

“Continued Oversight of the Foreign Intelligence Surveillance Act” Hearing

October 2nd, 2013

Dear Senators Leahy and Grassley:

Thank you for holding the hearing on October 2 regarding oversight of the Foreign Intelligence Surveillance Act (FISA) in light of the disclosures about NSA surveillance and collection of metadata that includes massive amounts of data about American citizens.

The main thing I want to correct is what Senator Feinstein said about the pre 9-11 warning from Director of Central Intelligence George Tenet, Feinstein's referring to the case of the (arrested) "terrorist who wanted to learn to fly without taking off or landing," the problem of "stovepiping" of intelligence that kept agencies from learning that Al Qaeda terrorist Al Midhar had entered California and her conclusion that if more metadata had been collected prior to 9-11, the attacks could have been prevented. With all due respect, Senator Feinstein has it completely wrong! With her factually inaccurate version of pre 9-11 failures, her point was to insist that there be no significant rolling back of the NSA's post 9-11 massive metadata and FISA surveillance programs. But her account is wrong and the truth is that this massive government surveillance is making things worse and even harder for analysts and agents trying to find the needle in the haystack by adding more hay. Agents and analysts are reported to call the non-relevant data collection "white noise" or false leads, etc.

I would be happy to provide more detail but in a nutshell, the main finding of the 9-11 Commission, based upon the earlier findings of the Joint Intelligence Committee's Inquiry (JICI) which Senator Feinstein was a part of and to whom I actually addressed my "whistleblower memo" of May 21, 2002 about the FBI's pre 9-11 failures (and also based upon the Senate Judiciary Committee's investigation which Senators Leahy and Grassley led in the spring-summer of 2002; and the lengthy Department of Justice's Inspector General Investigation of these failures) was that the failure to share information within agencies, between agencies and with the public was a major problem that enabled the Al Qaeda terrorist attacks to occur. Many examples of these failures to share information (including "stove piping") were documented, including the Moussaoui case in Minnesota and the case of the TWO (not one) Qaeda suspects Al Midhar AND Al Hazmi who the CIA had long been following since their Al Qaeda-related meeting monitored by the CIA in Kuala Lumpur. The CIA learned of Hazmi and Midhar's entry into California but failed to notify the FBI in a timely manner, not until a few weeks before 9-11. As you will recall Moussaoui later convicted of conspiring with the 9-11 hijackers, was arrested in Minnesota on August 16, 2001, suspected of terrorism connected to Bin Laden and thereafter the FBI Headquarters supervisors failed to share this info with the proper DOJ Office to seek a FISA Order for searching of Moussaoui's belongings despite 60 to 70 detailed requests via telephone, email and written draft declaration such that the FBI case agent later testified at Moussaoui's trial, that this FBIHQ "stovepiping" (or maybe the more accurate term would be "stonewalling") constituted "criminal negligence."

There are many more examples that were adduced and documented of US intelligence agencies already possessing key pieces of information and intelligence including the NSA's interception of conversations between terrorist hijackers and planners that were intercepted before 9-11 about the upcoming attacks that were not translated and understood until after the attacks occurred. The excuse by main officials for why they did not share or act upon the key information they already possessed--and in some cases, did not even read--until after 9-11 was that "intelligence is like a firehose and you can't get a sip from a firehose." In other words, officials' excuse for not even reading key intelligence memos, let alone properly sharing and disseminating such information or acting upon it, was that there was already too much intelligence being acquired before 9-11. Related to the "firehose" excuse for why the existing intelligence data was not read, shared or acted upon is that the claim it was impossible to make sense of it, to prioritize the importance of data, and "to connect the dots" when there is so much.

Senators Leahy and Grassley may recall that the Senate Judiciary Committee (at which I testified on June 6, 2002) later uncovered the fact that the FBI's National Security Law Unit Chief failed to read the detailed, written draft declarations submitted by Minnesota FBI agents in the Moussaoui case but simply relied upon a short verbal briefing. A couple years ago, former New York Times reporter Phil Shenon (also author of the book "The Commission" about the 9-11 Commission) discovered another "terrible missed chance" involving a prior written memo to then FBI Director Louis Freeh written in April 2001 explicitly warning of upcoming terrorist attacks by Osama Bin Laden's group and that Bin Laden was "heavily entwined" with the Chechen leader Ibn Al Khattab. However, several of the high level FBI executives who this April 2001 memo was addressed to by name, later denied having read it. And the information linking Al Khattab to Bin Laden was precisely the reason FBIHQ supervisors failed to appreciate the foreign power connection (for which they later were faulted). The FBI Supervisors were held at fault for failing to recognize the foreign power connection but their own supervisor claimed he had not read this April 2001 memo and therefore had not shared it with them.

DCI George Tenet, who Feinstein stated had passionately warned her intelligence committee of upcoming attacks during the summer of 2001 was himself briefed about the arrest of terrorist suspect Moussaoui in Minnesota as an "Islamic fundamentalist who learns to fly" on August 23 or 24, 2001, yet he could not really explain to the 9-11 Commission why he took no action. It's never been determined if DCI Tenet warned the President or anyone else of this information he received almost three weeks before 9-11.

In conclusion, in all due fairness, Senator Feinstein is dead wrong that the 9-11 attacks occurred as a result of not possessing the NSA and other surveillance programs that now collect massive amounts of metadata and other information about individuals, including American citizens, who are not suspicious. US intelligence officials did not read, share or act upon the key pieces of info they already had. And their excuse then was that they were getting too much data to even be able to read, or intelligently share or act upon this intelligence.

I would be happy to provide further details if you are interested.

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