

RON WYDEN: “AN OBVIOUS QUESTION I HAVE NOT ANSWERED”

In the background of the larger drama of the leak witch hunts is a paragraph that, to me, summarizes where the balance between secrecy and sanity is in our country.

An obvious question that I have not answered here is whether any warrantless searches for Americans' communications have already taken place. I am not suggesting that any warrantless searches have or have not occurred, because Senate and committee rules regarding classified information generally prohibit me from discussing what intelligence agencies are actually doing or not doing. However, I believe that we have an obligation as elected legislators to discuss what these agencies should or should not be doing, and it is my hope that a majority of my Senate colleagues will agree with that searching for Americans' phone calls and emails without a warrant is something that these agencies should not do.

This is the language Ron Wyden used to attempt to persuade his colleagues to join his opposition to the reauthorization of the FISA Amendments Act without first including protections for Americans' communications. A very similar paragraph appeared at the end of Wyden and Mark Udall's dissent from the Senate Intelligence Report on the legislation.

Now, I have already shown that even leak witch hunt convert Dianne Feinstein (who supports reauthorization without telling citizens what the legislation really does) made it clear that while NSA may not target Americans under FAA, the agency does query information collected

under FAA to find the communications of Americans. That is, DiFi herself made it clear that the communications collected “incidentally” are fair game for review. And both the Wyden/Udall dissent and the exchange Wyden had with Director of National Intelligence James Clapper last year—which he re-released in conjunction with his hold—make it more clear that the government is reviewing Americans’ communications it collects in the guise of “targeting” non-US persons.

Everyone—Wyden, DiFi, DNI Clapper—admit that the government is accessing Americans’ communications under FAA; it’s just the latter two are pretending they’re not doing so by hiding behind the magic word “targeting.”

With that said, let’s look at Wyden’s paragraph closely and what it says about democracy in the age of secrecy. The first sentence reads like CYA, insulation against any accusation that Wyden has revealed classified information.

An obvious question that I have not answered here is whether any warrantless searches for Americans’ communications have already taken place.

Yet at the same time, Wyden defines the question that DiFi refuses to answer clearly: whether or not the government is using FAA to conduct warrantless searches of Americans’ communications.

It’s an obvious question, Wyden continues, but he’s not legally permitted to answer it.

I am not suggesting that any warrantless searches have or have not occurred, because Senate and committee rules regarding classified information generally prohibit me from discussing what intelligence agencies are actually doing or not doing.

That said, Wyden makes it clear he knows the

answer. Which, given that he insists other Senators ought to demand to know the answer makes it pretty clear what that answer is.

However, I believe that we have an obligation as elected legislators to discuss what these agencies should or should not be doing,

But the whole scaffold of secrecy on which this legislative discussion takes place leaves Wyden with the weakest of legislative hammers with which to embarrass his colleagues into backing his hold on FAA.

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If this were not a secret discussion—if Wyden were not prohibited from stating clearly what he and DiFi and James Clapper have made clear indirectly—then he could say explicitly that a vote to reauthorize FAA is a vote to allow these agencies to search for Americans' phone calls and emails without a warrant. That's a vote these Senators' constituents would likely despise.

Yet Wyden and the ACLU and the TeaParty will never be able to whip against such a vote effectively because Senators can pretend the question has never been answered.

"Targeting," they'll say, when their constituents call to complain.

This is an area where it's clear that secrecy doesn't hide the underlying facts; it serves only to prevent real democratic accountability. But that's true well beyond this legislation. There's the Trans Pacific Trade deal on which Wyden has been forced to try to legislate transparency, which Obama's Administration has kept secret, in the lead-up to an election, from

the many members of the Democratic base that loathe it. And that's even true of StuxNet, where we now know DiFi has rubber stamped the release of the next generation of WMD without first demanding enough details to understand what a grave threat it might be.

This is what this leak witch hunt is all about: guarding a system that makes democratic accountability impossible.