

Rowan, Patrick (ODAG)

From: Williams, Jan
Sent: Monday, January 23, 2006 12:48 PM
To: Nelson, Carrie; Spagnoli, Deborah A. (USPC);
/o=USDOJ/ou=USAPAE/cn=Recipients/cn=Mailboxes/cn=SMalloy; Agarwal, Asheesh (CIV); Akers, Eric J.; Ames, Andrew; Barnett, Thomas O.; Battle, Michael (USAEO); Beach, Andrew; Beck, Cherith (USAARE); Bianco, Joseph F.; Blomquist, Kathleen M; Boardman, Michelle; Boote, John; Bottner, Andrea; Bounds, Ryan W (OLP); Bradbury, Steve; Bucholtz, Jeffrey (CIV); Burch, Victoria; Chambers, Shane P; Clinger, James H; Cohen, Brian; Cohn, Jonathan (CIV); Comisac, Rena (CRT); Cook, Elisebeth C; Cook, Marita L. (USAWY); Cooperstein, Theodore M; Coppenger, Chesed L. (TAX); Costigan, Michael; Coughlin, Robert; Curtis, O. Benton; Daley, Cybele; David, Matt; Dhillon, Uttam; Dummermuth, Matt (USAVAE); Eisenberg, John; Elwood, Courtney; Elwood, John; Flaherty, Connor; Freeman, Sharee (CRT); Friedrich, Matthew; Gambatesa, Donald (USMS); Garre, Gregory G; Glut, Martha (USANE); Gober, Chris; Golden, Lois; Goodling, Monica; Gorsuch, Neil M; Greg Harris; Hagle, Timothy; Harris, Gregory; Henke, Tracy (SMO); Hertling, Richard; Hofer, Patrick F. (TAX); Hoisington, Jana; Holland, Eric W; Irving, John (ODAG); Jaffer, Jamil N; Jordan, Theresa (USADE); Jungeblut, Neal P.; Katsas, Gregory (CIV); Keehner, Laura; Kessler, Elizabeth A; Korn, Jennifer; Lesch, Jaclyn; Little, Kimani (CRT); Longlet, Benjamin; Lonick, Sandra; Luckinbill, Trent W.; Macklin, Kristi R; MacLean, Alex (CRT); Magnuson, Cynthia; Marshall, C. Kevin; Martinson, Wanda; Masoudi, Gerald; McArthur, Patrick; McDonald, Bruce; McFarland, Steven T (ODAG); McIntosh, Brent; McKee, Cindy (USAKS); McKeown, Matt (ENRD); McKnight, Cynthia M (CRT); McNally, Edward; McNeil, Tucker (OPA); Mercer, Bill (ODAG); Meron, Daniel (CIV); Metcalf, Mark H (CRT); Miranda, Matthew; Monheim, Thomas; Moore, Miriam (ODAG); Morrison, Richard T. (TAX); Murphy, Sean; Neumayr, Mary (ENRD); Nichols, Carl (CIV); Nichols, Grant W; Nowacki, John; OConnell, James; Otis, Lee L; Otis, William G.; Pagliocca, Theresa; Parsky, Laura; Peabody, Payson R. (TAX); Peed, Carl; Potter, Janet; Racicot, Tim (USAMT); Reyes, Luis (SMO); Roberts, Crystal; Roe, Price (OCIO); Roehrkasse, Brian; Roper, Matt M; Rosenberg, Chuck; Rowe, Kiri; Sampson, Kyle; Schlozman, Brad (CRT); Schmitt, Glenn; Schwartz, Arthur; Scolinos, Tasia; Seidel, Rebecca; Selim, George (CRS); Sellers, Kiahna (OAG); Smith, Kimberly A; Sours, Raquel; Strug, Kerri; Swenson, Lily F; Taylor, Bruce A.; Tenpas, Ronald J (ODAG); Todd, Gordon (OLP); Tomlinson, Linda (USANH); Turner, Donald J. (USAPAM); Tzitzon, Nicholas; Underhill, Deborah; Vargas, Omar (CRT); Voris, Natalie (USAEO); Warren, Julie; Williams, Jan; Woodruff, William; Brand, Rachel; Clark, John (USMS); Clement, Paul D; Fisher, Alice; Flores, Robert; Gillis, John; Herraiz, Domingo S.; Keisler, Peter D (CIV); Kim, Wan (CRT); Leonhart, Michele M.; McCallum, Robert (SMO); McNulty, Paul J; Moschella, William; O'Connor, Eileen J. (AAG/TAX); Sanchez, William J (CRT); Tamargo, Mauricio J; Tandy, Karen P (DEA); Wooldridge, Sue Ellen (ENRD); Boente, Dana J. (TAX); Nash, Stuart (ODAG); Oldham, Jeffrey L; Pacold, Martha M; Purpura, Michael M (ODAG); Rowan, Patrick (ODAG); Senger, Jeffrey M; Taylor, Jeffrey (OAG); Webb, Lauren; White, Clifford
Subject: IN CASE YOU MISSED IT: General Hayden On The NSA Terrorist Surveillance Program

Importance: Low
Attachments: tmp.htm



tmp.htm (55 KB)

In Case You Missed It ...

General Hayden On The NSA Terrorist Surveillance Program

GENERAL HAYDEN: "Keith, thanks. Good morning. I'm happy to be here to

talk a bit about what American intelligence has been doing and especially what NSA has been doing to defend the nation.

"Now, as Keith points out, I'm here today not only as Ambassador John Negroponte's deputy in the Office of the Director of National Intelligence, I'm also here as the former director of the National Security Agency, a post I took in March of 1999 and left only last spring.

"Serious issues have been raised in recent weeks, and discussion of serious issues should be based on facts. There's a lot of information out there right now.

"Some of it is, frankly, inaccurate. Much of it is just simply misunderstood. I'm here to tell the American people what NSA has been doing and why. And perhaps more importantly, what NSA has not been doing.

"Now, admittedly, this is a little hard to do while protecting our country's intelligence sources and methods. And, frankly, people in my line of work generally don't like to talk about what they've done until it becomes a subject on the History Channel. But let me make one thing very clear. As challenging as this morning might be, this is the speech I want to give. I much prefer being here with you today telling you about the things we have done when there hasn't been an attack on the homeland. This is a far easier presentation to make than the ones I had to give four years ago telling audiences like you what we hadn't done in the days and months leading up to the tragic events of September 11th.

"Today's story isn't an easy one to tell in this kind of unclassified environment, but it is by far the brief I prefer to present.

"Now, I know we all have searing memories of the morning of September 11th. I know I do. Making the decision to evacuate non-essential workers at NSA while the situation was unclear; seeing the NSA counterterrorism shop in tears while we were tacking up blackout curtains around their windows; like many of you, making that phone call, asking my wife to find our kids, and then hanging up the phone on her.

"Another memory for me comes two days later - that's the 13th of September - when I addressed the NSA workforce to lay out our mission in a new environment. It was a short video talk; we beamed it throughout our headquarters at Fort Meade and globally throughout our global enterprise. Now, most of what I said was what anyone would expect. I tried to inspire: our work was important, the nation was depending on us. I tried to comfort: Look on the bright side, I said to them, right now a quarter billion Americans wish they had your job, being able to go after the enemy.

"I ended the talk by trying to give a little perspective. I noted that all free peoples have had to balance the demands of liberty with the demands of security, and historically, historically we Americans have been able to plant our flag well down the spectrum toward liberty. Here was our challenge, I said, and I'm quoting from that presentation: 'We are going to keep America free by making Americans feel safe again.'

"But to start the story with that Thursday, December 13th, is a bit misleading. It's a little bit like coming in near the end of the first reel of a movie. To understand that moment and that statement, you would have to know a little bit about what had happened to the National Security Agency in the preceding years.

"Look, NSA intercepts communications, and it does so for only one purpose - to protect the lives, the liberties and the well-being of the citizens of the United States from those who would do us harm. By the late 1990s, that job was becoming increasingly more difficult. The explosion of modern communications in terms of volume, variety, velocity threatened to overwhelm us.

"The agency took a lot of criticism in those days, I know, criticism that it was going deaf, that it was ossified in its thinking, that it had not and could not keep up with the changes in modern communications. And all of that was only reinforced when all of the computer systems at Fort Meade went dark for three days in January of 2000 and we couldn't quickly or easily explain why.

"Those were really interesting times. As we were being criticized for being incompetent and going deaf, at the same time others seemed to be claiming that we were omniscient and we were reading your e-mails. The Washington Post and New Yorker Magazine during that time - I'm talking 1999 now of 2000 - they wrote, incorrectly, that - and I'm quoting - 'NSA has turned from eavesdropping on the communists to eavesdropping on businesses and private citizens.'

"And that - and I'm quoting again - 'NSA has the ability to extend its eavesdropping network without limits.' We are also referred to as a, quote, 'global spying network that can eavesdrop on every single phone call, fax or e-mail anywhere on the planet.'

"I used those quotes in a speech I gave at American University in February of 2000. The great urban legend out there then was something called 'Echelon' and the false accusation that NSA was using its capabilities to advance American corporate interests - signals intelligence for General Motors, or something like that. You know, with these kinds of charges, the turf back then feels a bit familiar now. How could we prove a negative - that we weren't doing certain things - without revealing the appropriate things we were doing that kept America safe? You see, NSA had, NSA has an existential problem. In order to protect American lives and liberties, it has to be two things: powerful in its capabilities, and secretive in its methods. And we exist in a political culture that distrusts two things most of all: power and secrecy.

"Modern communications didn't make this any easier. Gone were the days when signals of interest - that's what NSA calls the things they want to copy - gone were the days when signals of interest went along some dedicated microwave link between strategic rocket forces headquarters in Moscow and some ICBM in western Siberia. By the late '90s, what NSA calls targeted communications - things like al Qaeda communications - coexisted out there in a great global web with your phone calls and my e-mails. NSA needed the power to pick out the one, and the discipline to leave the others alone.

"So, this question of security and liberty wasn't a new one for us in September of 2001. We've always had this question: How do we balance the legitimate need for foreign intelligence with our responsibility to protect individual privacy rights?

"It's a question drilled into every employee of NSA from day one, and it shapes every decision about how NSA operates.

"September 11th didn't change that. But it did change some things. This ability to intercept communication - we commonly refer to it as Signals Intelligence or SIGINT. SIGINT is a complex business, with operational and technological and legal imperatives often intersecting and overlapping. There's routinely some freedom of action - within the law - to adjust operations. After the attacks, I exercised some options I've always had that collectively better prepared us to defend the homeland.

"Look, let me talk for a minute about this, okay? Because a big gap in the current understanding, a big gap in the current debate is what's standard? What is it that NSA does routinely? Where we set the threshold, for example, for what constitutes inherent foreign intelligence value? That's what we're directed to collect. That's what we're required to limit ourselves to - inherent foreign intelligence value. Where we set that threshold, for example, in reports involving a U.S. person shapes how we do our job, shapes how we collect, shapes how we report. The American SIGINT system, in the normal course of foreign intelligence activities, inevitably captures this kind of information, information to, from or about what we call a U.S. person. And by the way, 'U.S. person' routinely includes anyone in the United States, citizen or not.

"So, for example, because they were in the United States - and we did not know anything more - Mohamed Atta and his fellow 18 hijackers would have been presumed to have been protected persons, U.S. persons, by NSA prior to 9/11.

"Inherent foreign intelligence value is one of the metrics we must use. Let me repeat that: Inherent foreign intelligence value is one of the metrics we must use to ensure that we conform to the Fourth Amendment's reasonable standard when it comes to protecting the privacy of these kinds of people. If the U.S. person information isn't relevant, the

data is suppressed. It's a technical term we use; we call it 'minimized.' The individual is not even mentioned. Or if he or she is, he or she is referred to as 'U.S. Person Number One' or 'U.S. Person Number Two.' Now, inherent intelligence value. If the U.S. person is actually the named terrorist, well, that could be a different matter. The standard by which we decided that, the standard of what was relevant and valuable, and therefore, what was reasonable, would understandably change, I think, as smoke billowed from two American cities and a Pennsylvania farm field. And we acted accordingly.

"To somewhat oversimplify this, this question of inherent intelligence value, just by way of illustration, to just use an example, we all had a different view of Zacarias Moussaoui's computer hard drive after the attacks than we did before.

"Look, this is not unlike things that happened in other areas. Prior to September 11th, airline passengers were screened in one way. After September 11th, we changed how we screen passengers. In the same way, okay, although prior to September 11th certain communications weren't considered valuable intelligence, it became immediately clear after September 11th that intercepting and reporting these same communications were in fact critical to defending the homeland. Now let me make this point. These decisions were easily within my authorities as the director of NSA under and executive order, known as Executive Order 12333, that was signed in 1981, an executive order that has governed NSA for nearly a quarter century.

"Now, let me summarize. In the days after 9/11, NSA was using its authorities and its judgment to appropriately respond to the most catastrophic attack on the homeland in the history of the nation. That shouldn't be a headline, but as near as I can tell, these actions on my part have created some of the noise in recent press coverage. Let me be clear on this point - except that they involved NSA, these programs were not related - these programs were not related - to the authorization that the president has recently spoken about. Back then, September 2001, I asked to update the Congress on what NSA had been doing, and I briefed the entire House Intelligence Committee on the 1st of October on what we had done under our previously existing authorities.

"Now, as another part of our adjustment, we also turned on the spigot of NSA reporting to FBI in, frankly, an unprecedented way. We found that we were giving them too much data in too raw form. We recognized it almost immediately, a question of weeks, and we made all of the appropriate adjustments. Now, this flow of data to the FBI has also become part of the current background noise, and despite reports in the press of thousands of tips a month, our reporting has not even approached that kind of pace. You know, I actually find this a little odd. After all the findings of the 9/11 commission and other bodies about the failure to share intelligence, I'm up here feeling like I have to explain pushing data to those who might be able to use it. And of course, it's the nature of intelligence that many tips lead nowhere, but you have to go down some blind alleys to find the tips that pay off.

"Now, beyond the authorities that I exercised under the standing executive order, as the war on terror has moved forward, we have aggressively used FISA warrants. The act and the court have provided us

with important tools, and we make full use of them. Published numbers show us using the court at record rates, and the results have been outstanding. But the revolution in telecommunications technology has extended the actual impact of the FISA regime far beyond what Congress could ever have anticipated in 1978. And I don't think that anyone can make the claim that the FISA statute is optimized to deal with or prevent a 9/11 or to deal with a lethal enemy who likely already had combatants inside the United States.

"I testified in open session to the House Intel Committee in April of the year 2000. At the time, I created some looks of disbelief when I said that if Osama bin Laden crossed the bridge from Niagara Falls, Ontario to Niagara Falls, New York, there were provisions of U.S. law that would kick in, offer him protections and affect how NSA could now cover him. At the time, I was just using this as some of sort of stark hypothetical; 17 months later, this is about life and death.

"So now, we come to one additional piece of NSA authorities. These are the activities whose existence the president confirmed several weeks ago. That authorization was based on an intelligence community assessment of a serious and continuing threat to the homeland. The lawfulness of the actual authorization was reviewed by lawyers at the Department of Justice and the White House and was approved by the attorney general.

"Now, you're looking at me up here, and I'm in a military uniform, and frankly, there's a certain sense of sufficiency here - authorized by the president, duly ordered, its lawfulness attested to by the attorney general and its content briefed to the congressional leadership.

"But we all have personal responsibility, and in the end, NSA would have to implement this, and every operational decision the agency makes is made with the full involvement of its legal office. NSA professional career lawyers - and the agency has a bunch of them - have a well-deserved reputation. They're good, they know the law, and they don't let the agency take many close pitches.

"And so even though I knew the program had been reviewed by the White House and by DOJ, by the Department of Justice, I asked the three most senior and experienced lawyers in NSA: Our enemy in the global war on terrorism doesn't divide the United States from the rest of the world, the global telecommunications system doesn't make that distinction either, our laws do and should; how did these activities square with these facts?

"They reported back to me. They supported the lawfulness of this program. Supported, not acquiesced. This was very important to me. A veteran NSA lawyer, one of the three I asked, told me that a correspondent had suggested to him recently that all of the lawyers connected with this program have been very careful from the outset because they knew there would be a day of reckoning. The NSA lawyer replied to him that that had not been the case. NSA had been so careful, he said - and I'm using his words now here - NSA had been so careful because in this very focused, limited program, NSA had to ensure

that it dealt with privacy interests in an appropriate manner.

"In other words, our lawyers weren't careful out of fear; they were careful out of a heartfelt, principled view that NSA operations had to be consistent with bedrock legal protections.

"In early October, 2001, I gathered key members of the NSA workforce in our conference room and I introduced our new operational authority to them. With the historic culture of NSA being what it was and is, I had to do this personally. I told them what we were going to do and why. I also told them that we were going to carry out this program and not go one step further. NSA's legal and operational leadership then went into the details of this new task.

"You know, the 9/11 commission criticized our ability to link things happening in the United States with things that were happening elsewhere. In that light, there are no communications more important to the safety of this country than those affiliated with al Qaeda with one end in the United States. The president's authorization allows us to track this kind of call more comprehensively and more efficiently. The trigger is quicker and a bit softer than it is for a FISA warrant, but the intrusion into privacy is also limited: only international calls and only those we have a reasonable basis to believe involve al Qaeda or one of its affiliates.

"The purpose of all this is not to collect reams of intelligence, but to detect and prevent attacks. The intelligence community has neither the time, the resources nor the legal authority to read communications that aren't likely to protect us, and NSA has no interest in doing so. These are communications that we have reason to believe are al Qaeda communications, a judgment made by American intelligence professionals, not folks like me or political appointees, a judgment made by the American intelligence professionals most trained to understand al Qaeda tactics, al Qaeda communications and al Qaeda aims.

"Their work is actively overseen by the most intense oversight regime in the history of the National Security Agency. The agency's conduct of this program is thoroughly reviewed by the NSA's general counsel and inspector general. The program has also been reviewed by the Department of Justice for compliance with the president's authorization. Oversight also includes an aggressive training program to ensure that all activities are consistent with the letter and the intent of the authorization and with the preservation of civil liberties.

"Let me talk for a few minutes also about what this program is not. It is not a driftnet over Dearborn or Lackawanna or Freemont grabbing conversations that we then sort out by these alleged keyword searches or data-mining tools or other devices that so-called experts keep talking about.

"This is targeted and focused. This is not about intercepting conversations between people in the United States. This is hot pursuit

of communications entering or leaving America involving someone we believe is associated with al Qaeda. We bring to bear all the technology we can to ensure that this is so. And if there were ever an anomaly, and we discovered that there had been an inadvertent intercept of a domestic-to-domestic call, that intercept would be destroyed and not reported. But the incident, what we call inadvertent collection, would be recorded and reported. But that's a normal NSA procedure. It's been our procedure for the last quarter century. And as always, as we always do when dealing with U.S. person information, as I said earlier, U.S. identities are expunged when they're not essential to understanding the intelligence value of any report. Again, that's a normal NSA procedure.

"So let me make this clear. When you're talking to your daughter at state college, this program cannot intercept your conversations. And when she takes a semester abroad to complete her Arabic studies, this program will not intercept your communications.

"Let me emphasize one more thing that this program is not - and, look, I know how hard it is to write a headline that's accurate and short and grabbing. But we really should shoot for all three - accurate, short and grabbing. I don't think domestic spying makes it. One end of any call targeted under this program is always outside the United States. I've flown a lot in this country, and I've taken literally hundreds of domestic flights. I have never boarded a domestic flight in the United States of America and landed in Waziristan. In the same way - and I'm speaking illustratively here now, this is just an example - if NSA had intercepted al Qaeda Ops Chief Khalid Shaikh Mohammed in Karachi talking to Mohamed Atta in Laurel, Maryland, in say, July of 2001 - if NSA had done that, and the results had been made public, I'm convinced that the crawler on all the 7 by 24 news networks would not have been 'NSA domestic spying.'

"Had this program been in effect prior to 9/11, it is my professional judgment that we would have detected some of the 9/11 al Qaeda operatives in the United States, and we would have identified them as such.

"I've said earlier that this program's been successful. Clearly not every lead pans out from this or any other source, but this program has given us information that we would not otherwise had been able to get. It's impossible for me to talk about this any more in a public way without alerting our enemies to our tactics or what we have learned. I can't give details without increasing the danger to Americans. On one level, believe me, I wish that I could. But I can't.

"Our enemy has made his intentions clear. He's declared war on us. Since September 11th, al Qaeda and its affiliates have continued to announce their intention, continued to act on their clearly stated goal of attacking America. They have succeeded against our friends in London, Madrid, Bali, Amman, Istanbul and elsewhere. They desperately want to succeed against us.

"The 9/11 commission told us - and I'm quoting them now - 'Bin Laden,

and Islamist terrorists mean exactly what they say. To them, America is the fount of all evil, the head of the snake, and it must be converted or destroyed.' Bin Laden reminded us of this intention as recently as last Thursday.

"The people at NSA, and the rest of the intelligence community, are committed to defend us against this evil and to do it in a way consistent with our values. We know that we can only do our job if we have the trust of the American people, and we can only have your trust if we are careful about how we use our tools and our resources. That sense of care is part of the fabric of the community I represent. It helps define who we are.

"I recently went out to Fort Meade to talk to the workforce involved in this program. They know what they have contributed, and they know the care with which it has been done. Even in today's heated environment, the only concern they expressed to me was continuing their work in the defense of the nation, and continuing to do so in a manner that honors the law and the Constitution. As I was talking with them - we were in the office spaces there, typical office spaces anywhere in the world - I looked out over their heads - and this is the workforce that deals with the program the president discussed several weeks ago - I looked out over their heads to see a large sign fixed to one of those pillars that go up through our operations building that breaks up the office space. That sign is visible from almost anywhere in this large area. It's yellow with bold black letters on it. The title is readable from 50 feet: What constitutes a U.S. person? And that title was followed by a detailed explanation of the criteria. That has always been the fundamental tenet of privacy for NSA. And here it was in the center of a room guiding the actions of a workforce determined to prevent another attack on the United States. Security and liberty. The people at NSA know what their job is. I know what my job is too. I learned a lot from NSA and its culture during my six years there. But I come from a culture too. I've been a military officer for nearly 37 years, and from the start, I've taken an oath to protect and defend the Constitution of the United States. I would never violate that Constitution nor would I abuse the rights of the American people. As the director, I was the one responsible to ensure that this program was limited in its scope and disciplined in its application.

"American intelligence, and especially American SIGINT, signals intelligence, is the frontline of defense in dramatically changed circumstances, circumstances in which if we fail to do our job well and completely, more Americans will almost certainly die. The speed of operations, the ruthlessness of the enemy, the pace of modern communications have called on us to do things and to do them in ways never before required. We've worked hard to find innovative ways to protect the American people and the liberties we hold dear. And in doing so, we have not forgotten who we are either."