THE USA PURGE: DOJ'S IG PUNTS

The long-awaited DOJ IG investigation appears to be a punt.

STILL INVESTIGATING CRIMES ASSOCIATED WITH THE USA PURGE

The Hill has an update on the US Attorney purge investigations. The most interesting news is that they appear to be chasing down the abundant evidence that the claims about Iglesias' firing were a cover-up of the real reasons, which are reported to personally involve George Bush.

THE USA PURGE, TO DATE

This is my general review of the interim report on the USA Purge. If you haven't already done so, make sure you read the post on the Iglesias cover-up, which I believe to be the most important aspect of the report.

The report on the findings to date in the USA purge lists the following crimes and violations that may have been committed in the course of the USA firings:Obstruction of justice,

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AND WHILE WE'RE TALKING ABOUT TAYLORS AT THE CENTER OF THE USA PURGE

281 days. That's how long—by my admittedly rough count—Jeff Taylor has been serving as Interim USA for DC. He's been serving roughly 21 days since George Bush signed a law that effectively did away with the PATRIOT appointment he currently serves under. Yet there he is, a former DOJ clique-member, Counselor to the Attorney General for four years, and before that Counsel to the Republican-led Senate Judiciary Committee.
Yet come Wednesday, when

HEFFELFINGER, NAIS, AND THE USA PURGE

At a hearing before the Senate Committee on Indian Affairs this week, Thomas Heffelfinger got asked some questions about how the USA Purge related to his work—and that of Chiara, Charlton, Iglesias, McKay, and Bogden before they were fired. In his testimony, Heffelfinger noted that those USAs on NAIS who were fired were not just on the subcommittee, they were leaders on it.

NATIVE AMERICANS AND THE USA PURGE, PART TWO

NATIVE AMERICANS AND THE USA PURGE, PART ONE

THE FSB PURGE: TWO NARRATIVES

Some more details on the timing and narratives surrounding Putin’s crack-down on FSB.

THE PURGE, THE BENGHAZI REPORT, AND TRUMP’S CLAIM OBAMA CREATED ISIS

The Mike Rogers purge and his replacement by Devin Nunes may mean that Trump intends to increase his blame on Obama for ISIS.

LEAHY USA FREEDOM'S BULKY CORPORATE PERSONS

As I said in my post the other day, the definition of Specific Selection Term in the Leahy version of USA Freedom addresses almost all my concerns about bulk collection under USA Freedom Act.

But not all of them.

I have two concerns.

First, some background. The bill actually uses two definitions of "specific selection term." The definition as it applies to traditional Section 215, PRTT, and NSL collection is,

> (i) means a term that specifically identifies a *person*, account, address, or personal device, or another specific identifier, that is used by the Government to narrowly limit the scope of tangible things sought to the greatest extent reasonably practicable, consistent with the purpose for seeking the tangible things; and [my emphasis]

It defines "address" this way:

> ADDRESS.—The term 'address' means a physical address or electronic address, such as an electronic mail address, temporarily assigned network address, or Internet protocol address.

That's my first concern. IP addresses can represent entire companies. And who knows what the NSA might consider "temporarily assigned network addresses"?

Then there's the difference between that

definition of “specific selection term” and the more narrow one used with the prospective contact chaining at telecoms, which is:

> CALL DETAIL RECORD APPLICATIONS.—For purposes of an application submitted under subsection (b)(2)(C), the term ‘specific selection term’ means a term that specifically identifies an *individual*, account, or personal device. [my emphasis]

You’ll note the bill targets “individual” for its contact chaining, but “person” for the rest of Section 215 collection. The obvious reason to do that is if you’re collecting on an entire corporate person, like Western Union (which WSJ and NYT reported CIA uses Section 215 to collect on).

The bill does include limits on what kinds of corporate persons can be collected. The bill explicitly prohibits using electronic communication service providers and cloud providers as specific selection terms, unless they are being investigated.

> (II) a term identifying an electronic communication service provider (as that term is defined in section 701) or a provider of remote computing service (as that term is defined in section 2711 of title 18, United States Code), when not used as part of a specific identifier as described in clause (i), unless the provider is itself a subject of an authorized investigation for which the specific selection term is used as the basis of production.

That still seems to leave a whole slew of corporate persons who can be the selection term for collection.

The bill limits that collection in another way, through minimization procedures.

> ‘(C) for orders in which the specific selection term does not specifically identify an individual, account, or personal device, procedures that prohibit the dissemination, and require the destruction within a reasonable time period (which time period shall be specified in the order), of any tangible thing or information therein that has not been determined to relate to a person who is—
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> (i) a subject of an authorized investigation;
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> (ii) a foreign power or a suspected agent of a foreign power;
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> (iii) reasonably likely to have information about the activities of—
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> > (I) a subject of an authorized investigation; or
> >
> > (II) a suspected agent of a foreign power who is associated with a subject of an authorized investigation; or
>
> (iv) in contact with or known to—
>
> > (I) a subject of an authorized investigation; or
> >
> > (II) a suspected agent of a foreign power who is associated with a subject of an authorized investigation,
>
> unless the tangible thing or information therein indicates a threat of death or serious bodily harm to any person or is disseminated to another element of the intelligence community for the sole purpose of determining whether the tangible thing or information therein relates to a person who is described in clause (i), (ii), (iii), or (iv)

This language is almost certainly not new – as CDT's otherwise decent analysis suggests. We know the FISC has been modifying orders more and more in recent years. We don't know – we have to rely on Congress, blindly – whether these minimization procedures are more strict or (likely, because other parts of this bill are) less restrictive than what the FISC itself has been imposing.

But even the existence of this language – and the differential use of "person" and "individual" – makes it clear the bill still permits the bulk collection of data. It just requires the agency in question to purge the data … sometime.

The question is whether this "agency protocol" – what Chief Justice John Roberts said was not enough to protect Americans' privacy – is sufficient to protect Americans' privacy.

I don't think it is.

First, it doesn't specify how long the NSA and FBI and CIA can keep and sort through these corporate records (or what methods it can use to do so, which may themselves be very invasive).

It also permits the retention of data that gets pretty attenuated from actual targets of investigation: agents of foreign powers that might have information on subjects of investigation and people "in contact with or known to" suspected agents associated with a subject of an investigation.

Known to?!?! Hell, Barack Obama is known to all those people. Is it okay to keep his data under these procedures?

Also remember that the government has secretly redefined "threat of death or serious bodily harm" to include "threats to property," which could be Intellectual Property.

So CIA could (at least under this law – again, we have no idea what the actual FISC orders this is based off of) keep 5 years of Western Union

money transfer data until it has contact chained 3 degrees out from the subject of an investigation or any new subjects of investigation it has identified in the interim.

In other words, probably no different and potentially more lenient than what it does now.