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WONDERING ABOUT WIRETAPS

On surveillance, feds are listening but not talking

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The office of James Clapper, director of national intelligence, doesn't have to tell us anything, including how much it already knows about us. But in a letter last month, from Director of Legislative Affairs Kathleen Turner, it was willing to admit a couple of things:

"On at least one occasion the Foreign Intelligence Surveillance Court held that some collection carried out pursuant to the FISA Section 702 minimization procedures used by the government was unreasonable under the Fourth Amendment."

In addition, "I believe the government's implementation of Section 702 of FISA (Foreign Intelligence Surveillance Act) has sometimes circumvented the spirit of the law, and on at least one occasion the FISA Court has reached this same conclusion."

You know, if the government admits that it violated the Constitution and the law, it would be interesting to know how often the government did it, and maybe get a rough estimate of how many Americans' phone calls and emails it's monitoring.

But it seems that's a problem. According to the inspector general of the National Security Agency, in a letter earlier this summer, "obtaining such an estimate was beyond the capacity of his office and dedicating sufficient additional resources would likely impede the NSA's mission. He further stated that his office and NSA leadership agreed that an IG review of the sort suggested would itself violate the privacy of U.S. citizens."

So the U.S. government admits carrying out illegal surveillance, but insists that any estimate of the scope of its surveillance, even for congressmen empowered to oversee it, would be too much trouble, and violate the rights of the Americans being monitored --although their rights may already have been violated.

But have a nice day.

During the last presidential election campaign, in the time of George W. Bush, there was lots of concern about the government's expanding power, pressing against constitutional rights. Pledged an Obama campaign document, "As president, Obama would update the Foreign Intelligence Surveillance Act to provide greater oversight and accountability to the congressional intelligence committees to prevent future threats to the rule of law."

We don't hear that so much in this presidential campaign. In fact, we don't hear much about the subject at all.

All we hear is a few senators trying to ask a few questions, which turn out to be hard --or embarrassing --to answer.

Suggests Michelle Richardson, ACLU legislative counsel in Washington, Fourth Amendment safeguards "may not be working all that well if our government can't even make an educated guess about how many of us they're spying on."

At least in round numbers.

This summer, these questions are coming up --but not being answered --as Congress moves to continue the government's power to listen in, without a warrant, on phone calls and emails if either party is outside the country. As Julian Sanchez of the **Cato Institute** notes, "It's a very sweeping power to engage in programmatic surveillance."

When Obama was in the Senate, he said it should be amended. Now, not so much.

In May, the Senate intelligence committee approved the extension 13-2, with only Ron Wyden, D-Ore., and Mark Udall, D-Colo., voting against. Now, Wyden has put a hold on the bill, preventing a quick vote, and 13 senators --including two Republicans --have written Clapper with a few questions.

"We are not prepared . . . to dismiss questions about how many Americans have had their phone calls or emails collected as trivial or unimportant," they wrote. ". . . If, as we have noted, the intelligence community has not even estimated how many Americans have had their communications collected under section 702, then it is possible the number is quite large."

Especially since, as the general counsel of the National Security Agency told the intelligence committee last year, the government has its own interpretations --secret ones --of the meaning of certain laws.

Questions are being asked about just who is under surveillance. Senators are listening.

And we know the government is.

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