

RON WYDEN: LIAR, LIAR, ALEXANDER PANTS ON FIRE

Ron Wyden, Dianne Feinstein, and a few other Senators are conducting what constitutes “a debate” on the FISA Amendments Act extension.

The highlight of the debate, thus far, came when DiFi promised to wave a classified letter answering some of Ron Wyden’s questions around in front of the TV. Mind you, she has not yet fulfilled that promise. But she made the promise, so I am glued to the screen waiting for her to embody the ridiculous nature of this so-called debate by waving her letter in lieu of telling us what it actually says.

Aside from that excitement, however, the high point of the debate has come from Ron Wyden, repeatedly suggesting NSA head General Keith Alexander is a liar.

At issue was a speech Alexander made in July at the DefCon hackers conference. He made two claims that Wyden and Mark Udall questioned in an October letter.

Specifically, you said:

We may, incidentally, in targeting a bad guy hit on somebody from a good guy, because there’s a discussion there. We have requirements from the FISA Court and the Attorney General to minimize that, which means nobody else can see it unless there’s a crime that’s been committed.

We believe that this statement incorrectly characterized the minimization requirements that apply to the NSA’s FISA Amendments Act collection, and portrayed privacy protections for Americans’ communications as being stronger than

they actually are. We urge you to correct this statement, so that Congress and the public can have a debate over the renewal of this law that is informed by at least some accurate information about the impact it has had on Americans' privacy.

You also stated, in response to the same question, that "...the story that we have millions or hundreds of millions of dossiers on people is absolutely false." We are not entirely clear what the term "dossier" means in this context, so we would appreciate it if you would clarify this remark. Specifically we ask that you please answer the following questions:

- *The intelligence community has stated repeatedly that it is not possible to provide even a rough estimate of how many American communications have been collected under the FISA Amendments Act, and has even declined to estimate the scale of this collection. Are you certain that the number of American communications collected is not "millions or hundreds of millions"? If so, then clearly you must have some ability to estimate the scale of*

this number, or at least some range in which you believe it falls. If this is the case, how large could this number possibly be? How small could it possibly be?

- *Does the NSA collect any type of data at all on “millions or hundreds of millions of Americans”?*

Alexander replied to Wyden and Udall on November 13. In it, he responded to the first Wyden/Udall question by claiming he was speaking about a foreign intelligence context.

I noted at the outset that NSA has a foreign intelligence mission, and my subsequent reference focused on the type of circumstance in which U.S. person information may be disseminated when this foreign intelligence requirement is not met (e.g., when there is evidence of a crime).

He went on to rehearse the legal requirements for minimization, which only applies to information not deemed “foreign intelligence information.” That is, he basically admitted that information deemed to be foreign intelligence information can be shared.

Alexander answered the second Wyden/Udall question by dodging.

Second, my response did not refer to or address whether it is possible to identify the number of U.S. person communications that may be lawfully but incidentally intercepted pursuant to

foreign intelligence collection directed against non-U.S. persons located outside the United States as authorized under FAA 702.

In your letter, you asked for unclassified answers to several questions that you feel are important to allow the public to better understand my remarks delivered at the conference. While I appreciate your desire to have responses to these questions on the public record, they directly relate to operational activities and complete answers would necessarily include classified information essential to our ability to collect foreign intelligence.

Wyden referred to these letters at least twice in his various speeches in this “debate.” And while he has been careful to suggest that Alexander may have just misspoke, he has repeatedly made it clear that Alexander lied when he said US person data could not be shared.

I don’t know why General Alexander described minimization as he did. But why did it take Udall and I to make big push to correct?

The implication, it seems, is that the government has simply deemed all the US person information they collect to be foreign intelligence (indeed, elsewhere Jeff Merkley talked about how the “relevant to an investigation” standard makes all conceivable information context for foreign intelligence), meaning minimization requirements are largely meaningless.

In response to Alexander’s claims on hundreds of millions of dossiers, Wyden noted, over and over again, that in spite of NSA’s refusal to answer the question of how many Americans’ data has been collected, Alexander did not in his response—and has not since—denied that NSA keeps

hundreds of millions of dossiers on people.

Director of NSA would not provide public answer on whether NSA keeps hundreds of millions of dossiers on people.

Clearly, Alexanders denial that NSA keeps dossiers (which itself stems from claims former NSA coder William Binney made) is simply a word game about the meaning of dossier. NSA doesn't have dossiers, you see. It has information on hundreds of millions of Americans.

Information—that Wyden makes clear—is not subject to the plain meaning of minimization requirements.