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