

NSA'S 60 WIRETAPS AND FBI'S 1,728 WIRETAPS?

I want to return to the exchange shown on last night's 60 Minutes piece on NSA where CBS's in-house national security shill asked Keith Alexander about collecting the content of phone calls.

John Miller: There is a perception out there that the NSA is widely collecting the content of the phone calls of Americans. Is that true?

Gen. Keith Alexander: No, that's not true. NSA can only target the communications of a U.S. person with a probable cause finding under specific court order. Today, we have less than 60 authorizations on specific persons to do that.

John Miller: The NSA as we sit here right now is listening to a universe of 50 or 60 people that would be considered U.S. persons?

Gen. Keith Alexander: Less than 60 people globally who are considered U.S. persons.

As a threshold matter, note that Alexander didn't answer the question Miller asked, which was whether the "NSA is widely collecting the content of the phone calls of Americans." Instead, Alexander answered how many US persons the NSA is targeting (he's been providing this non-responsive answer for months now, so it is a well-practiced ploy). His answer is further modified by referring to "specific person." And he used the word "globally," which I found to be particularly interesting, given that by law the government has to get orders to wiretap Americans overseas, too.

Note two other things Alexander doesn't address: US person content generally, and how many FISC orders the FBI gets.

According to the report to Congress on FISA covering 2012, the FISC approved 1,788 orders for electronic surveillance last year, plus another 68 for physical searches alone (which increasingly means stored content in an email server).

During the calendar year 2012, the Government made 1,856 applications to the Foreign Surveillance Court (the "FISC") for authority to conduct electronic surveillance and/or physical searches for foreign intelligence purposes. The 1,856 applications include applications made solely for electronic surveillance, applications made solely for physical search, and combined applications requesting authority for electronic surveillance and physical search. Of these, 1,789 applications included requests for authority to conduct electronic surveillance.

Of the 1,789 applications, one was withdrawn by the Government.

This number does not count the same number Alexander used in his dodge. It includes FISA Amendments Act orders, though those are programmatic and therefore should be far less numerous (indeed, the number of orders did not go up that much when bulk orders were first approved in 2007, and they actually went down in 2008 and 2009 with the FISA Amendments Act passage). And these orders may be email-only orders.

Thus, there are a range of explanations for why Lying Keith claims only to have taps on 60 people but the FISA report shows 1,788 orders for electronic surveillance: FBI, not NSA, submitted the orders, they don't request phone content, they're bulk orders targeting non-US

persons.

Still, the number of US persons who have been targeted via a specific FISC order are likely far higher than the 60 Lying Keith used on last night's show. Plus, there may be US persons who had their email collected via specific order, but not their phone content. And of course, every one of the bulk orders targeting non-US persons would include incidentally collection US person data that can be searched with no Reasonable Articulate Suspicion. And we know NSA collects email content from around 56,000 US persons each year in its upstream collection – collection which John Bates considers intentional collection.

Thus, the number of Americans having their content collected is far, far higher than the 60 Alexander used on last night's show.

Which is another good reason to require more transparency on these FISA numbers, because without it, Keith Alexander will lie again.