

CHICAGO SUN-TIMES

U. of C. prof on snoop panel: 'Snowden is a criminal'

By Lynn Sweet

December 26, 2013

WASHINGTON — Starting last August, University of Chicago Law School Professor Geoffrey Stone plunged into the secret world of U.S. intelligence gathering.

Stone's entree to spymasters who preside over U.S. government covert electronic eavesdropping programs came courtesy of Edward Snowden.

"What an amazing experience," Stone told me.

President Barack Obama tapped Stone and four others for a new panel, the "Review Group on Intelligence and Communications Technology" after documents leaked by Snowden, a former National Security Agency contractor, revealed massive NSA surveillance in the U.S, triggering an uproar.

Stone, a constitutional scholar, the author of books about free speech and civil liberties went through the looking glass, from academia to deep cryptanalytic tradecraft, armed with a top-secret security clearance, the first of his career.

In 1991, when Stone was the U. of C. Law School dean, he hired a promising Harvard Law School graduate by the name of Barack Obama for a "Law and Government Fellow" position at the school.

Fast forward: On Aug. 27, Stone and the rest of the review group were meeting with Obama in the White House Situation Room. Obama wanted their report by mid-December.

For the past months, Stone has been commuting between Chicago and Washington. He would spend a few days here each week, except during the partial federal government shutdown in October.

The group was based out of the Office of the Director of National Intelligence, working from a DNI suite housed in a nondescript building downtown on K Street.

Since they were dealing so much with classified information, they always met in a secure place — a Sensitive Compartmented Information Facility, better known in intelligence circles as a SCIF.

When Stone could not make it to Washington, he used a SCIF at the FBI's Chicago field office, 2111 W. Roosevelt.

The group interviewed or were briefed by players from the U.S. intel agencies: NSA, FBI, CIA, ATF, DEA plus, among others, the lower profile National Reconnaissance Office and the Defense Intelligence Agency.

House and Senate Intelligence and Judiciary committees were consulted as well as cabinet agencies and the tech and telephone companies whose data was or could be ripe targets for the NSA: Yahoo, Verizon, AT&T, Apple, Facebook, Google and Microsoft. They conferred with organizations wary of government snooping — among them from the left, the ACLU; from the right, the CATO Institute.

They also talked to a former judge on the Foreign Intelligence Surveillance Act Court., whose proceedings are cloaked in secrecy. (The group decided it was inappropriate to interview the 11 sitting FISA court judges, including Chicago-based U.S. District Court Judge James Zagel.)

The panel delivered their report on time and met again with Obama in the Situation Room on Dec. 18 to review with the president their 46 policy recommendations including one to seek legislation to end government storage of bulk telephony meta-data. Instead, the group suggested, the collected data should be held by “private providers or by a private third party,” with access allowed only with a FISA court order.

Obama said at his press conference last Friday he will make a “definitive statement” about the recommendations in January.

Going in, Stone knew only Cass Sunstein, a former U. of Chicago Law School professor, now at Harvard Law who handled regulatory issues in the Obama White House during the first term.

Unlike the others on the panel — Richard Clarke, Michael Morell, Peter Swire and Sunstein — Stone said he had no “extensive and relative recent experience in the government” and had to quickly get up to speed on the “internal operations of the intelligence community.

“So I had a huge learning curve in all this. And my perspective, I suppose to begin with was I’m basically a civil libertarian, but an open-minded one. And I think over time I learned an enormous amount.”

Stone said: “The most important thing I guess I would say I learned . . . is that I came to have great respect for NSA. They are incredibly capable. They are dedicated. These are people who could be making five times as much money in the private sector but they do what they do because they are protecting the nation. They are careful, in my opinion about staying within the boundaries of the law.”

Stone also said in our telephone interview:

NSA not a ‘rogue agency’

“The problems that exist are not, in my opinion because the NSA itself is indifferent to the law, but because our recommendations basically say we think the governing law should be changed.

“But NSA almost without exception was operating within the authorities that were given to it by Congress, executive branch and the Foreign Intelligence Surveillance Court. And one might think those authorities should be reconsidered, which we do.

“But it is not so much that NSA was some kind of a rogue agency, it’s really not. So that was something I think I learned that impressed me the most and was the most interesting to learn.”

Surprised no attacks thwarted, still . . .

“It is a mistake to ask, at least arguably a mistake to ask if any particular program . . . thwarted terrorist attacks, because we are not dealing with little things. It is possible that we are talking about a nuclear, a chemical, biological attack where tens of thousands of people’s lives could be at risk. If you thwart one every 20 years, you are doing pretty good. So the fact that hasn’t happened does not prove the program was worthless.”

Will not lobby for recommendations

“We were reporting to the president. We did our job.”

‘Snowden is a criminal’

“I understand why many people think that Snowden did the nation a service. And certainly there were positive consequences that arose from what he did (including many of the recommendations of the panel.)

“. . . But at the same time we have a very strong legal principle in our system, that you don’t get to commit a crime because you have a good justification for doing so. . . .

“Therefore, any kind of a notion that someone is not a criminal when they do this opens the door to other people saying, ‘Well, gee, I can do this and be a hero and I won’t even go to jail for it.’ I think you just don’t want that. . . .

“Basically, my view is I think Snowden is a criminal.”

Egos don’t collide

The five agreed unanimously on all 46 recommendations. “It was a very strange thing where we get dumped into this SCIF and you say ‘hi.’ And we agreed, the first thing we agreed was no chair. That was the first thing we did. And then we were off and running.”