NSA'S NOTION OF REGAINING CONFIDENCE

In my apparent never-ending job of documenting all the lies, half truths, and misrepresentations the Intelligence Community has told Congress, I wanted to look at one more document from the chunk the I Con released last week: the briefing given the House Intelligence Committee on the phone dragnet on October 21, 2009, during the early part of the PATRIOT Act reauthorization debate. The briefing came three weeks after then-House Intelligence Chair Silvestre Reyes requested a document on the dragnet (which would end up being the notice provided to Congress).

Here's the last entry in the October 21 briefing's description of the efforts to fix the problems with the dragnet.

> On September 3, 2009, after receiving extensive demonstrations and briefings regarding the BR FISA program, the FISC signed the Renewal Order for BR FISA. The order, which will remain in effect through October 30, 2009, restores to NSA the authority to make Reasonable Articulable Suspicion (RAS) determinations as to whether specific telephone identifiers may be used as "seeds" for querying against the BR FISA metadata. The signing of the renewal order is viewed as an indication that NSA is regaining the Court's confidence in its ability to safeguard US Person privacy while using BR FISA data for vital national security missions. [my emphasis]

That is, the NCTC and NSA claimed to HPSCI — one of two committees getting the most information on the phone dragnet — that "NSA is regaining the Court's confidence in its ability to safeguard US Person privacy."

But the September 3 reauthorization of the phone dragnet — the last interaction with FISC referenced in the briefing — was not the most recent event prior to this briefing.

The last event we know of, at least, came when, on September 21 and 23, Judge Reggie Walton — the judge who had been working through this process for 9 months and on September 3 had ordered NSA to restrict access to the phone dragnet data to those who had been specially trained for it — had a DOJ National Security Division attorney tell him, orally, of two "likely violations" of these orders. NSA employees were emailing results of phone dragnet queries around — had even set up an email list of 189 analysts — including to people who had not received the special training required by the Court.

Worse, NSA didn't inform Walton of the violations.

> The NSD attorney advised that NSD and NSA were investigating the foregoing incidents and expected to be in a position to submit a preliminary written notice to the Court in short order. As of the entry of this Order, the Court has not yet received such a notice.
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> The Court is deeply troubled by the incidents described above, which have occurred only a few weeks following the completion of an "end to end review" by the government of NSA's procedures and processes for handling the BR metadata, and its submission of a report intended to assure the Court that NSA had addressed and corrected the issues giving rise to the history of serious and widespread compliance problems in this matter and had taken the necessary steps to ensure compliance with the Court's orders going forward.

In his September 25 order, Walton instructed NSA

to brief him on September 28 on these latest violations.

In other words, as far as the declassified record thus far shows, FISC had newfound reason to be “deeply troubled” by violations (and probably, NSA’s failure to notice the court on them) when it briefed the House Intelligence Committee on October 21.

And the Administration didn’t tell HPSCI that, right in the middle of debates about PATRIOT (and therefore Section 215) reauthorization.

And yet the I Con and its defenders insist — insist! — Congress was fully informed when it reauthorized PATRIOT.