

# WORKING THREAD ON WARRANTLESS WIRETAPPING IG REPORT

Timed perfectly so al-Haramain can't use it in its latest brief. Though I imagine Judge Walker will read it closely.

Here's the report.

Consider this an working thread.

Update: The report admits how AGAG tried to avoid perjury: multiple programs were authorized with the same presidential finding, and he was just referring to one when he lied to Congress about any dissent on the program.

Update: The role of non-OLC, non-FBI parts of DOJ in the program:

DOJ's Office of Intelligence Policy and Review ... worked with the FBI and the NSA to address the impact PSP-derived information had on proceedings under the Foreign Intelligence Surveillance Act (FISA). DOJ's National Security Division also handled potential discovery issues that may have involved potential PSP-related information in international terrorism prosecutions.

All vague and non-dated...

Update: OPR hasn't completed its review of OLC's role in approving the program. Damn that's taking some time.

Update: This is a load of crap designed to cover up for the March 2004 hospital scene and the fact that OLC was given primacy over AG in approving the program.

The Department of Justice's Office of Legal Counsel reviewed this information

to assess whether there was "a sufficient factual basis demonstrating a threat of terrorist attacks in the United States for it to continue to be reasonable under the standards of the Fourth Amendment for the President to [continue] to authorize the warrantless searches involved" in the program. The Office of Legal Counsel then advised the Attorney General on whether the constitutional standard of reasonableness had been met and whether the Presidential Authorization could be certified "as to form and legality."

[snip]

Although there was no legal requirement that the Authorization be certified by the Attorney General or other Department of Justice official, current and former DOJ officials told us that this certification added value by giving the program a sense of legitimacy. Former Attorney General Gonzales stated that the NSA was being asked to do something it had not done before, and it was important to assure the NSA that the Attorney General had approved the legality of the program.

Note, Gonzales was interviewed for this, but Ashcroft refused. Yoo also refused. And ~~it doesn't even say whether they tried to interview Jim Comey or Jack Goldsmith~~ (Mueller did agree to be interviewed.) Scratch that—Comey was interviewed.

Update:

Initially the analysts who prepared the threat assessments were not read into the PSP and did not know how the threat assessments would be used. CIA's terrorism analysts drew upon all sources of intelligence in preparing these threat assessments.

After the terrorism analysts completed their portion of the memoranda, the DCI Chief of Staff added a paragraph at the end of the memoranda stating that the individuals and organizations involved in global terrorism (and discussed in the memoranda) possessed the capability and intention to undertake further terrorist attacks within the United States. The DCI Chief of Staff recalled that the paragraph was provided to him initially by a senior White House official.

Nice way to compartment the actual thinking from the claims used to justify this..

This bit is in there for al-Haramain, which was included largely because of some crap citizen-  
posse intelligence reports some Neocons did.

Update: CIA did the threat assessments until May 2003, when the Terrorist Threat Integration Center took over. Then ODNI—and the National Counterterrorism Center—picked it up in April 2005. There's a lot of detail on how the ODNI did the threat assessments, including mention of DOJ review.

Throughout the ODNI preparation and approval process, the threat assessments were also subject to varying degrees of review and comment by DOJ and ODNI attorneys.

When CIA was doing it, OGC reviewed the threat assessments, but there is no mention of DOJ review.

Update:

NCTC analysts involved in preparing the threat assessments told the ODNI OIG that only a portion of the PSP information was ever used in the ODNI threat assessments because other intelligence sources were available that

provided more timely or detailed information about the al-Qa'ida threat to the United States. (9)

Shorter NCTC analysts: the info we got from this program was shit, and other collection methods were more useful.

Update:

Yoo was the only OLC official "read into" the PSP from the program's inception in October 2001 until Yoo left DOJ in May 2003.

[snip]

Bybee stated he was never read into the PSP and could shed no further light on how Yoo came to draft the OLC opinions on the program. (10)

[snip]

As noted above, Yoo, Ashcroft, Card, and Addington declined or did not respond to the DOJ OIG's request for interviews, and the DOJ OIG does not know how Yoo came to deal directly with the White House on legal issues related to the PSP. (11)

Who could have imagined?!?!

Update: This is gonna get interesting.

On September and early October 2001, Yoo prepared several preliminary opinions relating to hypothetical random domestic electronic surveillance activities, but the first OLC opinion explicitly addressing the legality of the PSP was not drafted until after the program had been formally authorized by President Bush in October 2001. Attorney General Ashcroft approved the first Presidential Authorization for the PSP as to "form and legality" on the same day that he

was read into the program. (11)

We'll be reading the same thing about the torture program shortly, mark my words. One of the reasons this is interesting is because they don't want to admit the 4th Amendment eviscerating opinion was the basis for the program, so they have to say it came later. But when Bradbury did his FOIA exemptions he said the former WAS a basis for the program.

And note—we don't get the date when Ashcroft was read into the program, and whether it was before or after the program started. (This same vague reference is repeated on page 15.)

The analysis of John Yoo's shitty ass November 2, 2001 opinion is on 11-12.

Update: Just because I love posting on this shit:

Yoo's legal memoranda omitted any discussion of *Youngstown Steel & Tube Co. v. Sawyer*, 343 US 579 (1952), a leading case on the distribution of government powers between the Executive and Legislative Branches. (13)

What a surprise.

Update: Further load of crap watch. The report (on 14) describes AGAG stating that it was "inconvenient" not to have the DAG or AG COS read into the program. But, the report says, since Ashcroft declined to be interviewed, we have no idea whether or not Ashcroft tried to get others read in. Except, of course, Mueller's sworn public testimony describes Ashcroft complaining about this.

Page 15: No evidence of intentional misuse of PSP. Now word on "accidental" misuse of PSP, up to and including accessing Clinton's emails.

Page 17: Says FBI protected sources and methods, but doesn't address poison fruit. But of course not—if it did, then they'd have to settle the

al-Haramain case.

Page 19:

No DOJ attorneys with terrorism prosecution responsibilities were read into the PSP until mid-2004, and as a result DOJ continued to lack the advice of attorneys who were best equipped to identify and examine the discovery issues in connection with the PSP.

Also note the implications for al-Haramain: when they got those PSP logs, they were being investigated by DOJ CTC lawyers. Which means the lawyers had no clue what the PSP logs were.

Page 20: Philbin had to convinced Addington to read Goldsmith, the frigging AAG for OLC, into the program.

Goldsmith and Philbin became concerned that this revised analysis would not be sufficient to support the legality of certain aspects of the Other Intelligence Activities that the President had authorized under the PSP. [That is, the data mining.]

Page 21:

Comey told the DOJ OIG that of particular concern to him and Goldsmith was the notion that Yoo's legal analysis entailed ignoring an act of Congress, and doing so without full congressional notification.

I'll remind you all that Congress defunded TIA the previous fall, which should have made the data mining illegal.

Also, after Ashcroft went to ICU, AGAG wrote asking for confirmation that the previous opinions "covered" the program (this sounds like something OVP did before the 2003 SOTU).

Goldsmith, Philbin, and Comey concluded that Yoo's memoranda did not accurately describe some of the Other Intelligence Activities that were being conducted under the Presidential Authorizations implementing the PSP, and that the memoranda therefore did not provide a basis for finding that these activities were legal.

Funny! That's the same thing that happened with Yoo's torture memo—that it didn't really describe the activities it purported to authorize. What a coinkydink.

Page 23:

According to Gonzales's notes of the [March 10, 2004] meeting, individual congressional leaders expressed thoughts and concerns related to the program. However, Gonzales told the DOJ OIG that the consensus of the congressional leaders was that the program should continue.

Jeebus!! AGAG's notes apparently don't even support the "consensus" view.

Page 24: Really important new detail.

According to notes from Ashcroft's FBI security detail, at 6:20 PM that evening Card called the hospital and spoke with an agent in Ashcroft's security detail, advising him that President Bush would be calling shortly to speak with Ashcroft. Ashcroft's wife told the agent that Ashcroft would not accept the call. Ten minutes later, the agent called Ashcroft's Chief of Staff David Ayres at DOJ to request that Ayres speak with Card about the President's intention to call Ashcroft. The agent conveyed to Ayres Mrs. Ashcroft's desire that no calls be made to Ashcroft for another day or two. However, at 6:5 PM, Card and

the President called the hospital and, according to the agent's notes, "insisted on speaking [with Attorney General Ashcroft]." According to the agent's notes, Mrs. Ashcroft took the call from Card and the President and was informed that Gonzales and Card were coming to the hospital to see Ashcroft regarding a matter involving national security.

Our fucking dick of a former President made this call himself and he ordered Ashcroft's wife around. Fucker.

Page 22: Remember how AGAG pretended it was no big deal to go to the hospital to try to get Ashcroft's ok? Here's what happened the day before.

Gonzales reasoned that Ashcroft, who was still hospitalized, was not in any condition to sign a renewal of the Authorization, and that a "30-day bridge" would move the situation to a point where Ashcroft would be well enough to approve the program.

And the next day he went to get that signature anyway.

Page 25:

Gonzales told the DOJ OIG that he carried with him in a manila envelope the March 11, 2004, Presidential Authorization for Ashcroft to sign. According to Philbin, Gonzales first asked Ashcroft how he was feeling and Ashcroft replied, "Not well." Gonzales then said words to the effect, "You know, there's a reauthorization that has to be renewed..."

Page 26: Unique aspects of the March 11 authorization.



The March 11 Authorization also differed markedly from prior Authorizations in three other respects. It explicitly asserted that the President's exercise of his Article II Commander-in-Chief authority displaced any contrary provisions of law, including FISA. It clarified the description of certain Other Intelligence Activities being conducted under the PSP to address questions regarding whether such activities had actually been authorized explicitly in prior Authorizations. It also stated that in approving the prior Presidential Authorizations as to form and legality, the Attorney General previously had authorized the same activities now being approved under the March 11 authorization.

[snip]

At approximately noon, Gonzales called Goldsmith to inform him that the President, in issuing the Authorization, had made an interpretation of law concerning his authorities and that DOJ should not act in contradiction of the President's determinations.

Page 29: Comey writes a memo saying there were still probs with Congressional notification, "particularly where the legal basis for the program is the President's decision to assert his authority to override an otherwise applicable Act of Congress."

To which AGAG replies, fuckoff. (that's a paraphrase)

Page 33:

DOJ OIG found it difficult to assess or quantify the overall effectiveness of the PSP program as it relates to the FBI's counterterrorism activities. However, based on the interviews conducted and documents reviewed, the

DOJ OIG concluded that although PSP-derived information had value in some counterterrorism investigations, it generally played a limited role in the FBI's overall counterterrorism efforts.

Page 37: Here's a big steaming load of crap:

DOJ OIG concluded that Gonzales did not intend to mislead Congress, but it found that his testimony was confusing, inaccurate, and had the effect of misleading those who were not knowledgeable about the program.

If that was unintentional then my name is George fricking Washington.