

THE CIVIL LIBERTIES CELEBRATION HANGOVER WEARS OFF



At the end of last week, I joked a little about privacy and civil liberties advocates having had the “best week ever”. It was indeed a very good week, but only relatively

compared to the near constant assault on the same by the government. But the con is being put back in ICon by the Administration and its mouthpieces.

As I noted in the same post, Obama himself has already thrown cold water on the promise of his NSA Review Board report. Contrary to some, I saw quite a few positives in the report and thought it much stronger than I ever expected. Still, that certainly does not mean it was, or is, the particularly strong reform that is needed. And even the measures and discussion it did contain are worthless without sincerity and dedication to buy into them by the intelligence community and the administration. But if Obama on Friday was the harbinger of the walkback and whitewash of real reform, the foot soldiers are taking the field now to prove the point.

Sunday morning brought out former CIA Deputy Director Michael Morrell on CBS Face the Nation to say this:

I think that is a perception that’s somehow out there. It is not focused on any single American. It is not reading the content of your phone calls or my phone calls or anybody else’s phone calls. It is focused on this metadata

for one purpose only and that is to make sure that foreign terrorists aren't in contact with anybody in the United States.

Morrell also stated that there was "no abuse" by the NSA and that Ed Snowden was a "criminal" who has shirked his duties as a "patriot" by running. Now Mike Morrell is not just some voice out in the intelligence community, he was one of the supposedly hallowed voices that Barack Obama chose to consider "reform".

Which ought to tell you quite a bit about what Barack Obama really thinks about true reform and your privacy interests. Not much. In fact, Morrell suggested (and Obama almost certainly agrees) that the collection dragnet should be expanded from telephony to also include email. Not exactly the kind of "reform" we had in mind.

Then, Sunday night 60 Minutes showed that fluffing the security state is not just a vice, but an ingrained habit for them. Hot on the heels of their John Miller blowjob on the NSA, last night 60 Minutes opened with a completely hagiographic puff piece on and with National Security Advisor Susan Rice. There was absolutely no news whatsoever in the segment, it was entirely a forum for Rice and her "interviewer", Lesley Stahl, to spew unsupported allegations about Edward Snowden (He "has 1.5 million documents!"), lie about how the DOJ has interacted with the court system regarding the government surveillance programs (the only false statements have been "inadvertent") and rehab her image from the Benghazi!! debacle. That was really it. Not exactly the hard hitting journalism you would hope for on the heels of a federal judge declaring a piece of the heart of the surveillance state unconstitutional.

Oh, yes, Susan Rice also proudly proclaimed herself "a pragmatist like Henry Kissinger" which, as Tim Shorrock correctly pointed out, is not exactly reassuring from the administration of a Democratic President interested in civil

liberties, privacy and the rule of law.

So, the whitewashing of surveillance dragnet reform is in full swing, let the giddiness of last week give way to the understanding that Barack Obama, and the Intelligence Community, have no intention whatsoever of “reforming”. In fact, they will use the illusion of “reform” to expand their authorities and power. Jonathan Turley noted:

Obama stacked the task force on NSA surveillance with hawks to guarantee the preservation of the program.

Not just preserve, but to give the false, nee fraudulent, patina of Obama Administration concern for the privacy and civil liberties concerns of the American citizenry when, in fact, the Administration has none. It is yet another con.

Or, as Glenn Greenwald noted:

The key to the WH panel: its stated purpose was to re-establish public confidence in NSA – NOT reform it.

There may be some moving of the pea beneath the shells, but there will be no meaningful reform from the administration of Barack Obama. The vehicle for reform, if there is to be one at all, will have to come from the Article III federal courts. for an overview of the path of Judge Leon’s decision in *Klayman* through the DC circuit, see this piece by NLJ’s Zoe Tillman.

Lastly, to give just a little hope after the above distressing content, I recommend a read of this excellent article by Adam Serwer at MSNBC on the cagy pump priming for surveillance reform Justice Sotomayor has done at the Supreme Court:

If Edward Snowden gave federal courts the means to declare the National Security Agency’s data-gathering unconstitutional, Sonia Sotomayor showed them how.

It was Sotomayor's lonely concurrence in *U.S. v Jones*, a case involving warrantless use of a GPS tracker on a suspect's car, that the George W. Bush-appointed Judge Richard Leon relied on when he ruled that the program was likely unconstitutional last week. It was that same concurrence the White House appointed review board on surveillance policy cited when it concluded government surveillance should be scaled back.

"It may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties," Sotomayor wrote in 2012. "This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks."

Give the entire article a read, Adam is spot on. If there is to be reform on the surveillance dragnet, it will almost certainly have to be the handiwork of the courts, and Justice Sotomayor planted the seed. The constant barrage of truth and facts coming from the Snowden materials, what Jay Rosen rightfully terms "The Snowden Effect" is providing the food for Sotomayor's seed to flower. Hopefully.