

WYDEN DOESN'T KNOW WHAT NSA DOES WITH ITS DRAGNET OVERSEAS

Kim Zetter has an interview with Ron Wyden that goes over a number of things I have already reported. She describes him hedging when asked when he first learned of the phone dragnet; as I have shown the government did not brief the Internet dragnet to the Intelligence Committees, not even during the PATRIOT reauthorization in 2005. Wyden describes the months – “literally months” –during which he tried to get the Intelligence Community to correct what Keith Alexander had said to DefCon before he asked James Clapper the question he is now so famous for; I laid that out here and here. Wyden describes how – “incredible as it sounds” – the Bush Administration shut down NSA’s back door search authorities., which I noted here. Zetter and Wyden also discuss how to manage zero day exploits.

But the most important detail in the interview, in my opinion, comes where Wyden makes clear he doesn’t know enough about what the government does under E.O. 12333.

But no one, not even lawmakers on Capitol Hill, have a full grasp of how E.O. 12333 is being used.

Wyden says, “I’m not sure we’re at the bottom or close to it” when it comes to understanding how it’s being used.”

Wyden is suspicious that the White House and intelligence community have agreed to halt the phone records collection program, in the wake of intense criticism, only because the spy agency has other tricks to get the same data, possibly through E.O. 12333.

“The intelligence community is endorsing eliminating bulk-collection of phone records, and it makes me wonder what are

the authorities under 12333 [through which they might do the same thing]?" he asks. "You can get a bill passed and everybody says, 'Hey we banned bulk collection.'... [Then] we see the government go off in another direction. I will tell you that I don't know today the full ramifications of 12333 on bulk collection. But I'm going to be spending a lot of time digging into it."

I had pointed to Wyden's concern about this issue when he raised it at the turn of the year and noted that the Administration made public its belief it can engage in the phone and Internet dragnet without any Congressional authorization just as the USA Freedom Act debate resumed.

But Wyden's confirmation that he doesn't know what the government does overseas raises questions about, first, whether he knows what the government did with the Internet dragnet when he and Udall convinced the government to end the domestic collection of it in 2011. But it also underscores just how empty are the promises that there is adequate oversight of the NSA's work.

If someone on the Intelligence Committees (a critic, admittedly, but he is one of the legal overseers of the Agency) doesn't know, and doesn't think he'd necessarily know, if the government replaced a congressionally limited program with the same program overseas, that means there's no way the Intel Committees could ensure that the government had stopped practices Congress told it to stop.

Of course, given that Wyden got legislation passed in 2004 defunding any data mining of Americans only to have the Bush authorized dragnet continue, that must be a familiar position for the Senator.