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UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE COURT

HONORABLE THOMAS F. HOGAN, PRESIDING

Friday, August 4, 2014

11:00 a.m.

KEVIN O'CONNOR

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1 **FRIDAY, AUGUST 4, 2014**

2 **11:23 a.m.**

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5 THE COURTROOM CLERK: The case now before the Court is

6 [redacted]. And would everyone please state

7 your names first? We can start at this end.

8 MR. EVANS: Stuart Evans, Department of Justice.

9 MR. O'CONNOR: Kevin O'Connor, Department of Justice.

10 [redacted], Department of Justice.

11 [redacted], Federal Bureau of

12 Investigation.

13 MR. DeLONG: John DeLong, National Security Agency.

14 MR. [redacted]: [redacted], National Security Agency.

15 MR. [redacted]: [redacted], National Security Agency.

16 MS. [redacted]: [redacted], National Security Agency.

17 MR. [redacted]: [redacted], National Security Agency.

18 MR. [redacted]: [redacted], National Security Agency.

19 [redacted], Federal Bureau of

20 Investigation.

21 [redacted] Office of the Director of

22 National Intelligence.

23 (b)(6) [redacted]

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1 (b)(6); (b)(7)(C) [redacted] Department of Justice.

2 [redacted] Department of Justice.

3 THE COURT: All right. Thank you. Please be seated.

4 THE COURTROOM CLERK: Would you like me to place

5 anyone under oath?

6 THE COURT: Not right this minute. We might. All right.

7 Thank you all for coming in. We've spent some time reviewing

8 these applications on the certifications for the 702

9 requirements, that each year we meet to consider these overall.

10 I'm sure that the targeting agency procedures are appropriate.

11 They're complicated certifications. We've looked through those

12 and I know that the staff has had an opportunity to work with you

13 all on these matters as well, and I -- I have several questions

14 and issues I'd like to discuss. A lot has -- the government has,

15 through its communications with the staff, I think, has edited

16 much of these to make sure they meet the requirements of the

17 statute.

18 There had been, obviously, some compliance issues we'll

19 talk about a little bit, I hope, and get into what happened, as

20 well as some of the changes in the minimization procedures that

21 you all are looking at.

22 I thought there were a couple of areas I wanted to hear,

23 and maybe [redacted] is the one to start with this, in the overall

24 areas a couple of matters that have been raised with me.

25 Is it in the -- the targeting procedures across the board,

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1 I think, are going to be very applicable to each of the agencies
2 at this point, and I know you're aware that Judge Mosman had a
3 case or cases that came up with some issues and whether or not
4 there are procedures, in fact, on how you go about, now each of
5 the agencies, in determining if a person is a U.S. person under
6 the procedures or not, and how you determine that, [redacted]
7 [redacted]
8 [redacted]
9 [redacted]
10 [redacted]
11 [redacted]
12 [redacted]. So where are you on that? Maybe we can talk about
13 that. Who's the expert for me?
14 MR. O'CONNOR: Thank you, Your Honor. I'm Kevin O'Connor
15 with the Department of Justice. I'm chief of the Oversight
16 Section within the National Security Division. To your question
17 of the efforts that each of the agencies takes to ensure that 702
18 targets are not U.S. persons, each of the agencies recognize that
19 if they are faced with information that indicates that a target
20 or potential target may be a U.S. person, its incumbent upon them
21 to address and satisfy themselves that those questions are, in
22 fact, answered.
23 THE COURT: [redacted]
24 MR. O'CONNOR: [redacted]
25 [redacted]

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1 [redacted]

2 [redacted]

3 THE COURT: In [redacted]

4 [redacted]

[redacted]

[redacted]

7 [redacted]

8 MR. O'CONNOR: [redacted]

9 [redacted]

[redacted]

11 Looking historically, the government has -- had very few

12 instances in which the U.S. person determination under 702 was,

13 in fact, incorrect. [redacted]

14 issues, the agencies and the department and ODNI have had a

15 discussion about ensuring that those who are making the targeting

16 decisions recognize instances in which there is a legitimate

17 question regarding U.S. person status that needs to be resolved,

18 and they are -- have gotten word to their analysts and agents and

19 targeters that there are situations [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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1 [redacted]

7 [redacted]

13 MR. O'CONNOR: [redacted]

20 THE COURT: All right. Each of the agencies now in these
21 minimization procedures will make their own checks, as I
22 understand it, to make sure it's a non-U.S. citizen that's being
23 targeted, and NSA will do the [redacted] to determine in
24 the task for electronic communications is accessed within the
25 U.S., but each agency will do its own, as I understand, check to

1 see that they're targeting a non-U.S. person?

2 MR. O'CONNOR: To the extent that NSA is responsible for

3 (b)(1); (b)(3); (b)(7)(E), it's incumbent upon the NSA to make that

4 determination that the target is an appropriate target under 702,

5 to assess the full U.S. as well as the non-U.S. status.

6 When the FBI (b)(6)

7 , the FBI will undertake efforts to

8 determine whether they possess any information that is contrary

9 to the determination made by the NSA. (b)(1); (b)(3); (b)(7)(E)

it will undertake to continually assess and monitor those

12 communications for any indication that the individual has roamed

13 into the United States, was initially in the United States, or,

14 in fact, is a U.S. person.

15 THE COURT: Tell me a little bit of background. You said

16 this was really unusual, the (b)(1); (b)(3); (b)(7)(E) that came up. When

17 you're saying "unusual," meaning there were you know

18 that this has happened?

19 MR. O'CONNOR: Under those particular circumstances, yes,

20 Your Honor. There have been certainly other instances in which a

21 determination was made that (b)(1); (b)(3); (b)(7)(E) , but those

23 instances are few and far between.

24 THE COURT: Now, in each of the -- as to each of these

25 agencies, then, you have clarified their obligations, as I

1 understand it; is that correct, in these certifications?

2 MR. O'CONNOR: Yes, Your Honor, and I've attempted to

3 explain the approach that each of the agencies take to these

4 types of situations.

5 THE COURT: All right. All right, Mr. O'Connor, thank

6 you. Let me talk to you a little bit about, as we go through,

7 these changes. On some of the minimization procedures, one of

8 the big changes to me, it seems to me, is the retention of

9 information usually subject to destruction or age-off

10 requirements, and I would like a little bit of an explanation on

11 that and how you intend to follow that up with the agencies to --

12 and how the government intends to coordinate it with the other

13 branches of the Justice Department that may be involved in this

14 litigation to know whether or not they are supposed to be

15 retaining information, because I know in the past it's caused

16 some difficulties.

17 [redacted] Good morning, Your Honor. [redacted]

18 So, the Court is correct, each of the agency's

19 minimization procedures that are currently before the Court now

20 have language in them that would permit the agencies to retain

21 information that would otherwise be subject to age-off in the

22 event a litigation matter arises that would require retention.

23 Previously none of the agencies' procedures had this provision in

24 it.

25 THE COURT: You had to come here?

1 [redacted] That's correct. And we've had this crop up in
2 a couple of different circumstances. (b)(1); (b)(3); (b)(7)(E)
[redacted]
4 (b)(1); (b)(3); (b)(7)(E) --
5 THE COURT: -- yes --
6 [redacted]: -- where we've had to come in one-off cases to
7 the Court and seek a departure from (b)(1); (b)(3); (b)(7)(E)
[redacted]n order to accommodate that.
9 The other circumstance where this occurred recently was
10 not in the 702 context, but was in what we call the big business
11 record context where, as the Court's aware, all of the primary
12 orders which deal with how data is to be handled and retained and
13 disposed of had a five-year retention limit. We were coming up
14 on that five-year retention limit, and as a result of some civil
15 litigation out in California where the Department made a
16 determination that in order to comply with the District Court's
17 preservation order out there, we needed to be able to retain that
18 data for longer than five years, so we presented a motion to
19 Judge Walton which he analyzed and granted. So those were some
20 of the circumstances that we've confronted to date.
21 Just to round that out for the Court a little bit more,
22 the litigation in California continues. The litigation in
23 California has the potential to include data other than the data
24 that has been retained under the big business records program to
25 include potentially 702 data. Those matters are still being

1 litigated, but as a result of that, we wanted to have a mechanism
2 in place so that if we determine that we need to retain data, the
3 minimization procedures contemplate that.
4 One of the differences with respect to the way 702 works
5 versus Titles I and III of FISA where we could come in individual
6 cases a lot more -- with a lot more agility and seek individual
7 departures. In the 702 context, in order to change minimization
8 procedures, the Attorney General and the DNI have to execute
9 amended certifications with amended minimization procedures that
10 then have to be presented to the Court. So it's a much more
11 cumbersome process, and when you're faced with impending
12 preservation obligations in another court, that could potentially
13 put us at odds with obligations in other cases.
14 So, in light of that, we've developed procedures for each
15 of the agencies to allow them to retain data that would otherwise
16 be subject to age-off. In circumstances where the agencies
17 working with the department receive from the Department in
18 writing a notification that a decision has been made that certain
19 information is subject to preservation, what the case is, where
20 that obligation arises, what the scope of the information is that
21 will be retained, and then subsequently, if it's ultimately
22 decided that the information no longer needs to be retained,
23 another written notice to the agency telling them, "Your
24 preservation obligation has been lifted and it's now appropriate
25 for you to destroy the data consistent with your minimization

1 procedures."

2 So, in each circumstance where this would arise going
3 forward, it would not be a circumstance where the agency
4 independent of the Department would be making decisions about
5 what to retain or what not to retain, it would be a collaborative
6 effort ultimately ending up with the Department actually telling
7 the agency what they needed to keep.

8 THE COURT: And you've got some system of coordinating
9 these cases that are coming up, this general litigation over the
10 FISA-type work where you all are notified from the civil division
11 of the Justice Department or whoever is handling it at the
12 Justice Department, because sometimes there's a gap there, you
13 know.

14 [redacted] [redacted]: So there are a fair number of cases that are
15 out there. I think by last count, although don't hold me to
16 this, it was in excess of [redacted] either FOIA cases or civil
17 litigation cases that are out there. The civil cases, we work
18 closely with the relevant parts of the civil division in those
19 cases as a general matter in, you know, answering complaints, in
20 drafting briefs and things like that. In the civil division, as
21 new cases come in, they tell us the new cases have come in and we
22 coordinate with them.

23 In the criminal context, this is where the collaboration
24 comes in, because it may be that if a criminal matter is being
25 handled in a U.S. Attorney's Office in the district of Idaho, NSD

1 may not be witting of that, but an agency may get some type of a
2 notification from that U.S. Attorney's Office, and so that's
3 where the collaborative effort comes in. If an agency would get
4 a notification like that, they would notify us, and then we would
5 work with them to develop whatever the approach was that would be
6 necessary for retention in those kinds of cases. If it's a
7 terrorism matter (b)(1); (b)(3); (b)(7)(E) that would be handled
8 within the division, (b)(1); (b)(3); (b)(7)(E) the counterterrorism section
[redacted] we would be working within the
10 division to make sure we were witting of those kinds of cases.
11 THE COURT: And each of the agencies have effectively
12 signed on to this? They understand?
13 (b)(6); (b)(7)(C) [redacted]: We have had detailed discussions with them
14 about how this would work. They can obviously acknowledge, but I
15 am comfortable that they understand how this process will work.
16 THE COURT: It makes sense, I mean all the sense in the
17 world, rather than, as you said, trying to come back to us with
18 the Attorney General trying to change minimization procedures
19 when this litigation is now becoming fairly prevalent in the
20 country and has caused difficulties in other contexts for the
21 government with the court.
22 (b)(1); (b)(3); (b)(7)(E)
[redacted]

(b)(1); (b)(3); (b)(7)(E)

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(b)(1); (b)(3); (b)(7)(E)

[redacted]

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(b)(1); (b)(3); (b)(7)(E)

[redacted]

(b)(1); (b)(3); (b)(7)(E)

[redacted]

(b)(1); (b)(3); (b)(7)(E)

[redacted]

(b)(1); (b)(3); (b)(7)(E)

[redacted]

20 THE COURT: You mentioned the other minimization
21 procedures in this area that was suggested, and that is the
22 sharing with private individuals for mitigating serious economic
23 harm or serious physical injury. What's, like, an economic harm
24 that would apply to? What's an example?
25 (b)(6); (b)(7)(C) [redacted] So, the best example that I can give you is

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1 the one that we gave to the Attorney General when we gave him the
2 procedures. (b)(1); (b)(3); (b)(7)(E) [redacted]
3 [redacted]
4 [redacted]
5 [redacted]
6 [redacted]
7 [redacted]
8 [redacted]
9 [redacted]
10 [redacted]
11 THE COURT: And if you use any of these procedures, you or
12 [redacted] and advising them of other matters or apprising other
13 individuals of threats of serious economic harm or physical
14 injury to life or property, is there any provisions for reporting
15 back to the Court on how many times this occurs or anything like
16 that? Do we have any idea how broad spread or widespread this
17 may be?
18 [redacted] So that was something that we thought about,
19 and in the procedures dealing with serious economic or physical
20 harm, there's a requirement to report back to the Department
21 within ten days of exercising that authority. They are not
22 similar requirements in the [redacted] portions of the procedures or
23 the cyber portions of the procedures.
24 I would say, though, that if that's something that the
25 Court is concerned about, we could certainly work with the Court

1 and its staff to come up with a way to provide the Court with
2 information if disseminations are made pursuant to those
3 provisions.
4 THE COURT: There's some pending legislation. I don't
5 know if they need more work, but we'll think about that.
6 [redacted] We'll certainly be in touch with the staff on
7 those issues.
8 THE COURT: All right. Thank you. Other minimization
9 procedures suggest, I think. Actually there are some very good
10 changes you've made, and I don't see too many questions about
11 them. We have some compliance instances I need to talk about,
12 other areas, but the [redacted] concerned me, and I'll get
13 back to Mr. O'Connor in a second on that if I have any further
14 questions about it, and I do think that the idea of adding in the
15 retention capabilities is important in this area.
16 The use of [redacted] as a possibility, I've got to look at a
17 little bit more, make sure that that's appropriate, and I think
18 the notice of some serious economic concerns or physical danger
19 is sensible, as long as it's properly done, obviously, and I'm
20 making these applicable across the board, I think is very
21 important, so we don't have differences among the agencies how
22 these are being operated. Let me ask Mr. O'Connor back, if he
23 can get back in the hot seat again.
24 And I just want to make sure I'm checking on whether or
25 not this tasking, before it begins, is not a U.S. person, that

1 all of the -- that is the CIA and the FBI and NSA -- [redacted]
2 [redacted] And if not, because they're
3 satisfied with what they have, is there any idea we should
4 require them to always go beyond that and make sure that they
5 aren't targeting U.S. citizens.
6 MR. O'CONNOR: In answering --
7 THE COURT: You answered, [redacted]
[redacted].
9 MR. O'CONNOR: So, in most circumstances, Your Honor, I
10 think that the government would posit [redacted]
[redacted] in most instances they're able to establish
13 a reasonable basis to believe that an individual's a non-U.S.
14 person [redacted]. It's those
15 circumstances in which there is a real and substantial question
16 where they have information indicating that the target may be a
17 U.S. person and are unable to resolve that [redacted]
[redacted] But in the vast majority of
20 circumstances, the agencies are able to satisfactorily answer
21 that question [redacted]
22 THE COURT: What happened [redacted]?
23 How did that occur?
24 MR. O'CONNOR: [redacted]
25 [redacted]

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16 THE COURT: And so the same procedures are followed then
17 by the NSA and the FBI?
18 MR. O'CONNOR: My understanding is that the NSA has
19 adopted similar guidance for its targeters, and the FBI as well
20 is assessing how best to get the message out to their folks to
21 make that message clear.
22 THE COURT: I don't know if you want to do this or if the
23 FBI wants to talk about some issues on compliance, one, the
24 recent confusion and notices regarding instances where case
25 agents reviewing 702 collection material against a target knew

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1 that he was under indictment and there may be attorney-client
2 privileged questions and that wasn't caught, and I got advice
3 that that was a mistake and a note that was inaccurate, and then
4 I got an advice, when they came in Friday or yesterday, even over
5 the weekend maybe, that no, there were other additions, [redacted]
6 [redacted] like this this year.
7 MR. O'CONNOR: Yes, Your Honor. If I might take a stab at
8 answering your questions, and if necessary, with the leave of the
9 Court, we'll ask the FBI to come in and fill in any additional
10 details you might want to hear about.
11 There are [redacted] circumstances that I'd like to
12 inform the Court about for which notices have not yet been filed,
13 each of which involve 702 targets that were subject to charges in
14 the United States where collection continued and a taint team was
15 not put in place as required by the minimization procedures.
16 [redacted]
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(b)(1); (b)(3); (b)(7)(E)

[redacted]

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16 Now, the FBI, along with NSD, are putting in place several
17 measures. I'm happy to detail those for you, Your Honor, to
18 ensure that across the board the agents and analysts and
19 attorneys involved in the review of 702 collection understand and
20 are able to apply the attorney-client communications provisions
21 of the SMPs.
22 THE COURT: Yeah. I mean, there seems to be several just
23 recently -- maybe that's because they're ramping up some
24 terrorist prosecutions that's going to occur, but you advise
25 these on a quarterly basis if we have these.

1 MR. O'CONNOR: We can do that Your Honor, yes, or we do do
2 that, Your Honor.
3 THE COURT: Or outside of that. I just -- it concerns me
4 if this is going to keep up -- obviously, I assume the FBI is
5 going to go back to its agents and talk a little bit about
6 enhancing their training in this area. I think it would be of
7 help because I'm very concerned you're going to run into a real
8 buzz saw if you have any attorney-client communications there and
9 it becomes known. It's something that we have to be careful
10 about if we're going to have this go on.
11 Other areas of compliance from the purging areas in the
12 FBI. You had several of those about the report, again, that we
13 just received, I think [redacted] [redacted]
[redacted] FISA court information over multiple databases and trying to
15 track that down and making sure that the -- they may not have
16 been exported. And what have you done and how have you done
17 that? Has there been any effort to go back and track down these
18 queries that have been made and see what's happened or not?
19 MR. O'CONNOR: So, Your Honor, generally the issue there,
20 to recap, is an agent can conduct a query in an FBI database and
21 explore those query results. The database oftentimes will have a
22 query log. The FBI had not incorporated a review of those query
23 logs as part of this purge process. The FBI has since done that.
24 Historically, there's no way for the FBI to go and assure itself
25 that none of those exported results were, in fact, disseminated.

1 What the FBI has done is looked historically and determined that
2 the FBI had very few instances in which 702 collection was
3 required to be purged and looked at the nature and the use of the
4 agents of that export function, which is typically for internal
5 analytics as opposed to exporting for the purpose of
6 dissemination.
7 THE COURT: And are you satisfied that you're caught up
8 with this problem at this point?
9 MR. O'CONNOR: Yes, Your Honor, the FBI has analyzed it
10 and modified its purge process to account for this export
11 function in the databases.
12 THE COURT: All right. How about NSA purging issues that
13 you had advised us about concerning its compliance in [redacted]
14 [redacted] and maybe an
15 overview by NSA on what they've done to ensure that these purging
16 processes have worked out effectively, that -- whether or not
17 it's human error and there's training going on or there's more
18 electronic changes that need to be made in the systems. I mean,
19 just a description of where we are with that.
20 MR. O'CONNOR: Yes, Your Honor, with the Court's
21 permission, I would like to introduce John DeLong, the Director
22 of Compliance for NSA, to address your questions.
23 THE COURT: Sure. I'm referring to July 1 or the July
24 25th letter that set out a couple of these issues for us and
25 another one back in March, you gave us another report.

1 MR. DeLONG: Your Honor, John DeLong. So I think there's
2 two questions, at least, that we had gotten a little bit more
3 detail from the court advisors from Justice. One was the
4 disposition of the study [redacted]. So, with
5 your permission, I'll cover that at the general level. And we
6 also have [redacted] here who leads the 702 purge team, if the
7 Court has any additional questions. And then I think again,
8 maybe a little bit of a deeper dive into some of the additional
9 safeguards that exist for purge.
10 THE COURT: All right.
11 MR. DeLONG: With your permission, I'll proceed in that
12 way. So, on the [redacted], as we reported to you, we were -- we
13 went ahead and ran the full MPL against the [redacted] database.
14 Because there was a triggering event, we decided that that would
15 be a good way to more fully understand, get to root causes. We
16 have received those results, we've binned them in essentially
17 root cause cases.
18 In many of those cases, improvements in the intervening
19 time between when those objects -- you know, essentially already
20 addressed those root causes, so we did not make any additional
21 changes because of those root causes. In some cases, especially
22 due to the interaction that gave rise to that [redacted] garble, we
23 obviously took steps to more appropriately match up items that
24 are on [redacted] with the way they're described in the database.
25 [redacted]

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5 So, you know, technically it has to do with different
6 types of [redacted] but if the Court would like we can get into
7 that, but the short story is we've addressed that and as a result
8 the root causes have essentially been through those, worked them
9 off -- Like I said, many of them had already been worked off just
10 through intervening events and improved safeguards. The ones
11 that arose from the [redacted] incident we've also addressed.
12 THE COURT: What -- I mean, what is sort of the schedule
13 you're working under on being in compliance with the purge
14 procedures? I mean, one of the letters I looked at that you note
15 here you indicated that [redacted]
[redacted]
17 MR. DeLONG: A little clarification, if I might Your
18 Honor. So we have a [redacted], as has been described to
19 the Court. We can and do run that occasionally for certain
20 reasons across our systems. As you know, we have a purged
21 taxonomy. We divided our systems into different categories. [redacted]
22 [redacted]
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1 [redacted].

2 In 2010, before we certified systems as source systems of

3 record, the [redacted] we had in 2010, we've added [redacted] since. We also

4 ran the entire Master Purge List through those systems. [redacted]

5 [redacted]

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7

8 [redacted] And obviously, as you saw in the [redacted] incident, when

9 there's a triggering event, we run the MPL.

10 So I guess to raise the question and then answer the

11 question, the question may be, why not, as a matter of course,

12 run the entire, full Master Purge List across all our systems on

13 a, let's say, routine basis? If that's the question, I

14 understand, Your Honor, and I might go ahead and address that.

15 THE COURT: Yes, and then -- I guess my basic question is

16 what assurance do you get or not running searches on information

17 that's supposed to have been purged.

18 MR. DeLONG: Absolutely. So again, as described in the

19 letters, and maybe I'll go back to 2010. So in 2010 we did a one

20 time run. We also in May 2010 -- May 26th letter described a

21 series of testing and independent auditing that we would be

22 doing, and so much of what has gone on since then has been

23 consistent with that promise in 2010.

24 The -- at the 10,000 foot level, running the full MPL

25 across all the systems is not the best return on investment for

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1 the purpose for which it might be applied, [redacted]
2 [redacted]
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10 [redacted] And so in many of those cases --
11 and again, there are a variety. Obviously, the 702 purges are a
12 constant, daily activity. [redacted]
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18 [redacted], just as an
19 example. I just need to use examples here.
20 So what happens is, number one, running the MPL against
21 the [redacted] is both an
22 intense process for the system that takes time and energy and --
23 it's also an investment. When you invest in something to get a
24 good return, anything you invest in, what it then does is it
25 generates a lot of false positive, if you may, it generates a lot

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1 of work. The running down of the Master Purge List is not --
2 because it's optimized for, you know, [redacted]
3 [redacted]
4 [redacted]
5 [redacted] and
6 that then takes a lot of time and energy from the purge team.
7 So basically, and we would respectfully submit, if running
8 the full MPL against all the systems on periodic basis doesn't
9 generate the best return on investment, what would? And so what
10 we do -- [redacted]
11 [redacted]
12 [redacted], there's a lot
13 of different ways to skin the cat, if you will. What we've
14 determined in our best judgment is that doing a statistical
15 sample of the Master Purge List on a routine basis and running it
16 against the systems and seeing those results -- and again, this
17 is drawing from principles of internal auditing. It's a tried
18 and true method. It helps us diagnosis process errors. Each of
19 those we then run down, and I think as you you've seen in the
20 letters, in 2011 and 2012 and 2013, we've seen trends in a
21 positive direction. By that I mean closer to zero. If we were
22 to see trends going up, that might trigger a series of follow-on
23 events. So I don't know if that answers your questions.
24 THE COURT: Yeah, that's helpful. You mentioned root
25 causes. What's a root cause?

1 MR. DeLONG: A root cause may be -- for example, we used
2 to use e-mail to deliver -- [redacted]
3 [redacted], we made a decision in 2010 that the purge team
4 would communicate directly with those systems, [redacted]
5 [redacted]
6 [redacted] Those communications in some cases were done through
7 e-mail. Sometimes we could find a record where maybe an e-mail
8 was sent but maybe not received. That might be a root cause.
9 There's some incomplete nature of e-mail. You know, you might
10 get a return receipt, but it might not have actually been read or
11 not followed on. So in those cases, in some cases now, we don't
12 use e-mail to communicate anymore between the systems. We have a
13 much more direct interface. And, in fact, we had a few garbles
14 as we changed over to that interface, but the impact of that is
15 much better, so that would be an example of a root cause. The
16 other one that was more [redacted] and I would like to address
17 to see if there are any additional comments was that kind of
18 [redacted]
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23 THE COURT: Thank you, Mr. DeLong, I appreciate it.
24 One of the other matters that I just wanted to
25 double-check on a little bit was the collaboration between the

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1 NSA [redacted]
2 [redacted]. Who wants to talk about that? Who's knowledgeable on
3 the NSA's collaboration?
4 (b)(6); (b)(7)(C) [redacted] I'll start, Your Honor. (b)(6); (b)(7)(C) [redacted] again,
5 and if you get really down in the weeds --
6 THE COURT: Not too much into the weeds. Apparently, you
7 want to collect non-upstream data under 702 to assist, you
8 said -- [redacted]
9 [redacted]
10 [redacted]. What I was curious about
11 was, were there problems or issues that we don't know about that
12 we should?
13 (b)(6); (b)(7)(C) [redacted] So I'll sort of give you a historical
14 perspective of this, Judge.
15 So the Court is correct. In [redacted]
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1 [redacted]
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18 THE COURT: All right. Thank you.
19 (b)(6); (b)(7)(C) [redacted] For the record, I'm noting that they agree.
20 THE COURT: Everybody is nodding. All right. All right.
21 Thank you. Let me just -- we're going to wrap this up. We have
22 two members of the legal staff here, and if they would like to
23 say anything, they can introduce themselves on the record if they
24 would like to clarify anything that I raised, and they are
25 welcome to do so. Nothing?

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1 THE LAW CLERK: I don't think I have anything, Judge.
2 THE COURT: I'm going to take under consideration the 702
3 and approval of the certification and the new targeting
4 minimization procedures.
5 The criminal case, as I said, can consider the targeting
6 minimization and the certificates for approval, and then we have
7 to consider these by August 27th, and if we need any more
8 information or further information, I'll advise the responsible
9 parties here who are with the staff. I'm generally satisfied
10 that you've met the requirements of the statute. I do want to
11 take a look at a couple of these issues that we've discussed and
12 make sure whether we need any further reporting or other tweaking
13 that's been proposed. We'll take a look at that. I want to
14 thank you all for coming in to work and spending the time today,
15 and I appreciate the work done on these matters, and good to see
16 you all.
17 (Proceedings adjourned at 12:28 p.m.)
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19 (Certification.)
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