

IMAGINE THE ADMINISTRATION LYING TO CONGRESS ABOUT THE DRAGNET

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In a piece bemoaning the possibility that the dragnet programs created in secret might be scaled back now that citizens know what they entail, Ben Wittes lets his imagination run wild.

Imagine you were a high-level decision-maker in a clandestine intelligence agency. Imagine that you had played by the rules Congress had laid out for you, worked with oversight mechanisms to fix errors when they happened, and erected strict compliance regimes to minimize mistakes in a mind-bogglingly complex system of signals intelligence collection. Imagine further that when the programs became public, there was a firestorm anyway. **Imagine that nearly half of the House of Representatives, pretending it had no idea what you had been doing, voted to end key collection activity.** Imagine that in response to the firestorm, the President of the United States—after initially defending the intelligence community—said that what was really needed was more transparency and described the debate as healthy. Imagine that journalists construed every fact they learned in light of the need to keep feeding at the trough of a source who had stolen a huge volume of highly classified materials and taken it to China and Russia. [my emphasis]

Now, Ben sets up a few straw men here: journalists may have gotten some details wrong, but they're probably doing better on accuracy than the Agencies that have all the information at hand, which continue to tell easily demonstrable lies. He suggests Obama is interested in debate, abundant evidence to the contrary. He excuses the NSA's compliance problems because of complexity, when they introduced that complexity to make programs do what they legally weren't supposed to (for example, allowing illegal access via 3 other systems and by 3 other agencies and inventing a pre-archive archive to skirt the rules in the case of the phone dragnet program). He suggests the NSA played by Congress' rules, when in fact the FISC sets rules, and it says the government has repeatedly violated those rules and "misrepresented" claims about doing so.

But those straw men are nothing compared to the claim that those in the House who voted to defund the phone dragnet were "pretending it had no idea what you had been doing."

The record shows that the 2011 PATRIOT Act extension was passed with the support of 65 people – enough to make the difference in the vote – who had had no opportunity to learn about the Section 215 dragnet except at hearings that didn't provide notice of what they would present. Moreover, the record shows that when someone at one of (the only one of?) those hearings asked a question specifically designed to learn about problems with the dragnet, here's what happened.

Comment – Russ Feingold said that Section 215 authorities have been abused. How does the FBI respond to that accusation?

A – To the FBI's knowledge, those authorities have not been abused.

Then FBI Director Robert Mueller and then-General Counsel Valerie Caproni (the

Administration waited to release the dragnet materials Monday almost until the second Caproni got confirmed to lifetime tenure as a judge) gave that answer in spite of the fact that Mueller had to submit a declaration to Judge Reggie Walton to explain why the program was important enough to keep in spite of the many abuses. Walton ordered that declaration, in part, because the government's explanations about their gross violations "strain[] credulity," according to Walton. And one of the abuses involved FBI getting access to this data directly.

But FBI knows nothing, Colonel Klink.

And even in what notice the government made somewhat available to Congress (but which Mike Rogers did not pass on), it provided just a one paragraph description of the abuses that would take a page to lay out in skeleton bullet form.

In other words, the record shows that many of those who voted against the dragnet in fact had no idea what the government had been doing, both about the dragnet itself, and about the abuses of the dragnet program.

And note, when almost half the House voted to defund the dragnet, they **still** hadn't been informed of the full extent of these abuses (because the Administration was withholding the relevant opinions).

Congress is moving to rein in a program that the Executive Branch operated illegally for 5 years, then operated with FISC sanction for 7 years while abusing the terms of that sanction for at least 3 years. In Wittes imagination, that's a bad thing.

Update: Also note Valerie Caproni got briefed on these abuses January 23, 2009.