

California National Guard investigated for domestic spying

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The California National Guard has been under investigation both by the State of California and by the Army Inspector General's office for misusing allocated funds to create domestic surveillance units and spy on antiwar protestors.

Initially exposed in a report by the San Jose *Mercury News* last June, a unit called Information Synchronization, Knowledge Management and Intelligence Fusion, has come under scrutiny for monitoring a Mother's Day demonstration at the Vietnam Veteran's Memorial in Sacramento, California. There are indications that the administration of Republican Governor Arnold Schwarzenegger administration may have given the order to monitor the group's event.

The unit was created last year by Maj. Gen. Thomas Eres as part of an expanding nationwide effort to integrate military intelligence into global antiterrorism initiatives. The unit was given, according to the *Mercury News*, "'broad authority' to monitor, analyze and distribute information on potential terrorist threats." Eres was recently forced to retire by the Schwarzenegger administration amid allegations that he abused his power by, among other things, improperly using money meant for anti-drug programs to fund antiterrorism programs. The unit was under the command of Col. Jeff Davis, who has also recently retired and left the state.

The Schwarzenegger administration is also implicated in the domestic spying allegations. According to emails obtained by the *Mercury News*, the governor's press office alerted the California National Guard about the demonstration three days beforehand "as a courtesy to the military." It is unclear whether the contact between the two was the result of an order from Schwarzenegger's office or established protocols.

The Mother's Day demonstration was organized by Code Pink, a San Francisco group that had repeatedly attacked Schwarzenegger over his treatment of women. It was attended by members of Gold Star Mothers for Peace and Peninsula Raging Grannies, an offshoot of the Women's International League for Peace and Freedom which campaigns on issues such as war, social injustice and the environment. The groups called on the governor, as commander in chief of the California National Guard, to bring back all California Guard troops from Iraq by Labor Day.

Most recently, the Gold Star Mothers for Peace have gained national attention due to the antiwar protest being led by one of their members, Cindy Sheehan, who maintained a four-week vigil outside of President Bush's Texas ranch demanding the immediate withdrawal of all troops from the Iraq.

Using the California National Guard to conduct spying is an attempt to make use of a loophole in the Posse Comitatus Act of 1878, which prohibits the military from conducting domestic spying. However, the act does not apply to state National Guard units.

The day after the *Mercury News* story appeared, State Senator Joe Dunn of Garden Grove launched a state investigation, charging the Guard with violating state and federal law by spying on American citizens. Dunn's investigation will also examine whether the Guard hierarchy attempted to cover up these illegal activities by erasing data on a computer belonging to the retired Col. Davis. On the same day that Dunn requested the Guard not to destroy any evidence in the matter, computer technicians wiped clean the hard drive of Davis's computer. According to Dunn, the California legislature never agreed to allow money appropriated for the California National Guard to go to a unit to monitor US citizens.

On July 12, Dunn persuaded the State Senate Rules Committee to issue subpoenas for Col. Davis and his computer, as well as 20 emails allegedly exchanged between Schwarzenegger's press office and the California Guard regarding the *Mercury News* article. On August 4, the Schwarzenegger administration and the California National Guard refused, on the basis of "executive privilege," to turn over the emails. The following day, however, the governor's office announced that it would work through the state's military department to negotiate the handover of the requested documents to the Dunn investigation.

However, thus far these documents have not been made public. As part of the agreement with the Schwarzenegger administration, Dunn signed a confidentiality agreement that would allow sensitive materials to be reviewed by the Senate budget committee but prevent the release of this evidence to the public.

In an effort to preempt the further damaging exposures of the California National Guard and the Schwarzenegger administration as a result of anything turned up through the Dunn investigation, the Army Inspector General's office launched its own probe of the California National Guard in response to the allegations published in the *Mercury News*. The acting adjutant general for the California National Guard, Brigadier General John R. Alexander, said he would not provide any details to Dunn while the Army investigation was ongoing.

The California National Guard has since used the report issued by the Army Inspector General's office to clear itself of any wrongdoing. On August 13, General Alexander said that the Army had found no evidence that the Guard's intelligence program had targeted groups participating in the Mother's Day rally. He further stated that the report concluded that the unit that supposedly engaged in these activities was not created "secretly or deceptively." However, the report has not been made public, and General Alexander is the only person within the California National Guard who has read the material.

This is not the first time that California state authorities have been accused of spying on activists. In August 2003, the California antiwar group Peace Fresno discovered that it had been infiltrated by an undercover agent working for the Fresno Sheriff's

Department. The true identity of the infiltrator only became known to the group when he was killed in a motorcycle accident and his true name accompanied his photograph in a local newspaper.



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