

New reports expose extensive illegal spying by US government

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Recent articles in the US media indicate that the illegal spying organized by the Bush administration has extended far beyond what was initially reported. It is becoming increasingly clear that the US government has been engaging in a massive operation that violates fundamental democratic and constitutional rights.

Following an initial report by the *New York Times* on December 15, Bush acknowledged that he issued a Presidential order authorizing the National Security Agency (NSA) to spy on some calls made to or from the United States without obtaining the approval of the Foreign Intelligence Surveillance Court. In issuing the order, the administration acted in violation of US law, which requires the NSA to receive a court warrant to monitor any communications involving individuals within the United States.

The administration initially stated that the spying was limited to a relatively small number of individuals connected to Al Qaeda, and that no entirely domestic communications were spied on. Subsequent reports have undermined both of these claims.

Citing unnamed current and former government officials, the *Times* reported on December 24 that “the volume of information harvested from telecommunication data and voice networks, without court-approved warrants, is much larger than the White House has acknowledged ... It was collected by tapping directly into some of the American telecommunication system’s main arteries.”

Much of the communications that go in and out of the United States pass through switches that relay large amounts of data and are controlled by a handful of private corporations. The officials said that this data was turned over to the NSA, which was able to use various search, or “data mining” techniques to find information it was looking for. Essentially, this means that the government was not spying on a few hundred individuals at a time, as had been previously reported, but potentially thousands or millions of separate communications, including phone conversations and emails.

The figure previously reported in the press of several hundred individuals tracked at any given time may account for only those calls or e-mails that the NSA determined were suspicious, when in fact the databases that the government was using to track these communications involved much greater numbers.

The issue of switches had come up previously in discussions between the administration and the Foreign Intelligence Surveillance Court. The *Times* quotes a Justice Department official as saying that “there was a lot of discussion about the switches” and that the court expressed skepticism about the legality of using this information. This gives some insight into why the administration decided to go outside of the court, which typically grants all requests for warrants and allows for up to 72 hours of spying before a warrant has to be

obtained. The government wanted to pursue a program that is far broader in scope than even the FISA court would allow.

The new revelations highlight the degree to which the US government relies on the secret collaboration of private corporations in violating the democratic rights of the population. In a December 25 article, the *Los Angeles Times* reported on one database that is being kept by telecom giant AT&T, code-named Daytona, which records phone numbers and call durations. According to a business executive quoted by the newspaper, the NSA has direct access to the entire database. This means that the government has the ability to monitor the calling habits of all individuals tracked by the database, presumably including calls entirely within the US.

An article published December 20 in the *New York Times* also reported that the communications monitored by the administration included purely domestic calls and e-mails. Administration officials claimed that the interception of such communications was accidental, due to the alleged difficulty of determining their origin and destination. However, it raises the possibility that the scope of the spying extends to include large swaths of domestic e-mails and phone calls of US citizens.

All of these activities are in clear and direct violation of the 1978 Foreign Intelligence Surveillance Act (FISA), enacted following the Church Committee investigations into illegal spying and other activities carried out by US intelligence agencies during the 60s and 70s, culminating in the Watergate scandal. Among the programs investigated by the Committee was “project SHAMROCK,” whose task was to collect and analyze all telegram communications going into and out of the United States. FISA was designed in part to explicitly prohibit this activity, which Senate Intelligence Committee Chairman Frank Church called “probably the largest government interception program affecting Americans ever undertaken.”

Internet security expert Bruce Schneier noted that the government spying program approved by the Bush administration was “explicitly anticipated in 1978, and made illegal by FISA. There might not have been fax machines, or e-mail, or the Internet, but the NSA did the exact same thing with telegrams.” The administration is claiming that any restrictions that the law might place on the spying activities that Bush has authorized are an unconstitutional violation of his powers as commander-in-chief.

The spying programs that are now coming to light are only a part of a broader move by the administration to make greater use of vast databases and data mining techniques to monitor the activity of the population. These plans were initially intended to be brought together in the so-called Total Information Awareness program (TIA), the brainchild of Defense Department official John Poindexter, who

became infamous for his actions as National Security Adviser to President Ronald Reagan during the Iran-Contra scandal.

TIA was to accumulate vast stores of data—everything from credit card purchases to travel histories and Internet activity—in a centralized spying operation within the Department of Defense. When the program's existence was revealed in the media, it produced intense popular opposition, and Congress eventually passed a bill denying any funding for the program.

However, the basic premise of the TIA program has continued in other forms. A May 2004 report by the Government Accountability Office found that nearly 200 data-mining operations are ongoing or planned, including 29 for intelligence or police activities. In 2004, the American Civil Liberties Union obtained documents relating to the Multi-state Anti-Terrorism Information Exchange (MATRIX), an ostensibly state-run but federally-funded data-mining operation. The ACLU argued that the program was in part an attempt by the government to continue the TIA project in a way that would attract less public attention.

There can be no doubt that these recent revelations are only a very small indication of the types of illegal activities being carried out by the government. Earlier in the month, reports emerged of a Pentagon program that included the spying and collection of information on anti-war protesters and other individuals considered to be “threats” to military installations. Last week, the *US News & World Report* revealed a joint FBI-Energy Department program to test for radiation near mosques and other Muslim or Arab-American organizations.

On December 22, the *New York Times* published an article documenting the infiltration by New York City police of anti-war protests. Not only did the police collect information on the protestors, but they also engaged in provocations. The *Times* reported that at the Republican National Convention last year, “the sham arrest of a man secretly working with the police led to a bruising confrontation between officers in riot gear and bystanders.”

Since the attacks of September 11, 2001, the Bush administration has sought to use the threat of terrorism as a pretext to vastly expand the powers of the executive branch, while undermining fundamental democratic rights. Within weeks of the attacks, administration lawyers, including then-White House counsel and current Attorney General Alberto Gonzales, began drafting memoranda arguing that the President's position as Commander-in-Chief gives him unchecked powers to wage war, detain individuals indefinitely without charge, authorize military tribunals and order the torture of prisoners.

The administration is now declaring that it also has the power to spy on the American people, even when this spying directly violates laws passed by Congress. In other words, the President is above the law, a position that lays the groundwork for presidential dictatorship. Laws established in a previous period, including FISA, as well as other measures such as the War Powers Act, which were designed to restrict to some degree the powers of intelligence agencies and the executive branch, are now considered by the administration to be unconstitutional violations of presidential prerogatives.

The ultimate aim of this abrogation of democratic rights is to attack any political opponents of the policies of the American ruling class, including the war in Iraq and the assault on the social position of the working class. It should be remembered that the other main spying program investigated by the Church Committee, known as “project MINARET,” involved the collaboration of US intelligence agencies in spying on individuals considered dangers to the state. Among these were civil rights leaders and opponents of the Vietnam War, including

Malcolm X, Martin Luther King Jr. and others.

The latest revelations have been followed by verbal protests within the media and political establishment. Various figures in Congress, including some Republicans and Democrats, have called for hearings to investigate whether the spying program violates the law. However, no one has suggested any serious steps that might be taken to combat the White House's open flaunting of the law and the principle of the separation of powers.

No leading figure within the Democratic Party has broached the question of impeachment, the principal constitutional mechanism by which Congress can deal with a President who ignores the law. There is no reason to believe that the Congressional hearings being planned, or the Justice Department probe announced on Friday, will be anything more than operations in damage control and whitewash, along the lines of the 9/11 commission, the investigations into torture and the investigations into the lies used by the administration to justify the war in Iraq.

Here the role of the Democratic Party is critical. Whatever muted and timid protests are raised here and there about the tactics employed by the White House, the Democratic Party is in fundamental agreement with the aims of the administration. It continues to support the illegal invasion and occupation of Iraq, the central crime from which all the other crimes of the administration have flowed.

Leading members of the Democratic Party were repeatedly informed of the existence of the spying operation, even if the administration may have withheld certain details. Congresswoman Jane Harman, the House Intelligence Committee's senior Democrat, said last week that she had been briefed “since 2003 on a highly classified NSA foreign collection program that targeted Al Qaeda. I believe the program is essential to US national security and that its disclosure has damaged critical intelligence capabilities,” she said. Senator Jay Rockefeller, the Democratic vice chairman of the Senate Intelligence Committee, sent a letter to Vice President Cheney in 2003 that was critical of the spying program, but neither he nor any other Democrat took any steps to expose the criminality of the government.

The Bush administration is even attempting to turn the exposure of its illegal spying into a new occasion for attacking democratic rights, announcing December 30 that the Justice Department would open an investigation into the leak of classified information that was the basis of the original *New York Times* story on NSA surveillance. Since the White House has been aware of the content of the story for more than a year—the *Times* delayed publication in response to administration pressure—the latest announcement must be seen as a deliberate attempt to intimidate and punish the media.

The publisher and editor of the *Times* met personally with President Bush in the Oval Office in early December to discuss his request to suppress the article. While the article was nevertheless published a week later, the meeting highlights the intimate relationship between the state and the major media outlets in the United States. What other crimes committed by the government are known by the media but remain hidden from the American people?



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