachtleben, that is fair; the government has him cold through phone and email records, travel records and his admission of guilt in a signed information where he flat out said he was no whistleblower by admitting that he:

> did not believe that he was exposing government waste, fraud, abuse, or any other kind of government malfeasance or misfeasance.

So Sachtleben is cooked, and that is all well and good. But if this is all over, what about the "other" leak that was part of the mid May 2012 leakfest, i.e. the one that *really was* a dangerous affront to operational security concerns. You know, the one where the Saudi agent (double agent?) who acquired UndieBomb II was burned.

The Saudi agent story was not part of Apuzzo and Goldman's original reporting and was by all appearances first broken by ABC and Richard

Clarke after participating in a background phone call by, who else, John Brennan, and then LA Times, CNN, NYT and a host of others in succession picked up the ball and ran with it. It is unclear whether AP had the story too and, if so, whether any part of it came from Sachtleben. There is no mention of the Saudi agent, the story of his work, possible involvement in the al-Quso drone strike, or any indication that Sachtleben could have garnered that information, contained in the DOJ press release and criminal information.

In fact, the reports on the Saudi agent consistently referred to what appears to be a Saudi official as a leaker, but with confirmations, which themselves are clear leaks, from multiple Obama Administration officials. One of said officials clearly leaking what was still classified information was none other than John Brennan. The leaker who was subsequently installed as head of the CIA. One leaker gets prison, and the other gets a promotion to CIA director. But that is how the Obama Administration hypocritically rolls.

So, what of the Obama Administration officials chattering to the press, both in the first instance, and as confirmation sources regarding UndieBomb II plot and the Saudi operation? What about the Saudi leaker? For that matter, what about the government sources that confirmed the AP information from Sachtleben? What about the sources, some clearly Administration based, for the CNN, LA Times and ABC reports? While many of them are undoubtedly the same individuals, all of those seem to be swept under the rug by Sachtleben's plea, even though he is obviously but one part of the equation. And by all appearances, Sachtleben is far from the most damaging part.

In fairness, Josh Gerstein relates this:

> The court papers in Sachtleben's case don't describe precisely what damage his leak caused, nor do they make any reference to an informant or double

> agent being endangered. However, a U.S. official said prosecutors haven't put all the details in the public documents in order to avoid compounding the damage.

That is a pretty vague and unsatisfactory answer to the pertinent questions. The damage is already done, Brennan and others did part of it and answers better than just the Sachtleben wrap are due.

Next, there is the issue of the "investigative" work the DOJ is so proud of in its press release and criminal complaint on Sachtleben. Remember, DOJ collected on *20 different phone lines* alone including multiple AP bureau offices, and business, home and cell numbers of AP reporters. That is pretty much the main backbone for AP governmental and national security reportage. Add in the additional collection on their email and text records.

The full scope of the collection is delineated in paragraphs 5, 8, 9, 11, 13 and 14 of the criminal information. And the phone and email collection was not just metadata, but as the above described paragraphs make clear, full content too. Since these subpoenas were after the fact, that means the vaunted NSA storage database was likely used. How many "hops" were made off of the AP lines? (Remember, 3 hops off of one person making 40 calls can be 2.5 million people).

Frankly one hop off the lot of the AP phones could yield a massive number of targets, and the most precious ones to First Amendment journalism. This post is long enough without going into specifics of the surveillance implications from the collection on the AP and its top reporters, but suffice it to say the implications to, and chilling effect on, governmental and national security reportage is immense.

Lastly, there is the presumptive regularity that

must be given to the stated timing of the national security prong of the case against Sachtleben vis a vis the child porn prong. But take a look at the end of Charlie Savage's report in the NYT:

> As it turns out, the contractor was about to take a trip to Quantico. On May 2, he visited the lab where the underwear device was being examined, it said, and soon called the reporter.
>
> Two and a half hours later, the court filing said, two A.P. reporters began calling government officials saying they knew that the United States government had intercepted a bomb from Yemen and that the F.B.I. was analyzing it.
>
> The next day, May 3, 2012, law enforcement agents in Indiana, working on an unrelated case involving the distribution of child pornography on the Internet, obtained a search warrant for Mr. Sachtleben's house, court filings show. They seized his computers on May 11.

Once again, very convenient how it all came together. I am sure it all happened legitimately like the government claims, but it certainly would be a lot easier to bite off on fully if the government's propensity for "parallel construction" of cases were not known (and, no, it is not only the DEA who uses the technique).

The above are but some of the key questions and implications arising from yesterday's announcement by the DOJ of the wrapping up of the UndieBomb II investigation by the charging of Donald Sachtleben. It is a convenient end for the government, but a rather unsatisfying one for the intelligence of the public.

BRADLEY MANNING'S SENTENCE, PAROLE AND APPEAL IMPLICATIONS

On Monday I laid out the dynamics that would be in play for the court in considering what sentence to give Bradley Manning in light of both the trial evidence and testimony, and that presented during the sentencing phase after the guilty verdict was rendered. Judge Lind has entered her decision, and Bradley Manning has been sentenced to a term of 35 years, had his rank reduced to E-1, had all pay & allowances forfeited, and been ordered dishonorably discharged. This post will describe the parole, appeal and incarceration implications of the sentence just imposed.

Initially, as previously stated, Pvt. Manning was credited with the 112 days of compensatory time awarded due to the finding that he was subjected to inappropriate pre-trial detention conditions while at Quantico. Pvt. Manning was credited with a total 1294 days of pre-trial incarceration credit for the compensatory time and time he has already served since the date of his arrest.

Most importantly at this point, Manning was sentenced today to a prison term of 35 years and the issue of what that sentence means – above and beyond the credit he was given both for compensatory time and time served – is what is critical going forward. The following is a look at the process, step by step, Bradley Manning will face.

The first thing that will happen now that Judge Lind has gaveled her proceedings to a close is the court will start assembling the record, in terms of complete transcript, exhibits and full docket, for transmission to the convening authority for review. It is not an understatement to say that this a huge task, as the Manning record may well be the largest ever produced in a military court martial. It will be a massive undertaking and transmission.

At the same time, the defense will start preparing their path forward in terms of issues they wish to argue. It is my understanding that Pvt. Manning has determined to continue with David Coombs as lead counsel for review and appeal, which makes sense as Coombs is fully up to speed and, at least in my opinion, has done a fantastic job. For both skill and continuity, this is a smart move.

The next step will be designation of issues to raise for review by the "convening authority". In this case, the convening authority is Major General Jeffrey Buchanan, who heads, as Commanding General, the US Army's Military District of Washington. This step is quite different than civilian courts, where a defendant proceeds directly to an appellate court.

The accused first has the opportunity to submit matters to the convening authority before the convening authority takes action – it's not characterized as an "appeal," but it's an accused's first opportunity to seek relief on the findings and/or the sentence. According to the Manual for Courts-Martial, Rule for Court-Martial 1105:

> (a) In general. After a sentence is adjudged in any court-martial, the accused may submit matters to the convening authority in accordance with this rule.
>
> (b) Matters which may be submitted.
> (1) The accused may submit to the

> convening au thority any matters that may reasonably tend to af fect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. The convening authority is only required to consider written submissions.
> (2) Submissions are not subject to the Military Rules of Evidence and may include:
> (A) Allegations of errors affecting the legality of the findings or sentence;
> (B) Portions or summaries of the record and copies of documentary evidence offered or intro duced at trial;
> (C) Matters in mitigation which were not avail able for consideration at the court-martial; and
> (D) Clemency recommendations by any mem- ber, the military judge, or any other person. The defense may ask any person for such a recommendation.

Once the convening authority has the full record and the defense has designated its matters for review, Buchanan will perform his review and determine whether any adjustments to the sentence are appropriate, and that will be considered the final sentence. At this point, the only further review is by a traditional appeal process.

Generally, the level of appellate review a case receives depends on the sentence as approved by the convening authority. After the approval of the sentence, cases in which the sentence includes death, a punitive discharge (bad conduct, dishonorable discharge, or dismissal), or confinement for one year or greater (and Manning's sentence certainly fits that criteria) are automatically referred to the service (in this case the Army) Court of Criminal Appeals (ACCA) for review. In Bradley Manning's case, only some counts will be eligible for appeal, the ones for which Judge Lind convicted him of after "deliberation". Appeal on the counts

Manning voluntarily pled guilty to prior to trial was waived.

The ACCA will be responsible for reviewing the entire case and has, pursuant to Article 66, UCMJ, the responsibility to:

> …affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines on the basis of the entire record, should be approved.

That statutory requirement to find law and fact "correct" is significant; the ACCA could decide not to sustain a conviction on a particular offense even if not challenged on appeal. The ACCA "may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the court-martial saw and heard the evidence."

In addition to the ACCA's review, military appellate counsel, unless waived, are provided to the accused at no cost. Bradley Manning will likely already have David Coombs, but due to the complexity, it can be anticipated there will also be military counsel participating as well. The appellate counsel may raise specific legal issues to the court for resolution.

After the ACCA, the decision may be appealed to the Court of Appeals for the Armed Forces and thereafter to the United States Supreme Court. Military appellate counsel are continued to be provided at no cost until all the appeals have been exhausted. See generally Subchapter IC, Post-Trial Procedure and Review of Courts-Martial (10 USC §§ 860-876) and Chapter XII of the Rules for Courts-Martial.

The foregoing is the process that will play out in relation to court proceedings for Bradley Manning. But, as such is progressing, Mr. Manning will, of course, be incarcerated, and there will be factors to be considered in that regard as well. Manning will be sentenced to a

facility for confinement. The obvious location is Fort Leavenworth where he has been for some time already, although he will likely be moved out of pre-trial population and into general confinement population.

Some military prisoners can be transferred to a Federal Bureau of Prisons (FBOP) facility with the concurrence or direction of the Secretary concerned and agreement with the FBOP. Factors that are considered are: the prisoner's demonstrated potential for return to duty or rehabilitation, nature and circumstances of offenses, confinement file, status of legal appeals/proceedings, length and nature of sentence, age, and special circumstances (prisoner needs/interests of national security). At least at this point, there is no reason to believe Bradley Manning would be transferred to a civilian prison, although it is at least possible after all appeals are exhausted, which will not be for a very long time.

Once assigned to his facility, Mr. Manning will have a "sentence computation form" generated that will effectively control his confinement and eligibility for release going forward. Here is the template used for such computation. The form can be, and is, commonly updated as the prisoner serves his time, and the document is primarily an internal one as opposed to a public one. There is no set time period for initial production of the form, but it should happen pretty quickly after Manning's return to the permanent facility. Any number of things can cause adjustments to the form as time goes on, including any sentence relief granted by the convening authority, either initially or after alteration of the conviction status from appellate courts.

So, what about Bradley Manning's potential release date? This is where there is a HUGE difference in the UCMJ process from civilian process. As many know, the United States government has abolished "parole" for federal prison sentences. Instead, and this is now

common in many states too, federal prisoners must serve at least 85% of their imposed sentence, and only then are eligible for supervised release for the remaining time. Under the UCMJ, however, there is still an active and healthy parole system that is far more flexible and favorable to a defendant, especially one like Bradley Manning, who is sentenced to a long term.

Several programs exist within the military corrections process to allow prisoners to be released prior to serving their full sentence. These programs are: clemency, parole, mandatory supervised release (MSR), reenlistment, and restoration to duty. Prisoners do not have any right to clemency, parole, reenlistment, or restoration. These programs are administered by a Clemency and Parole Board (C&PB) on behalf of the Secretary concerned and only apply to military prisoners confined at military corrections facilities. Upon the unlikely event of permanent transfer to the Federal Bureau of Prisons, military prisoners may only be considered for clemency, restoration to duty, and reenlistment, the latter two of which are pretty inconceivable for Bradley Manning.

C&PB considers factors such as the nature and circumstances of the prisoner's offenses, the military and civilian history, the confinement file, personal characteristics of the prisoner (age, education, marital/family status, psychological profile), impact of prisoner's offense on victim and attempts at restitution, protection and welfare of society, and the need for good order and discipline in the military when determining whether a prisoner should be granted any of the above programs.

Parole is the conditional release from confinement of a prisoner under the guidance and supervision of a United States Probation Officer. This may be granted prior to the minimum release date and does not require the member to remain on parole until the adjusted maximum release date. Parole considerations

begin, upon request of the prisoner, if the sentence is less than 30 years after the member serves one-third of the confinement, but no less than 6 months. If the sentence is greater than 30 years, the prisoner must serve at least 10 years of confinement. The point at which the C&PB begins to consider the prisoner for these programs is dependent upon the sentence received. Specific details on how to calculate when a prisoner, such as Bradley Manning, is eligible for parole or MSR, see Department of Defense Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority as well as the DOD Sentence Computation Manual.

MSR is the conditional release of a prisoner who has served the portion of the sentence to confinement up to the minimum release date from confinement. This type of release continues until the individual reaches the adjusted maximum release date unless the confinement term is altered by the military department through remission, revocation, etc. This is also served under the guidance and supervision of a United States Probation Officer.

Bradley will also be eligible for “good time credits” that will inure to his release favor assuming he is a model prisoner. Good time credit is time that is awarded for faithful observance of all rules and regulations and is subtracted from the prisoner’s adjusted maximum release date. The adjusted maximum release date is computed by adjusting the maximum release date to include administrative credit (pretrial confinement), judicial credit (credit ordered by a judge to a sentence of confinement), inoperative time, and crossing the International Date Line. Good time credit is calculated as 5-10 days per month off the top depending on the length of the approved sentence. In addition, a prisoner may receive up to an additional 8 days per month for work, participation in rehabilitation programs, and/or participation in education programs. If a prisoner performs extraordinary acts, then an additional 2 days

per month for 12 months may be credited. The total combined credited time may not exceed 15 days per month.

There is no interplay between parole and good time credit as good time credit affects the adjusted maximum release date, and parole consideration is annual after a specified time frame as explained above. If a prisoner is not paroled, s/he may be released earlier than initially expected as a result of good time credit.

So, what is the bottom line as to how much time Bradley Manning will likely really serve in confinement given the sentence today by Judge Lind? As you can tell from the above discussion, that is an extremely hard question to answer, and the answer is quite fluid and subject to change as the circumstances dictate. A good rule of thumb, however, is that Bradley could be released after serving one third of his sentence. In light of the fact Judge Lind has imposed a term of 35 years, Mr. Manning, considering the time he has already served, could potentially be eligible for release in as little as 9 years from now. As painful as it is to admit, this sentence, and Bradley Manning's prospects could have very easily looked far worse. [UPDATE – after pondering what Col. Morris Davis said, I think he is right, and after recalculation, I think the initial eligibility for release – assuming everything goes perfectly for Bradley Manning – will be in 8.3 years.]

One last point – what are the effects of this UCMJ conviction upon Bradley Manning's civil rights? That is a question not nearly as easy to answer as it is for a civilian felony conviction, where certain rights are simply lost until formally restored. It turns out that for military convictions there is no set authority. The best resource I have found on understanding collateral consequences of a military conviction and sentence is this from the American Bar Association. Some consequences may apply during

a period of supervised release while others could be permanent. In general, the consequences that military convicts face is determined by the state law of the person's residence.

THE BRADLEY MANNING SENTENCING DYNAMICS

U.S. Army Private First Class Bradley Manning stands convicted of crimes under the Uniform Code of Military Justice (UCMJ). The convictions result from two events. The first was a voluntary plea of guilty by Pvt. Manning to ten lesser included charges in February, and the remainder from a verdict of guilty after trial entered by Judge Denise Lind on July 30.

The maximum possible combined sentence originally stood at 136 years for the guilty counts, but that was reduced to a maximum possible sentence of 90 years after the court entered findings of merger for several of the offenses on August 6. The "merger" resulted from the partial granting of a motion by Mr. Manning's attorney arguing some of the offenses were effectively the same conduct and were therefore multiplicitous. The original verdict status, as well as the revised verdict status after the partial merger of offenses by the court, is contained in a very useful spreadsheet created by Alexa O'Brien (whose tireless coverage of the Manning trial has been nothing short of incredible).

Since the verdict and merger ruling, there have been two weeks of sentencing witnesses, testimony and evidence presented by both the government and defense to the court. It is not the purpose of this post to detail the testimony and evidence per se, but rather the mechanics of the sentencing process and how it will likely be carried out. For detailed coverage of the

testimony and evidence, in addition to Alexa O'Brien, the reportage of Kevin Gosztola at FDL Dissenter, Julie Tate at Washington Post, Charlie Savage at New York Times and Nathan Fuller at the Bradley Manning Support Network has been outstanding.

All that is left are closing arguments and deliberation by Judge Lind on the final sentence she will hand down. So, what exactly does that portend for Bradley Manning, and how will it play out? Only Judge Lind can say what the actual sentence will be, but there is much guidance and procedural framework that is known and codified in rules, practice and procedure under the UCMJ.

Initially, the obvious should be stated, Bradley Manning is in front of an Army court martial process under the UCMJ, and while there is much similar to the traditional state and federal civilian trial processes covered over the years here, much is different and unique. There has been much said about the process in terms of the Manning trial in terms of the secrecy, lack of transparency in docket items and evidence and closed proceedings. Much of it is fair, some is not. Having been involved in a few UCMJ proceedings, the issues of poor access to docket items and pleadings is not unique to the Manning trial, it is inherent in the decentralized and rigid UCMJ system. That is certainly something that is an issue compared to civilian systems and needs to be improved on by the military.

By the same token, the secrecy and utilization of closed proceedings for portions of the trial were not necessarily much different than would have occurred in a federal District Court which also can utilize closed proceedings as well as the CIPA process. All in all, many defense attorneys I know that have practiced in both jurisdictions have, surprisingly, found the UCMJ process to be generally fair and protective of defendants' rights. Certainly others may differ, but that comports with my experience as well. That is no comment on the Manning proceedings,

but just a general observation.

With that overview in mind, let’s take a look at how the process looks to play out for Pvt. Manning. As stated above, the evidentiary portion of the sentencing process concluded late last week. Rule for Courts-Martial (RCM) 1001 outlines the presentation of sentencing evidence and what qualifies as sentencing evidence. Specifically, the prosecution presents personnel records which include the accused’s marital status, number of dependents, character of prior service, performance reports, prior convictions, and any other personnel records which were made or maintained in accordance with Army regulations such as prior non-judicial punishment and letters of reprimand/counseling.

Thereafter, the prosecution presents evidence in aggravation which is defined as evidence directly relating to or resulting from the offenses for which the accused has been found guilty. This may include evidence of financial, social, psychological, medical impact on victims and adverse impacts on the mission or discipline of the service units. Lastly, the prosecution may present opinion evidence as to the accused’s rehabilitative potential.

The defense then may present any matter in extenuation or mitigation that it considers favorable to the the convicted individual, in this case Bradley Manning. This includes information which may explain the circumstances surrounding why the accused committed the offenses and matters which may cause the court to lessen the punishment which may include acts of good conduct, bravery, reputation, or any other trait that is probative and favorable.

The accused has the right to make a sworn or unsworn statement during sentencing. It is not uncommon for a defendant to exercise this right and make an unsworn statement, which is exactly what Bradley Manning did. Other defense evidence frequently consists of letters of support for the accused. Military courts are required to consider all the evidence before them when

determining the most appropriate sentence; however, the exact weight that the court gives to any particular piece of evidence is within the deliberative process and discretion of the court, and is not specifically delineated or disclosed with the final sentence.

In a civilian court, many of the separate counts would, for final sentence calculation, be considered as either concurrent or consecutive for sentence determination and, at least in the federal system, the Federal Sentencing Guidelines would then be calculated to provide a range of sentence to guide the court. That, however, is not how it works under the UCMJ.

Under the UCMJ, once the charges and specifications are reviewed, a maximum punishment is determined by the court and, in this case, as stated above, it is 90 years confinement. The court also has available other sentencing modalities such as dishonorable discharge, reduction to the lowest enlisted grade, a reprimand, and the possibility of a fine (although a fine is uncommon in non-financial cases). At that point, the Court will review what Manning has been convicted of and the sentencing evidence to decide what punishment to impose. The Court does not impose a separate punishment for each charge or specification. The court, i.e. Judge Lind, will come up with one lump sum sentence for the entire case and impose it pursuant to RCM 1003 and 1005.

To whatever sentence Pvt. Manning is given, he will be given credit for 112 days as compensation for mistreatment in his initial pre-trial confinement period at Quantico. You would think the court should take further notice of the abuse inflicted on Bradley Manning in his confinement, but such is unlikely to be the case and, again, there will be no way to tell since the basis of the sentence is not specifically delineated by the court. Credit for time in confinement pre-trial and pre-sentence, since his arrest on May 27, 2010, will also be given.

And that is the process for the sentencing of Bradley Manning. Final statements will be given this morning and Judge Lind may well hand down the final sentence as early as this morning or afternoon; Tuesday morning at the likely latest. Once the court has issued its sentence, a host of new factors and processes, including parole and appeal considerations, that are far different from civilian courts (and arguably much more favorable), will come into play, and those will be explained in a separate post once Judge Lind has issued her sentence.

THE CLAPPER REVIEW: HOW TO FIRE 90% OF SYSADMINS?

Yesterday, I noted it took just 72 hours from Obama to turn an "independent" "outside" review of the government's SIGINT programs into the James Clapper Review of James Clapper's SIGINT Programs.

But many other commenters have focused on the changed description of the review's mandate. In his speech on Friday, Obama said the review would study, "how we can **maintain the trust of the people**, how we can make sure that there **absolutely is no abuse** in terms of how these surveillance technologies are used, ask **how surveillance impacts our foreign policy**."

On Monday, his instruction to James Clapper said the review would, "whether, in light of advancements in communications technologies, the United States employs its technical collection capabilities in a manner that optimally protects our national security and advances our foreign policy while appropriately accounting for other policy considerations, such as the **risk of unauthorized disclosure** and our **need to maintain**

the public trust."

Both addressed public trust. But Monday's statement replaced a focus on "absolutely no abuse" with "risk of unauthorized disclosure."

Now, I'm not certain, but I'm guessing we all totally misunderstood (by design) Obama's promises on Friday.

The day before the President made those promises, after all, Keith Alexander made a different set of promises.

> "What we're in the process of doing — not fast enough — is reducing our system administrators by about 90 percent," he said.
>
> The remarks came as the agency is facing scrutiny after Snowden, who had been one of about 1,000 system administrators who help run the agency's networks, leaked classified details about surveillance programs to the press.
>
> Before the change, "what we've done is we've put people in the loop of transferring data, securing networks and doing things that machines are probably better at doing," Alexander said.

We already know that NSA's plan to minimize the risk of unauthorized disclosure involves firing 900 SysAdmins (Bruce Schneier provides some necessary skepticism about the move). They probably believe that automating everything (including, presumably, the audit-free massaging of the metadata dragnet data before analysts get to it) will ensure there "absolutely is no abuse."

And by turning the review intended to placate the civil libertarians into the review that will come up with the brilliant idea of putting HAL in charge of spying, the fired SysAdmins might just blame the civil libertarians.

So this review we all thought might improve

privacy? Seems, instead, designed to find ways to fire more people faster.

MIKE ROGERS SAYS 4 BRIEFINGS RECENTLY MAKES UP FOR WITHHOLDING INFORMATION BEFORE PATRIOT ACT VOTE

Here's House Intelligence Chair Mike Rogers' response to the White Paper's revelation, backed by Justin Amash's reports, that he didn't invite all members of the House to read notice of the Section 215 dragnet.

> The House Intelligence Committee makes it a top priority to inform Members about the intelligence issues on which Members must vote. This process is always conducted consistent with the Committee's legal obligation to carefully protect the sensitive intelligence sources and methods our intelligence agencies use to do their important work. **Prior to voting on the PATRIOT Act reauthorization and the FAA reauthorization, Chairman Rogers hosted classified briefings to which all Members were invited** to have their questions about these authorities answered. Additionally, **over the past two months, Chairman Rogers has hosted four classified briefings**, with officials from the NSA and other agencies, on the Section 215 and Section 702 programs and has invited all Republican Members to attend and receive

> additional classified briefings on the use of these tools from Committee staff. The Committee has provided many opportunities for Members to have their questions answered by both the HPSCI and the NSA. And Chairman Rogers has encouraged members to attend those classified briefings to better understand how the authorities are used to protect the country. [my emphasis]

So even according to Mike Rogers, Mike Rogers provided briefings to members to answer the questions they'd have no notice they needed to ask before reauthorization of the PATRIOT Act because Mike Rogers hadn't provided the explanation of what they might want to ask questions about.

And since Edward Snowden exposed all this, he has had 4 briefings.

Nowhere in Rogers' statement does he deny he failed to pass on the notice that read,

> We believe that making this document available to all members of Congress, as we did with a similar document in December 2009, is an effective way to inform the legislative debate about reauthorization of Section 215.

Which, I take, is additional confirmation (in addition to the White Paper and reports from Congress) he failed to pass on notice that DOJ and the Administration claimed they wanted shared with all of Congress.

The legality of the 215 dragnet depends, in part, on whether or not the Executive briefed Congress. And because of Mike Rogers, it appears that that legal case is beginning to crumble.

OBAMA'S CREDIBILITY TRAP

President Obama just stood before the nation and said,

> And if you look at the reports – even the disclosures that Mr. Snowden has put forward – all the stories that have been written, what you're not reading about is the government actually abusing these programs and listening in on people's phone calls or inappropriately reading people's emails. What you're hearing about is the prospect that these could be abused. Now, part of the reason they're not abused is because these checks are in place, and those abuses would be against the law and would be against the orders of the FISC.

Even as he was speaking, his Administration released a document that said, in part,

> Since the telephony metadata collection program under Section 215 was initiated, there have been a number of significant compliance and implementation issues that were discovered as a result of DOJ and ODNI reviews and internal NSA oversight. In accordance with the Court's rules, upon discovery, these violations were reported to the FISC, which ordered appropriate remedial action. The incidents, and the Court's responses, were also reported to the Intelligence and Judiciary Committees in great detail. These problems generally involved human error or highly sophisticated technology issues related to NSA's compliance with particular aspects of the Court's orders. The FISC has on occasion been critical of the Executive Branch's compliance problems as well as the Government's court

> filings. However, the NSA and DOJ have corrected the problems identified to the Court, and the Court has continued to authorize the program with appropriate remedial measures.

While (as I will show in a future post), Obama's Administration has worked hard to prevent details of these violations from becoming public and delayed even the Judiciary Committees from being briefed, some of them may come out as part of the DOJ Inspector General review that the Administration tried to thwart in 2009.

Also, even as he was speaking, EFF announced the government will turn over a redacted copy of the October 3, 2011 FISA Court ruling that found the minimization procedures for Section 702 violated the Fourth Amendment. A new Guardian report suggests that ruling may pertain to the use of a backdoor to conduct warrantless searches on US person content already collected under Section 702. (While many commentators have insisted the Guardian report provides no evidence of abuse, NSA and DNI's Inspectors General refused to count how often Americans have been searched in such a way, effectively refusing to look if it has been abused.)

As Shane Harris astutely describes, all of this kabuki is designed solely to make people feel more comfortable about these dragnets.

> And the President's message really boiled down to this: It's more important to persuade people surveillance is useful and legal than to make structural changes to the programs.
>
> "The question is, how do I make the American people more comfortable?" Obama said.
>
> Not that Obama's unwilling to make any changes to America's surveillance driftnets — and he detailed a few of them — but his overriding concern was that people didn't believe him when he

> said there was nothing to fear.

But the President just stood up and claimed the government hasn't abused any of these programs.

It has, by its own admission, violated the rules for them.

Meanwhile, Ron Wyden has already released a statement applauding some of these changes while noting that Obama is still minimizing how bad the violations have been.

> Notably absent from President Obama's speech was any mention of closing the backdoor searches loophole that potentially allows for the warrantless searches of Americans' phone calls and emails under section 702 of the Foreign Intelligence Surveillance Act. I believe that this provision requires significant reforms as well and I will continue to fight to close that loophole. I am also concerned that the executive branch has not fully acknowledged the extent to which violations of FISC orders and the spirit of the law have already had a significant impact on Americans' privacy.

Ultimately, details of these violations will come out, and are on their way out in some form already.

If this press conference was designed solely to make us feel better, wouldn't Obama have been better advised to come clean about these violations than to pretend they don't exist?

AGAINST LEGION OF DOOM ALERT, IS HADI PLAYING SALEH'S OLD GAME?

After President Obama met with Yemen's President Abdo Rabu Mansour Hadi on the eve (or during the progression) of the Legion of Doom alert last week, he said this about Hadi's cooperation on terrorism.

> I thank President Hadi and his government for the strong cooperation that they've offered when it comes to counterterrorism. Because of some of the effective military reforms that President Hadi initiated when he came into this office, what we've seen is al Qaeda in the Arabian Peninsula, or AQAP, move back out of territories that it was controlling.
>
> And President Hadi recognizes that these threats are not only transnational in nature, **but also cause severe hardship and prevent the kind of prosperity for the people of Yemen themselves**. [my emphasis]

Hadi responded,

> Our work together insofar as countering terrorism is concerned and also against al Qaeda is expressive, **first and foremost, of Yemeni interests, because as a result of the activities of al Qaeda, Yemen's development basically came to a halt** whereby there is no tourism, and the oil companies, the oil-exploring companies had to leave the country as a result of the presence of al Qaeda. So our cooperation against those terrorist elements are actually serving the interests of Yemen. [my

> emphasis]

Note how this carefully scripted puppet show emphasized Yemen's own interests in defeating al Qaeda.

Here's what, in the wake of disagreements whether a disrupted plot (that may have had nothing to do with AQAP) had anything to do with the Legion of Doom alert, the WSJ now reports really happened at the meeting between Obama and Hadi.

> The U.S. raised concerns in meetings in Washington last week, with officials complaining to President Abd Rabbu Mansour Hadi that Yemeni forces weren't taking the al Qaeda threat seriously and needed to stop pulling back from military offensives, people familiar with the meetings said. **Yemeni officials say they have spared no effort battling al Qaeda and its affiliates but that the threat remains too large for their ill-equipped military**.
>
> "We don't have the capabilities or man power to capture large swaths of territory," said one Yemeni official familiar with counterterrorism policy. "AQAP has hide-outs in remote villages and towns spread across the country."
>
> The history of U.S.-Yemeni counterterrorism relations has been checkered with missteps and mistakes, even before this latest terror alert. Mr. Hadi—who came to power in large part due to America's diplomatic intervention—has tried to strengthen military and economic ties with the U.S.
>
> Some officials in San'a, however, worry that President *[my emphasis]*

It goes onto lay out details of the cooperation — though the reported influx of JSOC members to

Yemen may reflect a dramatic departure from this cooperation.

> At the heart of the U.S.-Yemeni cooperation is a joint command center in Yemen, where officials from the two countries evaluate intelligence gathered by America and other allies, such as Saudi Arabia, say U.S. and Yemeni officials. There, they decide when and how to launch missile strikes against the highly secretive list of alleged al Qaeda operatives approved by the White House for targeted killing, these people say.
>
> But local sensitivities about the bilateral counterterrorism cooperation have spiked in recent years due to high-profile civilian deaths by U.S. missiles, prompting tight limitations on any visible American role in the fight against al Qaeda.
>
> For example, U.S. Special Forces aren't allowed to accompany Yemeni units on patrols through the rugged mountains where al Qaeda cells have found haven, military officials familiar with the situation say. But Yemeni units have neither the skill nor political will to take on these sorts of quick-strike operations, the officials said.
>
> Instead, Yemeni armed forces conduct periodic high-profile land operations against militants whose affiliation with al Qaeda isn't clear.

And all that's built on a bunch of military toys which Foreign Policy catalogs here. (Note, why are we paying Gallup $280,000 for a "Yemen Assessment Survey" when they can't even poll in the US competently anymore? If we insist on using a US firm, why not use Zogby, which would have better ties to Arabic speakers?)

But underlying all this parroted language about

cooperation is the reality that a focus on Al Qaeda tends to distract Hadi, who already relies on the US and Brits and Saudis to retain power, from issues that matter to Yemenis. This superb Guardian piece notes how counterterrorism delegitimizes him.

> Among ordinary Yemenis, meanwhile, the latest al-Qaida drama has been greeted with scepticism and even some derision. Al-Qaida is often viewed as an American obsession while millions of Yemenis have more basic things to worry about – like obtaining their next meal. They also point out that more people die on Yemen's treacherous mountain roads, or in fights over scarce water resources, than at the hands of al-Qaida.
>
> There is now widespread recognition that drone strikes in Yemen have been counter-productive. Whatever benefits they brought in terms of killing militants who posed a serious threat have been cancelled out by the killing of others who posed no threat at all, and the anger this has aroused among the population at large.
>
> Some of that resentment is now being directed against President Hadi, who was installed by the Gulf states (with western blessing) as Saleh's successor – and it hasn't escaped Yemenis' notice that Hadi met Obama in Washington last week, just a few days before the al-Qaida alert. Obama, as might be expected, was full of praise for him.
>
> Before becoming president, Hadi had no real power base in Yemen and without strong international backing – especially from the US – he would be unlikely to survive for long. That leaves him in no position to resist American demands and at the same time it further damages his support at home. In effect, the US is propping him up with

> one hand and dragging him down with the other.

As Legion of Doom unfolds, one thing to keep in mind is this double game, the US need to create the illusion that Yemen is or can or would want to cooperate fully on responding to this alert, while most observers realize that if Hadi were to cooperate fully, it would only make him less legitimate in the eyes of Yemenis.

That may not provide us with a reason to pump up the threat (though the NSA disclosures would provide such a reason). But it does put Hadi into the same position Ali Abdullah Saleh was in before him: with a need to boost the threat (and claims that normal counterinsurgency operations actually targeted Al Qaeda) to get more American toys to defend against the Yemeni people.