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NSA spying on Americans is an outrage

By Jay Bookman

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Al Gore calls it "obscenely outrageous."

That may be an understatement.

According to secret documents published by Britain's Guardian newspaper, the U.S. government has demanded and is receiving information about every cell phone call placed and received by millions of its citizens. There is no pretense whatsoever of "reasonable cause" that those being monitored are guilty of a crime. Under the guise of anti-terrorism, they can track who you called, when you called, how long you talked and probably the locations of the call as well.

The top-secret documents obtained and published by The Guardian apply only to Verizon. However, absent some theory as to why Verizon cell phone customers are more prone to terrorism than those of other service providers, it is reasonable to assume that this is merely one of several or even many such secret surveillance orders in effect, and that the program is monitoring every one of us.

The fact that the program was approved by the Foreign Intelligence Surveillance Court (known as FISA), created to provide secret judicial oversight of the intelligence community, indicates that the system of checks and balances installed to prevent abuses and overreach does not work. In other words, ending the surveillance will not be sufficient. The law and the process that allowed the surveillance -- a creation of the so-called Patriot Act, a truly Orwellian nomenclature -- must be overhauled as well.

According to an expert quoted by The Washington Post, the order appears to have been in existence since 2006, and has been routinely renewed every 90 days since then. The program itself was apparently begun back in 2001, shortly after 9/11, and was moved under the protection of FISA and the Patriot Act five years later.

FISA rulings are by law top secret, often for very good reason. We don't want the bad guys to know how they're being watched. But in this case the secrecy is aimed at the good guys, so to speak. The only reason to keep such an order secret from the American people is to prevent public outrage at its obvious overreach. After all, those engaged in plotting terrorism already have reason to suspect that their communications traffic is being monitored, and act accordingly.

Indeed, Sen. Mark Udall of Colorado and Ron Wyden of Oregon -- both members of the Senate Intelligence Committee -- have warned for a while now that Americans would be "stunned" if they knew what was going on in the name of anti-terrorism.

"As we see it, there is now a significant gap between what most Americans think the law allows and what the government secretly claims the law allows," they wrote in a letter to Attorney General Eric Holder last year. "This is a problem, because it is impossible to have an informed public debate about what the law should say when the public doesn't know what its government thinks the law says."

However, because they are sworn to secrecy as members of the intelligence committee, Udall and Wyden were unable to let the rest of us know what was going on. That particular hurdle has now been breached.

It will be interesting to see how official Washington responds to this news. Members of the intelligence committees already knew this was going on, and with the exceptions noted above they apparently found it acceptable. The practice stretches across a dozen years and two administrations, so it does not lend itself to the partisan trench warfare that seems to be all our leaders are capable of engaging in. It implicates every branch of the government -- the executive, which created and carries out the program; the legislative, which passed the laws under which it is allegedly legal; and the judicial, which somehow found perverse ways to pretend that it is constitutional.

But to again quote the former vice president, this is obscenely outrageous. There is no way to reconcile this government surveillance of the daily communication of all Americans with the protections provided under the Bill of Rights. On its face, it is an unreasonable search and seizure, without cause or justification. On its face, it is a "general writ of assistance" that the Fourth Amendment was written specifically to outlaw.

This has to stop.