

Supreme Court Oks Secret Warrantless Surveillance by Feds

February 27, 2013 - The US Supreme Court has put an end to lawsuits over secret government wiretaps of international phone calls and other forms of communication. The court found that the plaintiffs in the case didn't have standing to file their suit in the first place based on a Catch-22 in the law that goes something like this: Secret, warrantless wiretaps by the government may violate the Fourth Amendment but, in order to sue over them, you must first prove that your phone has been tapped. Since the wiretaps are secret, there is no way for any one individual to know if their conversations were the subject of such a wiretap. And without that specific knowledge, the person filing the suit doesn't have any standing with the court.

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After the terrorist attacks of 9/11, the federal government cast a wide net to catch any more terrorists that might be hiding in the US or abroad. The government began working with the country's major phone companies to monitor international phone calls and other electronic communications. This was done without any court supervision, in the interest of national security.

Under the current law - which was passed in 2008 - this type of electronic surveillance is supposed to target individuals outside of the United States. For instance, if someone places a call from Sweden to Indonesia, and the call transits through a US phone network, it would be OK for the government to monitor that call. But where the law gets sticky is with regard to residents of the United States.

As a US citizen placing a phone call, you have a certain expectation of privacy. If your line is tapped, it is supposed to be with a court order. And there is even a secret court - called the Foreign Intelligence Surveillance Act (FISA) Court - that can provide any necessary warrants that the government needs. FISA warrants are sealed from the general public.

The problem that the federal government faced was that they didn't really know who they needed to target. Hence, they decided to see if they could get around the Fourth Amendment by enacting the 2008 law. Yesterday's court ruling would indicate that they have succeeded.

In its ruling, the court didn't say that it was legal for the government to tap phones without a warrant. They ignored the Fourth Amendment issues completely and simply said that in order for anyone to challenge such a wiretap, they need to prove that they were the subject of such a wiretap. But presumably, getting such proof would involve breaking other laws against revealing classified data. So the chances are that the current law is here to stay.

The case was *Clapper vs. Amnesty International*.

byJim Malmberg

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