

Cyber-Warfare Chief's Deception

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U.S. Army Lt. Gen. Keith Alexander may well be harboring the proverbial thought attributed to prevaricator Oliver North upon being spared punishment — and instead getting rewarded handsomely — for lying about the Iran-Contra Affair: “Is this a great country or what!”

Gen. Alexander, Director of the National Security Agency since August 2005, is about to become what the Army describes as “dual hatted.” The Senate is about to confirm him to a new, highly sensitive leadership position requiring the utmost integrity and fidelity to the Constitution when he has shown neither.

Yet, after sizing up the enormous challenge of running the new U.S. cyber-warfare command, Sen. James Inhofe, R-Oklahoma, looked at Gen. Alexander and added, “And you’re the right person for it.”

Not for the first time, neither Inhofe nor his colleagues seem to have done their homework. Or maybe it is simply the case that Congress now accepts being lied to as part of the woodwork in the Capitol.

Alexander, you see, has a publicly established record of lying about NSA’s warrantless wiretapping. Call me naïve or obsolete, but when I was an Army officer it was understood that an officer did not lie — and especially not to Congress. Gen. Alexander seems to have missed that block of instruction.

And the same can be said for so many other very senior Army officers. It becomes easier to understand why Army Maj. Gen. Antonio Taguba compared some of his colleagues during the Bush administration to the Mafia.

Taguba conducted the first (and only real) investigation of the abuses at Abu Ghraib. His brutally honest report was leaked to the press — and thus became largely responsible for preventing the scandal from being swept entirely under the rug.

Rather than thank Taguba for upholding the honor of the U.S. Army, the Bush administration and more senior generals singled him out for ridicule, retribution and forced retirement.

Taguba told investigative journalist Seymour Hersh of a chilling conversation he had with Gen. John Abizaid, then CENTCOM commander, a few weeks after Taguba’s report became public in 2004. Sitting in the back of Abizaid’s Mercedes sedan in Kuwait, Abizaid quietly told Taguba, “You and your report will be investigated.”

“I’d been in the Army 32 years by then,” Taguba told Hersh, “and it was the first time that I thought I was in the Mafia.”

Getting back to Gen. Alexander's nomination, if our senators continue to feed on thin gruel like that served up by the Washington Post, Alexander is a shoo-in to become the first head of the Cyber Command, newly established to enhance the kind of capabilities for waging network warfare that the Pentagon believes it needs.

Technically speaking, Alexander's training and experience would qualify him for the job. But, as I will show in what follows, if Congress wants to be able to get honest answers from someone in such a sensitive post, it should send the general packing.

Premium on Trustworthiness

As Alexander testified Thursday before the Senate Armed Services Committee that is weighing his nomination, it became frighteningly clear that his new scope of responsibility would be virtually (no pun intended) unbounded — the more so inasmuch as he would keep his job as NSA director.

Alexander himself conceded that much about cyber-warfare is "unchartered (sic) territory." He got that right! It's also uncharted.

"Civil liberties, privacy all come into that equation," Alexander said, "while you try to, on the same network, potentially take care of bad actors."

This gave little comfort to committee members with concerns that civil liberties could take a back seat to the Cyber Command's broadly-but-vaguely defined tasks, like "executing full-spectrum military, cyberspace operations."

Nathan Hodge, writing in *Wired*, observed that apparently Alexander would be cyber guru over "everything but the kitchen sink."

No sighs of relief or reassurance were heard as committee members read Alexander's written answers to earlier questions from senators. For example, in an attempt to mollify some of the senators' concerns, Alexander had written this:

"It is difficult for me to conceive of an instance where it would be appropriate to attack a bank or a financial institution, unless perhaps it was being used solely to support enemy military operations."

What about the Internet? Could Alexander order his cyber-warriors to shut it down?

Alexander promised to be sensitive to the vagaries of cyber-warfare and said he would honor the laws of war and the impact on civilians. It seems he was protesting a tad too much as he promised repeatedly to "operate within applicable laws, policies, and authorities."

That should be a given, no? Not for Gen. Alexander. There was an elephant in the room — Alexander's open record of deception — but no one noticed it.

Lying Is Okay

Would that the Washington Post's Ellen Nakashima had done due diligence before talking to Alexander's buddies and then writing a bland scene-setter before Thursday's hearing.

Nakashima had a follow-up on Friday, in which she noted that the Senate committee members expressed confidence that he would be confirmed.

A few minutes of Googling would have turned up an incident that, by any objective standard, should be an automatic disqualifier for Alexander. (I realize that after 9/11 “everything changed.” Does that mean that lying to Congress is now okay?)

Here’s the story on Alexander; it requires a bit of background.

In December 2005, top New York Times officials decided to let the rest of us in on the fact that the Bush administration had been eavesdropping on American citizens without the court warrants required by the Foreign Intelligence Surveillance Act (FISA).

Get this: The fearless Times had learned of this law violation well before the 2004 Election and acquiesced to White House entreaties to suppress this explosive information, which easily could have proved a game-changer.

Over a year later, in late fall 2005, the Times’ investigative reporter James Risen reminded management that his explosive book, *State of War: the Secret History of the CIA and the Bush Administration*, was about to be published and would expose the warrantless eavesdropping and much else.

Times’ publisher, Arthur Sulzberger, Jr., bit through his lip when he realized he could defer to the White House no longer. It would simply be too embarrassing to have Risen’s book out on the street before Sulzberger let Risen and his colleagues tell the story in the newspaper.

The Times was already reeling from the well earned ridicule directed its way for its shameless reporting on the threat from Iraq with its (non-existent) “weapons of mass destruction,” and the Times’ cheerleading for war.

How could Sulzberger and his managers pretend that the eavesdropping story did not fit Adolph Ochs’s trademark criterion: All The News That’s Fit To Print. (The Times’ then ombudsman, Public Editor Byron Calame, later branded the newspaper’s explanation for the long delay in publishing Risen’s story “woefully inadequate.”)

When Sulzberger told his friends in the White House that he could no longer delay reporting on Risen’s findings, the publisher was immediately summoned to the Oval Office for a counseling session with President Bush on Dec. 5, 2005. Bush tried in vain to talk him out of putting the story in theTimes.

But, alas, there is always someone who does not get the word. This time it was the pitiable Lt. Gen. Keith Alexander. No one in the White House thought to call NSA and tell Alexander, in effect, that the cat was out of the bag.

Alexander The Not So Great

And so the following day, Dec. 6, Alexander spoke from the old faux talking points when House intelligence oversight committee member Rush Holt, D-New Jersey, made a parish call at NSA. No, never ever would NSA eavesdrop on Americans without a court order, Alexander told Holt.

Holt is still possessed of the quaint notion that generals and other senior officials are not supposed to lie to congressional oversight committees. Accordingly, on Dec. 16 when the Times published a front-page story by James Risen and Eric Lichtblau, “Bush Lets U.S. Spy on Callers Without Courts,” Holt was surprised, to say the least.

He drafted a blistering letter to Gen. Alexander, but the Intelligence Committee chair, Pete Hoekstra, R-Michigan, blocked any attempt to hold Alexander accountable for his lie.

Yet, Holt was not simply another committee member, but rather the panel’s most experienced and diligent worker in this area. Holt also had served in the intelligence community as an intelligence analyst at the State Department.

Here’s what happened next. The day after the Dec. 16 Times feature, President Bush publicly admitted to — actually bragged about — committing a demonstrably impeachable offense.

Authorizing illegal electronic surveillance was a key provision of the second article of impeachment against President Richard Nixon. On July 27, 1974, this and two other articles of impeachment were approved by bipartisan votes in the House Judiciary Committee, prompting Nixon’s resignation two weeks later.

Toughing It Out

For his part, Bush chose a frontal approach. Far from expressing regret, the President proudly bragged about having authorized the warrantless surveillance “more than 30 times since the September the 11th attacks.”

Declaring that he would continue to do so, Bush added: “Leaders in Congress have been briefed more than a dozen times on this authorization and the activities conducted under it.”

On Dec. 19, 2005, then-Attorney General Alberto Gonzales and then-Deputy Director of National Intelligence Michael Hayden held a press conference to answer questions about the surveillance program. (Hayden had been Alexander’s predecessor as NSA director and would become head of the CIA in May 2006.)

At the press conference, Gonzales was asked why the White House decided to flout the FISA rather than attempt to amend it, choosing instead a “backdoor approach.” He answered:

“We have had discussions with Congress...as to whether or not FISA could be amended to allow us to adequately deal with this kind of threat, and we were advised that that would be difficult, if not impossible.”

Hmm. Impossible? It strains credulity that a program of the limited scope described would be unable to win ready approval from a Congress that had passed the sweeping “Patriot Act” in record time.

James Risen has made the following quip about the prevailing mood: “In October 2001, you could have set up guillotines on the public streets of America.” (And, further disproving Hayden’s political judgment, FISA was amended before Bush left office essentially to make his illegal actions “legal.”)

Based on all the deceptions and circumlocutions, it was not difficult to infer that the surveillance program must have been of such scope and intrusiveness that, even amid highly stoked fear, it didn't have a prayer of winning congressional approval.

So, the administration resorted to the tried and true "brief/co-opt/and gag" approach that works so well with the invertebrate leaders of the Intelligence Committees who fear nothing so much as being painted "soft on terrorism."

Naming the Spying

Despite Bush's hubris, going with the name, "Illegal Surveillance Program (and Whaddya-Gonna-Do-About-It?)," didn't quite fit the White House's public-relations purposes.

It took six weeks to settle on "Terrorist Surveillance Program," with FOX News leading the way followed by the President himself. This branding would dovetail nicely with Bush's earlier rhetoric on Dec. 17, 2005:

"In the weeks following the terrorist attacks on our nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al-Qaeda and related terrorist organizations. ... The authorization I gave the National Security Agency after September 11 helped address that problem..."

"Consistent with U.S. law and the Constitution?" No way. Congress had made FISA the exclusive means for conducting national security wiretaps, and the Constitution's Fourth Amendment requires a warrant based on "probable cause" to make searches legal.

But, of course, Gonzales and Gen. Michael Hayden, who headed NSA from 1999 until Alexander took over in August 2005, were on the same page as the President, and brazened through as strongly as Bush.

Yet, in a moment of almost poignant candor during his May 2006 confirmation hearings to become CIA director, Hayden told of his deep soul-searching when, as director of NSA, he was asked to eavesdrop on Americans without a court warrant.

"I had to make this personal decision in early October 2001," said Hayden. "It was a personal decision. ... I could not not do this."

Small wonder it was a hard decision. It was not only in direct violation of FISA (and thus a felony), but also of NSA's own time-honored "First Commandment" — Thou Shalt Not Eavesdrop on Americans Without a Warrant.

Call me old school, but I believe it was Hayden's duty to refuse an illegal order. I take some satisfaction in the fact that two of Hayden's most admired predecessors concurred in that judgment.

No Accountability

After President Bush nominated Hayden to be CIA director, Admiral Bobby Ray Inman, who led NSA from 1977 to 1981 and was actually a key co-author of the 1978 FISA, minced few words about Hayden.

At a public discussion at the New York Public Library on May 8, 2006, Inman took strong issue with Hayden's flouting of FISA:

"There clearly was a line in the FISA statutes which says you couldn't do this," said Inman. He went on to call specific attention to an "extra sentence put in the bill that said, 'You can't do anything that is not authorized by this bill.'"

Inman spoke proudly of the earlier ethos at NSA, where "it was deeply ingrained that you operate within the law and you get the law changed if you need to."

The New York Times and the rest of the Fawning Corporate Media missed the story.

The late Gen. Bill Odom, another former NSA director, was even blunter, declaring that Hayden "should have been court-martialed" for assenting to an order that violated federal law and the Constitution.

Odom's comment on Jan. 4, 2006, came while preparing to be interviewed by George Kenney, a former Foreign Service officer and now producer of "Electronic Politics." Odom added with equal fury that President Bush "should be impeached."

But accountability for unconstitutional lawbreaking was not in the cards, then or since. Hayden was easily confirmed as CIA Director on May 26, 2006, after already acquiring a fourth star for his loyalty (to the White House, not the Constitution — you don't get stars from the Constitution).

Gen. Alexander seems to have learned well from his NSA predecessor. And he is likely to get a fourth star from President Barack Obama upon taking over the new Cyber Command, after getting confirmed by senators who either don't care that Alexander lied to Congress or don't know enough to care. (I'm not sure which is worse.)

It all reminds me of the college student whom I asked to explain the widespread apathy on campus. His answer: "I don't know, and I don't care."

O Tempora, O Mores!

NSA will be in the news over the next days because of the ex-NSA official who has been accused of giving information to a reporter about cost overruns and other bureaucratic screw-ups at NSA, ironically turning the tables on the spy agency which seems to worry more about its own dirty laundry than the privacy of the American people.

The media circus that is sure to follow will make it still easier to divert attention from Gen. Alexander's proven willingness to deceive.

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