

JAMES CLAPPER PROVES INADEQUATE OVERSIGHT BY REFUSING TO ANSWER EO 12333 QUESTIONS

The headlines from today's Senate Judiciary Committee hearing on NSA will no doubt be that Pat Leahy forced Keith Alexander to admit they've been lying about whether the 54 "plots" they "thwarted" were really "plots" or "thwarted" in the first place. Perhaps just two were.

More astute reporters might note that, in response to questions about the NYT's report on the dossiers created in the course of foreign intelligence collection analysis, Keith Alexander offered several equivocations first claiming NYT got things wrong, then realizing that was a too broad claim. More interesting, he ultimately admitted that the NSA conducts some of this under Executive Order 12333 – the collection David Kris outlined in his paper.

There was even some follow-up on the NSA's use of EO 12333, with James Clapper and Alexander claiming Congress had some oversight of that collection (in spite of Dianne Feinstein's admission that they don't get news of EO 12333 violations even when they involve Americans).

But the most telling exchange occurred between Amy Klobuchar, Keith Alexander, and James Clapper. (after 1:25) Klobuchar asked why they hadn't told the Committee of the violations reported in an internal NSA review when they last appeared before the committee. After Alexander tried to filibuster (actually addressing the report in question and noting only ODNI and DOJ get those numbers, not FISC or Congress), Clapper interrupted and pretended she had asked about the LOVEINT incidents just

reported to Charles Grassley. Clapper claimed those hadn't been reported because they were 12333 violations.

Clapper: I think the answer to the question, Senator, was that the subject of the hearing was 215 and 702, and these 12 violations over 10 occurred under the foreign collection under the auspices of Executive Order 12333. [Sits back]

Klobuchar: I thought we were broadly asking questions and it would have been nice to have heard about it there but it's behind us now.

But Clapper is absolutely incorrect. The review Klobuchar asked about reported 195 FISA violations. Of those, 20% were due diligence violations – of an analyst not following Standard Operating Procedures she has been trained on. 31% are what amount to insufficient intelligence (these are called “resource violations”), resulting in searches on targets who shouldn't be targeted. A number of the incidents included not detasking someone quickly enough.

In other words, while this may (or may not) be minor, they are real violations of FISA authorities, the stuff that Congress and the Courts are supposed to oversee. And Clapper just blew off the question by saying they don't have to disclose any violations pertaining to EO 12333 (even though a chunk of these violations weren't EO 12333 violations).

Which of course demonstrates a further point. The Intelligence Community is basically refusing to discuss any EO 12333 violations and/or programs, even while it also picks up US person information at least incidentally.

And yet they claimed there was adequate oversight over those programs.