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## Wiretaps Up 24 Percent, Driven By Federal-Level Spike

By Juan Carlos Rodriguez

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Law360, New York (July 01, 2013, 3:45 PM ET) -- The number of federal and state wiretaps reported in 2012 increased by nearly a quarter from 2011, according to a report released Friday by the Administrative Office of the U.S. Courts, with the majority of new approvals coming at the federal level.

According to the office's 2012 Wiretap Report, a total of 3,395 wiretaps were reported as authorized last year, up 24 percent from 2,732 in 2011. Of last year's wiretaps, 1,354 were authorized by federal judges, and 2,041 by state judges. But while the majority of wiretap approvals still come from state judges, the number approved by federal judges shot up by 71 percent over 2011's numbers, while those approved by state judges rose a mere 5 percent.

Telephone wiretaps accounted for 95 percent of the intercepts installed in 2012, the majority of them involving cellphones.

"Applications in California, New York and Nevada accounted for 69 percent of all applications approved by state judges. Seventy-seven federal jurisdictions submitted reports for 2012. The Northern District of Illinois authorized the most federal wiretaps (90), approximately 7 percent of total applications approved by federal judges," the report said.

Drug offenses were the most common type of criminal offenses investigated using wiretaps, according to the report, as 87 percent of all applications in 2012 cited illegal drugs as the most serious offense under investigation.

"Homicide, the second-most frequently cited crime, was specified as the most serious offense in more than 3 percent of applications. Racketeering, the third-most frequently cited crime, was specified in less than 3 percent of applications," the report said.

The report comes on the heels of last week's Second Circuit ruling upholding the controversial wiretap used to convict Galleon Group LLC founder Raj Rajaratnam of insider trading, which some attorneys said could embolden white collar prosecutors to push the envelope with aggressive wiretap requests.

White collar criminal defense lawyer A. Jeff Ifrah of Ifrah Law said although 2012's uptick in wiretaps was largely due to additional narcotics cases, use of wiretaps for white collar crime has proportionately risen significantly. He pointed out that 2012 saw 67 wiretaps for gambling, compared with 46 in 2011, and that racketeering wiretaps skyrocketed from 51 in 2011 to 91 in 2012.

"The increase reflected by the report is a disappointing trend that is likely to continue. The increased reliance on wiretaps for white collar offenses should not go unnoticed by white collar practitioners who may not be familiar with this tactic because it has historically been reserved for organized crime," Ifrah said.

Marc Rotenberg, executive director at the Electronic Privacy Information Center, said given

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the current debate about the scope of surveillance authorized by the Foreign Intelligence Surveillance Court, perhaps the most remarkable fact about the annual wiretap report is how much detail it provides.

“For more than 40 years, the Administrative Office of the U.S. Courts has compiled an extensive report, complete with tables and charts, on the use of electronic surveillance authorized by federal courts,” he said. “By way of contrast, we know almost nothing about the cost, effectiveness or privacy impact of the surveillance authorized by the FISC. Even the legal authorities are kept secret.”

The report said as of Dec. 31, 2012, a total of 3,743 people had been arrested and 455 had been convicted as a result of wiretaps, with federal ones responsible for 34 percent of the arrests and 25 percent of the convictions.

--Additional reporting by Max Stendahl. Editing by Kat Laskowski.

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