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.
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> 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.
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> "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.
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> 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.
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> 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.
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> 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.