

LICHTBLAU AND RISEN REPORT ILLEGAL WIRETAPPING OF AMERICANS ... AGAIN

It's pretty pathetic that, three years after they first broke the story of the Bush's illegal wiretap program, Eric Lichtblau and James Risen are still reporting on illegal warrantless wiretapping of Americans.

Their story has two main revelations. First, in preparation for Holder's first semi-annual certification of the FISA program to the FISC, NSA realized it was not complying with the law.

In recent weeks, the eavesdropping agency notified members of the congressional intelligence committees that it has encountered operational and legal problems in complying with the new wiretapping law, according to congressional officials .

Officials would not discuss details of the over-collection problem because it involves classified intelligence-gathering techniques. But the issue appears focused in part on technical problems in the N.S.A.'s inability at times to distinguish between communications inside the United States and those overseas as it uses its access to American telecommunications companies' fiber-optic lines and its own spy satellites to intercept millions of calls and e-mails.

One official said that led the agency to inadvertently "target" groups of Americans and collect their domestic communications without proper court authority.

Sort of funny how this illegal collection wasn't discovered six months ago, while Bush was still in charge, huh?

From the sounds of things, though, this was not just a technical violation—it flouted the few protections included in the FISA Amendment Act for civil liberties (which almost certainly means minimization, because there aren't many other civil liberties protections in FAA).

Notified of the problems by the N.S.A., officials with both the House and Senate intelligence committees said they had concerns that the N.S.A. had ignored civil liberties safeguards built into last year's wiretapping law.

In addition to these ongoing violations of Americans' privacy, the ongoing Inspector General investigation has discovered more troubling incidents when the warrantless wiretapping program was deliberately used under Bush to target—among other people—a Congressman traveling overseas.

As part of that investigation, a senior F.B.I. agent recently came forward with what the inspector general's office described as allegations of "significant misconduct" in the surveillance program, people with knowledge of the investigation said. Those allegations are said to involve the question of whether the N.S.A. targeted Americans in eavesdropping operations based on insufficient evidence tying them to terrorism.

And in one previously undisclosed episode, the N.S.A. tried to wiretap a member of Congress without a warrant, according to a U.S. intelligence official with direct knowledge of the matter.

The agency believed that the congressman, whose identity could not be

determined, was in contact as part of a congressional delegation to the Middle East in 2005 or 2006 with an extremist who had possible terrorist ties and was already under surveillance, the official said. The agency then sought to eavesdrop on the congressman's conversations to gather more intelligence, the official said.

The official said the plan was ultimately blocked because of concerns from some officials in the intelligence community about the idea of using the N.S.A., without court oversight, to spy on a member of Congress.

Let's hope this time around, the knowledge that members of Congress themselves were targets, will spur Congress to fix this once and for all.