

ROSENCRANTZ AND GULDENSTERN VISIT PEE-CLOB

The first panel of an all-day Privacy and Civil Liberties Oversight Board hearing on Section 702 of FISA just finished.

It featured NSA General Counsel Raj De, ODNI General Counsel Robert Litt, Deputy AAG for National Security Brad Weigmann, and FBI General Counsel James Baker.

While there were a number of interesting disclosures – which I’ll get at in the future – the most striking aspect of the hearing was the tooth-pulling effort to get the panel to define the terms they use.

There were a slew of terms defined, among others including “minimization,” “bulk collection,” “PRISM,”

But the most interesting redefinitions were for “purge” and “search.”

After much tooth-pulling, James Dempsey got De to admit that NSA’s definition of the word “search” is different from the one used in the Fourth Amendment. Actually, that may not be entirely true: Sometimes the actual collection of data counts as a search, sometimes only the querying of it does. NSA gets to decide which is which, best as I can tell, in secret or in legal filings where it will serve to deprive someone of standing.

Then there’s “purge,” which I can’t hear anymore without seeing a pink speech bubble and scare quotes surrounding the word. Purge does not mean – as you might expect – “destroy.” Rather, it means only “remove from NSA systems in such a way that it cannot be used.” Which, best as I understand it, means they’re not actually destroying this data.

I do hope EFF figures that out before they argue

the protection order for Section 215 today, as on those terms it seems increasingly clear NSA is not complying with the Jewel protection order.

“Purge.” To keep. Somewhere else.