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## If the Feds Did Wiretap Trump Tower, It's Not Obama Who Should Worry

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It started like so many eruptions these days, with a tweet.

Early Saturday morning, President Trump fired off a series of tweets accusing, without evidence, former President Barack Obama of wiretapping Trump Tower in the month before the election. Trump compared the alleged snooping to “Nixon/Watergate,” and intimated legal action.

What makes the broader allegation so extraordinary isn't that it is new. Quite the contrary. Various reports that the Foreign Intelligence Surveillance Court granted Justice Department investigators a warrant to probe the Trump campaign's ties with Russia surfaced in November. What makes Trump's Twitter tirade so striking is what prompted it, and what it might imply if it's true.

### **Anatomy of an Allegation**

Baffling as it may be, it appears Trump's accusation stems from a recent [article published on Breitbart](#), the conservative news outlet formerly run by White House senior adviser Stephen Bannon.

“This is a somewhat stunning, in so far as the president of the United States doesn't need to get his information about classified activity from Breitbart,” says Cato Institute fellow Julian Sanchez.

That story, “Mark Levin to Congress: Investigate Obama's ‘Silent Coup’ Vs. Trump,” rehashes comments the titular conservative radio host made Thursday equating the previously reported FISA warrant with a “police state,” and accuses Obama of a politically motivated, covert attempt to undermine Trump and his associates.

It's unclear just what prompted Levin's rant, or why Trump glommed onto it. Although no one has confirmed a FISA investigation, or wiretaps in Trump Tower, several news outlets have reported the former's existence. The most detailed account thus far, [from the BBC](#) in January, provided a timeline: The Justice Department sought a FISA warrant in June to intercept communications from two Russian banks suspected of facilitating donations to the Trump

campaign. The judge reportedly rejected the warrant, as well as a narrower version sought in July. A new judge granted the order in mid-October, according to the BBC.

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None of this necessarily makes Trump's allegations true. Even if a FISA warrant exists, it does not mean Trump Tower is tapped or that Trump specifically is the target. Further complicating things, the existence of a wiretap would not necessarily confirm the existence of a FISA warrant. Almost half of the building's 58 floors are dedicated to commercial and office space, and any one of them—not to mention the building's residents—could be the target of an investigation unrelated to international espionage or election tampering.

“If he has evidence that he was wiretapped without a proper FISA order being sought, that would be a huge scandal, and he should produce whatever evidence he's got,” says Sanchez. “It's a pretty serious claim, and it's striking he would make it without anything solid to back it up.”

Republican Senator Ben Sasse called on the president to clarify his claims, stating that “we are in the midst of a civilization-warping crisis of public trust.” Obama spokesperson Kevin Lewis strongly denied extra-judicial surveillance of any US citizens to Politico in response to the claims..

Look past the president's conspiracy theories, though, and one fact stands out: However strongly Trump feels that he's right, he'd better hope he's wrong.

## **Tower of FISA**

If nothing else, Trump's tweets show he doesn't understand how the FISA system works. If he did, he may have limited himself to tweeting about Arnold Schwarzenegger quitting The Apprentice this morning.

“While the order would have been requested by some part of the executive branch, Obama can't order anything. Nor can Trump,” says former NSA lawyer April Doss, who stresses that her comments are based only on public information. “The order has to come from the court, and the court operates independently.”

FISA court judges serve seven-year appointments, so the court's composition doesn't ebb and flow with the political tides. What's more, specific laws adopted in the wake of Watergate prevent the very activity Trump accuses Obama of.

“You can't tap the phones of a political candidate for political purposes,” says Doss.

What you could tap them for? Acting as a foreign power, or as an agent of a foreign power. In other words, spying against US interests with both knowledge and intent.

Clearing that bar is difficult, by design. FISA warrants don't allow for broad wiretaps of, say, every call going in and out of a specific office in a 58-story Manhattan skyscraper. Federal authorities must demonstrate not just probable cause, but that a given phone line serves primarily

to undermine US interests. It's difficult, for instance, to obtain a warrant to wiretap a shared office, for fear of picking up innocent third-party conversations.

"I have high confidence that a FISA court judge would not have authorized any warrant unless it met all the requirements under the statute," says Doss.

Trump's wiretap claims, then, carry presumably inadvertent implications. First, based on previous reporting and the nature of FISA courts, any wiretaps within Trump Tower would be legal. And they would stem from overwhelming evidence that the Trump campaign, or someone within it, has unsavory ties to Russia or another foreign power. Otherwise, it's unlikely those wiretaps would exist at all.

If federal authorities did have cause to listen in on Trump Tower, though, and they provided enough evidence for a FISA court to approve the snooping, Obama is not the one who ought to worry.