Written by **Joe Wolverton, II, J.D.** on March 16, 2014

New House Plan Props Up NSA Surveillance of Phone Calls

Regarding oversight of National Security Agency (NSA) warrantless wholesale collection of telephone metadata, Reprsentative Dutch Ruppersberger (D-Md.) has decided to stick a toe in the constitutional waters, but it's little more than that.

Under a scheme being cooked up by a bipartisan group of congressmen on the House Intelligence Committee (Ruppersberger is the ranking member), the individual phone companies would keep the metadata collected from its customers, and the NSA would have to obtain an order from the FISA court (Foreign Intelligence Surveillance Court, officially) before being granted access to the information.

This is hardly the stringent oversight citizens should expect from their representatives, particularly in light of the oath each of them swore to preserve, protect, and defend the Constitution. Even Ruppersberger's boasts about the proposal reveal a profound misunderstanding of the protections of civil liberties provided by the Constitution.

"We've got to have legislation that will take away the concern and perception that people are being listened to," Ruppersberger said, as quoted in Politico.

So, rather than actually defanging the NSA and immediately stopping their unwarranted surveillance of citizens' electronic and telephonic communications, Ruppersberger simply wants people to think ("perception") they are not being listened to.

Not surprisingly, Congress is collaborating with the White House on the effort to leave the NSA able to savage the Constitution like a lion while convincing citizens that the agency is little more than a lamb under the watchful eye of government.

"We're trying to make this a collaborative effort. These are important programs. And if we can make them function, that's the most important thing we can do. I think we can do that," Representative Mike Rogers (R-Mich.), the House Intelligence Committee chairman and fellow NSA water carrier, told Politico.

President Obama is doing his part to make a lot of sound and fury, signifying nothing. Earlier this year, he met with lawmakers and tech industry leaders to consider reforms to the National Security Agency's surveillance programs.

In preparation for the publication of his recommendations for changes to the NSA's practices, the president summoned members of Congress to the White House reportedly to bounce some reform ideas off them.

In reports on the confab, the mainstream media reveal their biases. In January, *Time* magazine wrote, "The 90-minute meeting focused on two potential changes. One would strip the NSA of its ability to store telephone 'metadata' — information about the phone numbers involved in calls, including their length, but not their content."

Really? The so-called "metadata" doesn't contain information on the content of phone calls?

After a closed Senate intelligence briefing held in June 2013, Senator Bill Nelson (D-Fla.) made a statement that seemingly contradicts this claim. "Only when there is probable cause, given from a court order by a federal judge, can they go into the content of phone calls and emails," Nelson said.

This brings up the question: How can the NSA "go into the content of phone calls and emails" unless they are storing that information somewhere?

Furthermore, it's not as if it's all right for the snoops to record metadata. There's a lot of information that can be gleaned from those markers. The Electronic Frontier Foundation (EFF) explained just how much personal information the feds can get out of metadata:

> What they are trying to say is that disclosure of metadata — the details about phone calls, without the actual voice — isn't a big deal, not something for Americans to get upset about if the government knows. Let's take a closer look at what they are saying:
>
> They know you rang a phone sex service at 2:24 am and spoke for 18 minutes. But they don't know what you talked about.
>
> They know you called the suicide prevention hotline from the Golden Gate Bridge. But the topic of the call remains a secret.
>
> They know you spoke with an HIV testing service, then your doctor, then your health insurance company in the same hour. But they don't know what was discussed.
>
> They know you received a call from the local NRA office while it was having a campaign against gun legislation, and then called your senators and congressional representatives immediately after. But the content of those calls remains safe from government intrusion.
>
> They know you called a gynecologist, spoke for a half hour, and then called the local Planned Parenthood's number later that day. But nobody knows what you spoke about.
>
> Sorry, your phone records — oops, "so-called metadata" — can reveal a lot more about the content of your calls than the government is implying. Metadata provides enough context to know some of the most intimate details of your lives.

So, there's no comfort in the president's earlier proposal or the similar one being hammered out by Ruppersberger and Rogers. The federal government is listening, and it will know if there's anything in your personal life (online or in real life) that can be used to keep you in line.

Next, Politco reports that Ruppersberger's plan relies on the FISA court to review each request by the NSA (or other federal agency) to demand phone companies turn over personal customer data. This provision is yet another example of sham oversight and phone protections, all of which gut the Constitution.

In fact, the FISA court has proven to be little more than a rubber stamp for government petitions to snoop on Americans.

As *The New American* reported last May:

> As required by provisions of the Foreign Intelligence Surveillance Act Amendments of 2008 (FISA) and the Patriot Act (as amended in 2005), the Department of Justice revealed to Congress the number of applications for eavesdropping received and rejected by the FISA court.
>
> To no one's surprise (least of all to the architects and builders of the already sprawling surveillance state), the letter addressed to Senator Harry Reid (D-Nev.) reports that in 2012, of the 1,789 requests made by the government to monitor the electronic communications of citizens, not a single one was rejected.
>
> That's right. The court, established specifically to judge the merits of applications by the government to spy on citizens, gave a green light to every government request for surveillance.

Not content to be a mere formality for electronic surveillance, the FISA court also held the coats of the FBI while that agency carried out the searches and seizures set out in 212 applications.

Finally, Ruppersberger admits that his proposal will not set the surveillance bar any higher than it is now. Current regulations regarding the NSA's ability to gather data will essentially remain unchanged.

When asked why he didn't go along with another bipartisan idea being promoted by Representative Jim Sensenbrenner (R-Wis.) and Sen. Patrick Leahy (D-Vt.), Ruppersberger trotted out the same old trope that is used to justify the de facto repeal of the Bill of Rights: national security.

"In my opinion that would put our country at risk," Ruppersberger said, as reported in *National Journal*.

Ruppersberger insists that since the NSA is protecting the United States from terrorists, it should not be held to the same constitutional standards as law enforcement (read: the protections provided by the Fourth Amendment regarding warrants).

Both Ruppersberger's and President Obama's proposals are expected to be released before the end of March. That gives citizens who prefer the standards of the Constitution to the watered-down version being advocated on Capitol Hill little more than a couple weeks to contact their federal representatives.

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