United States of Secrets: The Program – Part 1

Glenn Greenwald – December 2012

* One of the biggest leaks of secrets ever
* Received email, but ignored it

Laura Poitras

* Received emails from same NSA insider
* Went to HK with Greenwald to meet leaker
* Told Greenwald she received archive of documents once they were on the plane, showed him the documents
* Regarding wide range of NSA surveillance activities
* Ewen Macaskill joined them

Calhoun, Hong Kong

* Told to meet at the hotel, at a bench by an alligator, look for man holding a rubics cube
* Enter: Edward Snowden
* Brought group to his room
* Debriefed Snowden for days

Ewen Macaskill

* Sent email to Jenine, editor in NY “The Guinness is good”

Edward Snowden

* Told the group about what the NSA called “The Program”

The program began sept 11, 2001

* Michael Hayden, NSA Director 99-05
* Vito Potenza NSA Dep General Council, 93-06
* J. Kirk Wiebe NSA senior analyst, 75-01
* Sept 12, NSA HQ
	+ Believed selves culpable
	+ NSA created after WWII to prevent another surprise attack like Pearl Harbor
	+ “What did we do wrong, what didn’t we detect that should have been detected”
	+ Fighting with one hand tied behind back in fear of political backlash.
		- Like Nixon and Watergate
	+ Believed selves overly cautious
	+ Edward Loomis NSA Cryptologist 65-01
		- Could have been prevented with revisions to how they operated before 9/11
		- Tried to get general council to embrace, but they wouldn’t
		- (said through tears)
		- 3k lives lost because of this on 9/11

Washington, DC – Growing demand to prevent next attack

CIA

* George Tennet under pressure from vice president Dick Cheyne
	+ Called General Heyden
	+ What can you do
	+ Told Hayden to take the gloves off, prevent another surprise attack
	+ Begin monitoring foreign internet traffic in US
	+ Agency wanted more aggressive data collection
		- Surveillance without warrants
		- Look for unknown conspirators by looking at everybody
		- Hayden proposed idea to Washington
* President Bush asks what they want to do that they can’t do that will prevent another 9/11
	+ Monitor the phone calls of millions of americans
	+ Go develop program, lawyers working on it, but “we’re going to do this”
* Knew when it went public, it’d be controversial
	+ Is it the right thing to do?
	+ “Yeah I think so”
	+ We’ll deal with public when it comes
* Order written by VP’s lawyer, stored in VP’s safe, unique to history
* Kept secret for 4 years
* Hayden wanted his lawyer, Robert Deitz, to sign off, is it legal
	+ Deitz: very hard call
* In intel world, if President says “I need this to keep people safe” job is to figure out where the legal line is, constitutionally, and march right up to it
* **Article 2 authority** gave hayden the okay
* **Collected content, recorded phone calls, not all, but many, many, many**
* **Most NSA employees kept out of loop**
	+ **Thomas Drake**
		- **First day on job was 9/11**
		- **Kept out of loop what was going on between Hayden and WH**
		- **Charged to find whatever they had that could be used and deployed**
		- **Thought whatever he found had to safeguard American’s privacy**
		- **Discovered a program before 9/11 that “could have” eavesdropped on entire world, called: THINTHREAD**
		- **William Binny: developed THINTHREAD**
			* **Build networks around communications**
			* **Isolate terrorists**
			* **Selectively pick out relevant info**
			* **Anonymizes who it’s listening into unless court warrant**
			* **Automatically encrypted if US citizen**
	+ **Put together 2 page plan to utilize THINTHREAD**
	+ **Was not chosen program**
* **Stacks of servers began appearing**
* **Drake had people coming to him with concerns, “thought we were supposed to have a warrant,” directed to use tools meant to use against foreign agents against citizens**
* **Used without encryption protections for US citizens**
* **Loomis was surprised how far the agency was willing to go**
	+ **Went back to old ways from the early 70’s**
	+ **Couldn’t believe it**
* **NSA had gone down a path they were preached to “you never do”**
* **THINTHREAD was incorporated without encryptions**
	+ **Oct 2001, binny, kirk weaby, loomis retired, drake stayed**
	+ **Drake confronts Moraine Begynski**
		- **“Call the office of general council” was her response**
		- **Drake says to office “program may be illegal”**
		- **Response “lawyers approved it, its legal.**
			* **“Required to deal with threat, we need the data”**
			* **Don’t ask any more questions, Mr. Drake**
			* **If constitutionality came up, stopped paying attention**
		- **Hits deadend inside agency**
	+ **Binny breaks ranks, goes to congress**
		- **Finds ally Diane Roarke**
			* **House Intelligence staffer**
			* **5 years**
			* **Porter Goss was her boss and future CIA director**
		- **Binny tells her data is collected on everybody**
		- **She was shocked, constituted a complete reversal of NSA policy**
		- **Could not be legal, would “fry them” if breaking law**
		- **Pierced the veil**
		- **Argued the protections needed to be restored**
		- **In October, WH invited the small group of congressional leaders to secret briefing in VP office**
		- **Hayden led briefing**
			* **Wanted legislative branch’s support**
			* **Conditions for briefing**
				+ **No staff**
				+ **No communicating what they heard**
			* **Returned to congress, some feeling unable to exercise effective oversight**
	+ **Goss had enough**
		- **Roarke summoned to top deck of NSA to talk to Hayden**
		- **“Why did he take off encryptions/protections”**
		- **Hayden evaded answering**
		- **She wouldn’t leave without an answer**
		- **Hayden: “We have the power, we don’t need them”**
			* **Power = President’s wartime authority**
		- **He thought it was lawful and effective**
		- **Wanted Roarke to stop lobbying against the program**
		- **Made her more worried**
* **By early 2003, keeping program secret became harder**
* **Thomas Tamm, attorney doj**
	+ **Uncle was a top aid to J Edgar Hoover**
	+ **Father worked under Hoover**
	+ **Worked for FISA court**
		- **Watchdog after nixon’s spying on americans**
		- **Reforms: NSA could conduct surveillance in US ONLY if FISA issued warrant**
	+ **Tamm’s job to prep warrants for FISA court**
	+ **Working on terrorism**
		- **Found evidence of The Program**
		- **Surveillance without warrants**
		- **His supervisor assumed what they were doing was illegal and didn’t want to ask any questions**
		- **NSA obtained information and didn’t inform court of source**
	+ **Chance the sitting Attorney General would be indicted**
	+ **Took questions up chain of command without success**
	+ **Decided to go to congress for secret meeting with powerful staffer**
		- **What’s going on with program**
		- **Cant tell you**
		- **Maybe I’ll go to press**
		- **“Whistleblowers don’t end up very well”**
		- **I understand that**
* **Office of Legal Council needed new head in 2003**
	+ **Jack Goldsmith**
	+ **Charged with reviewing legality of admins most secret programs**
	+ **David Addington**
		- **Briefs Goldsmith on The Program (Stellar Wind: cover name)**
	+ **Goldsmith had doubts on legality**
	+ **Discovered emails were being collected**
		- **4th and maybe 1st amendment violation**
	+ **Says “we’ll pull back endorsement of program”**
		- **Addington says lives of those killed next would be on his head**
* **DOJ prepares for conflict with WH**
	+ **James Comey delivers news to John Ashcroft**
	+ **Parts of the program appeared to be illegal**
	+ **Ashcroft to sign reauthorization every 45 days, had for 2 years, now balked and would no longer go along with program**
	+ **Hours later, Ashcroft collapsed, pancreatitis**
	+ **Comey now acting AG**
	+ **Informs WH he won’t sign within 48 hours of expiration of program**
	+ **Andrew Card, Chief of Staff, and Gonzalez go to Ashcroft’s hospital**
		- **Ashcoft’s wife calls Comey, Comey rushes to hospital**
		- **Goldsmith and Comey in room**
		- **Andrew and Gonzalez show up**
		- **Ashcroft gives 2-3 meeting speech**
			* **Showed clarity what issues were and why he would not approve program**
			* **I’m not AG, Comey is**
			* **Seemed near death, this was moment of impressive clarity**
		- **Andrew and Gonzalez leave**
	+ **Cheyney insists president operates on his own and approves program without the AG**
	+ **New document made with place for signature not of AG, but for Gonzalez, who did not have the same legal authority**
		- **Signed to protect president**
	+ **Hayden says he’ll continue program with signature, even though questionable legality**
		- **Did so because of attacks in Madrid**
		- **We’ll do this one more time with somewhat different framework**
	+ **Bush reauthorizes program that afternoon**
	+ **Goldsmith prepares resignation letter from DOJ**
	+ **Dozens of top DOJ officials threaten to join him, including Muller and Comey**
	+ **Nearly the entire political appointment list at DOJ threatened to leave**
	+ **Next morning, Bush speaks to Comey**
		- **Bush tells Cheyney to stay back**
		- **Asks Comey how he could step back last minute**
		- **Comey realizes Bush had no idea what’s been going on, didn’t know this was going on for 3 months**
		- **Bush not happy**
	+ **Bush sends for FBI Director Muller**
		- **Tell Comey to fix this, I withdraw the order, make it right**
		- **Warrantless collection shut down, but WH determine to resume program**
			* **Worked to find existing laws, loopholes, to continue program**
			* **Worked with Chief Judge of FISA court to continue**
			* **Hayden meet Judge Kotelly to make pitch on two Saturday**
			* **Colleen Kollar-Kotelly rules this was legal, that the NSA could collect all internet metadata going in and out US**
			* **Used authority previously used to trace calls going to and from a SINGLE phone on ALL US citizens, an interpretation of a 25 year old Supreme Court case**
	+ **Program back online, back online, now considered legal**
		- **Resumed in fall, 2004**
	+ **Bush argues publicly there is no warrantless surveillance while on campaign**
		- **Lied to US citizens to win election**
	+ **Tamm knew otherwise**
		- **Was not aware Goldsmith nearly resigned**
	+ **Agonized about program for months**
	+ **Didn’t want to continue participating**
	+ **In a Washington subway station, used a payphone to call New York Times**
		- **Knew he’d be found out, knew there’d be ramifications**
		- **Eric Lichtblau**
			* **Will not confirm Tamm was source, but received a tip**
			* **Informed the Program was causing upheaval in the DOJ**
			* **Tamm told Eric gvt lawyers thought what they were doing was illegal**
		- **Knew James Risen was hearing about The Program**
			* **TP was believed to be in violation of FISA and Constitution**
			* **Wanted Hayden on the record, called NSA to schedule meeting**
			* **Spoke to Hayden immediately**
				+ **Read Hayden two paragraphs of draft of the story**
				+ **Heard “sharp intake of breath” like he couldn’t believe he had the story**
				+ **Caught Hayden offguard, who began to confirm**
				+ **Sounded the alarm, that NYT would expose The Program in middle of election year**
			* **Admin: should we get an injuction**
			* **Met with NYT**
				+ **First meeting:**

**Admin wouldn’t admit to program, used hypotheticals**

**Orwellian language, lots of “If”**

**Risen prevented from taken notes**

* + - * + **More meetings:**

**Government argued program was “effective” and “legal”**

**“There was no doubt about its legality”**

**At NYT office, reporters said WH was misleading them**

**Editors were skeptical about being misled**

* + - * + **Admin invited top editors to closed door meeting**

**Condolesa Rice, Hayden, Gonzalez met with Bill Keller, executive editor**

**Insisted to keller that revealing existence of program would endanger national security**

**Keller decided to spike the story, WH wins, The Program would remain secret**

* + - * + **Hayden promoted to help oversee ALL intelligence ops**
				+ **Replaced by Keith Alexander**
				+ **Drake given another chance, wrote confidential letter to Alexander**

**NSA’s activity were out of control and needed to be reigned in**

**Alexander was not responsive**

**Drake broke beurocratic protocol by writing the letter**

**His job was reorganized so he had nothing but an office, no team, no authority, nothing**

* + **Nuclear Option: going to the press**
		- **“We’d be fired… or worse”**
		- **1 year after NYT refused to publish investigation into NSA**
		- **Program grew dramatically during that year**
			* **Calls and emails collectetd**
		- **Risen had enough, went solo**
			* **“Only way to get the story out was to put it in a book”**
			* **Invited Lichtblau to home to read him the first chapter of his book**
			* **Lichtblau only asked his name was in there too**
			* **NYT editors heard what he planned**
				+ **Series of awkward conversations**
				+ **Accused Risen of being insubordinate**
				+ **Risen put a “gun” to their head**
				+ **Game of chicken between NYT and Risen over next few months**
			* **Keller had a hard choice**
				+ **Run story or be exposed by the book**
				+ **Keller, Todman, Solsburger summoned to WH**

**President speaks to them about program, why its important, saves lives, can’t be made public**

**Turns it over to Hayden**

**Explains program**

**Gives examples**

**“Terrorist to bring down Brooklyn bridge with a blowtorch”**

**Editors bemused, find example ridiculous**

**Arthur believes president cracked a smile when the bridge story came up**

* + - * + **President threatened NYT would be responsible for the next attack**
			* NYT publishes story, making The Program public
* WH in crisis mode
* “The Big Pause” – when stuff like this goes public, what’s the big guy gonna do.
* President decides to address it directly
	+ Speaks to the public, gives truncated description of the program, makes it sound “not too worrisome” to most americans, underplays the extent of program
	+ Spoke of the least controversial and smallest element of the program
		- Program was NOT to surveil known suspects/consiprators
		- Goal was to sort through trillions of calls and emails
			* Look for unknown conspirators
	+ Hayden goes on to brief press
		- Downplays program
		- Only addressed the small part that leaked, not the stuff that didn’t
		- Never addressed that calls and emails were collected
		- Lied that there was no internal conflict about program
		- Said internally everyone was enthusiastic
* Bush visits NSA
* Drake watches government response carefully
	+ Realizes they were lying
	+ Knows gvt desparate to protect domestic surveillance program
	+ Real problem was the “dragnet surveillance program”
		- Vast bulk copy of millions, phone records, email records, internet usage, financial transactional, credit card information
	+ Complained internally for more than 4 years
	+ Decided to go to the press
		- Acted alone without THINTHREAD team
		- Reached out to Siobhan Gorman – Baltimore Sun
			* Reaches out thinking in secret
			* Would only provide unclassified material
			* Careful not to violate national security laws
		- Gorman wont reveal her source officially
			* Drake first remained anonymous, communicating via encrypted email
			* Called self “senior official”
			* Provided unclassified information about surveillance program
			* Gorman wrote series of stories based on this information
		- Drake wasn’t only leaker
	+ NYT revealed story of what happened in Ashcroft’s hospital Room
	+ USA Today revealed collection of phone records of tens of millions of americans
* Cheyney was furious
	+ Determined to stop leakers
	+ Investigation ran by FBI
		- Run by Alberto Gonzalez
			* Manhunt for leakers
			* Began investigation at the DOJ, everyone that worked for FISA court
		- Tamm refused to return calls, avoided when calls received
		- Tamm chose not to speak to them, plead the 5th
			* Sealed his fate
			* Became primary suspect
			* Resigned from DOJ
			* Waited for indictment
		- Goldsmith working of professor at Harvard
			* Summoned to meeting with 2 FBI agents
			* Handed subpoena about leak to NYT
			* Issued under AG Gonzalez
	+ Summer 2007, 18 months since FBI began investigation
		- Little to show
		- Up the ante
		- Raids homes of Binney, Weibe, Roarke
		- Then raided Loomis’ home
			* Had no idea why he was raided
			* Became a recluse due to emotional response to raid
			* Lost his wife
		- FBI considered them persons of interest for leaking to NYT
			* They all insistent they didn’t
		- Drake’s home was not raided that day, but he thought he’d be next
			* Nov 28, 2007, Drake was raided
			* Warrant said “looking for evidence that Drake was the leaker”
			* Spent the whole day without his attorney trying to convince FBI that NSA were the real bad guys, but FBI didn’t want to hear it
			* April, 2008, Drake receives summons to meet with Stephen Torrel, fed prosecutor
			* Says to Drake “You are screwed”
				+ Torrel had no evidence Drake spoke to anyone, but said FBI discovered classified docs on his computer and in his basement
			* Wanted Drake to confess and admit he was the center of a conspiracy with the others
			* They all faced decades in federal prison
			* Believed they had only one chance
				+ Presidential election year
	+ Enter Obama, promising a change
* Obama
	+ Embraced importance of whistleblowers
	+ Regarding secrecy around creation of The Program, Obama was forceful, “no more wiretapping of American citizens”
	+ “Surveillance state run amuck”
* Waning months of Bush admin
	+ How to make The Program permanent
	+ Tried to convince congress to enshrine The Program into law
	+ Abandoned claim Article 2 gave him power to run The Program
	+ FISA amendment act of 2008
		- Allows things they were doing in The Program to be used against US citizens, expanding program legally
		- Richard Clarke, Obama campaign advisor
			* Purpose was to make legal things everyone said they had a problem with regarding The Program
		- Ben Rhodes, Obama speechwriter
			* Would Obama support Bush’s bill?
		- In private, Obama showed he was capable of the dirtier side of presidency
		- Chose to accept the expansive law, voted in favor of it
* 6 months later, Obama became President
* Learns of the full scale of The Program in WH briefing
* Told of trillions of phone, email, internet data secretly gathered
	+ Advisors insisted program was necessary
	+ Decision: allow The Program or restrict it
	+ When in power, you don’t want to give up tools that help you do your job
	+ Decided to keep The Program intact and running
	+ Never pushed back against it
* NSA
	+ 10 billion dollars per year capturing data on people globally
	+ Relied on private contractors to handle the amount of people needed
	+ Enter 25 year old Edward Snowden
		- Grew up 25 minutes away from NSA
		- Father in coast guard for 30 years
		- Highschool dropout
		- Passionate about constitution
		- Enlisted in army, left after breaking both legs in training
		- By 2009, working as NSA contractor in Japan
			* Provided access to details about NSA ops
			* Began to understand the scope of NSA reach
			* Became disturbed the more he saw
			* Began to believe something was wrong, very wrong
		- Documents discovered:
			* Key document detailing the ENTIRE secret history of The Program
			* Reading this inspector general’s report left big impression
		- Watched as program continued under Obama
		- Realized he needed to become a whistleblower
	+ Obama DOJ, led by Eric Holder, continued on the Bush era investigations
		- Obama did nothing to stop persecutions
		- Did not like people leaking classified information
		- “When it comes to national security, you leak classified information that could endanger people, gonna come down on your like bricks”
		- Came down on Drake
	+ April 14, 2010, Drake charged
		- Charged with violating the espionage act
		- Spent 2 years draining resources on private attorney, then went to a public defender
		- Worked at an Apple store after resources drained
		- On charge of retention of classified information
			* All that info was put in public domain, so not classified
			* Was not stamped classified until after being seized from Drake’s home
		- Gvt insisted docs contained national secrets, covered by espionage law
		- Days before trial, charges dropped
		- Went from some of the worst charges possible, to being bargained down, to a misdemeanor…
		- Plead guilty to unauthorized use of a government computer, charged a $25 court fee, given a year of probation and given community service
	+ None of the other suspects were ever charged
* More than 10 years, little public outrage and few congressional critics
* Program continued to grow
* Secret bunker in Hawaii, snowden working for new NSA contractor
	+ Working to make a move as a whistleblower
	+ Studied other whistleblowers, especially drake
	+ Realized people wont believe you without proof
	+ Decided it had to be documents, lots of documents
	+ Disgusted with NYT for sitting on story during election
	+ Reached out to Greenwald, Poitress, Gelman
		- Systematically copying and providing documents
			* Held most closely guarded gvt secrets
		- Had clearance for many, many areas
			* Superuser access
			* Had access to 1.7 million documents
			* Could walk out of agency with them without gvt having any idea it took place
			* Largest leak of classified info to ever occur anywhere
		- For NSA, biggest threat was just beginning
* Continued in Part 2