

Bush administration launches campaign of lies in defense of government spying

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25 January 2006

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The campaign began last week with a speech by Vice President Dick Cheney on January 19 and one by White House Chief of Staff Karl Rove on January 20. Rove denounced the mild criticisms made by some Democrats of the National Security Agency spying program as exhibiting a “pre-9/11” mentality, which “makes them wrong, wrong deeply and profoundly and consistently.” Coming from Rove, these remarks are a clear sign that the Republican Party plans to run in the 2006 elections on the basis of a defense of the administration’s criminal policies.

Rove’s statements, and the statements of other administration officials, are not directed primarily at the Democrats, who do not have any fundamental objections to the attack on democratic rights represented by the NSA program. The main target is the American people and the widespread public opposition to what is a fundamental violation of basic constitutional guarantees. Far from retreating in the face of this opposition, the government is seeking to intimidate the population by suggesting that any criticism of the program is equivalent to aiding terrorists.

The announcement that Bush will speak at the headquarters of the NSA on Wednesday is an indication of how critical the administration considers the program to be. Though it is thought to be the largest US intelligence agency, the NSA is also one of the most secretive institutions of the government, one whose operations and budget have rarely been discussed publicly. It is known in Washington as the “No Such Agency.” Bush’s appearance at the NSA is intended to bring the agency into greater prominence, and legitimize all of its various activities, including the new spying program.

Other administration officials who have spoken in recent days in defense of the spying program include Vice President Dick Cheney last week and Attorney General Alberto Gonzales on Tuesday. Bush spoke on Monday at a separate appearance at Kansas State University.

The administration’s offensive is designed to cover up the basic fact that the government has been operating a program that is in direct violation of US law and the Fourth Amendment protection against unreasonable searches and seizures. In particular, the NSA spying violates the Foreign Intelligence Surveillance Act of 1978, which was put in place as a direct consequence of revelations of massive illegal surveillance of US citizens and opponents of government policies.

In defending the program, administration officials have repeated the fraudulent legal arguments discussed in a Justice Department memo released last week. These arguments include the claim that spying on American citizens is part of the president’s powers as commander-in-chief, and that the powers were also approved by the Authorization to Use Military Force, passed by Congress after the September 11 attacks. Gonzales repeated on Tuesday, “The president’s authority to take military action—including the use of communications intelligence targeted at the enemy—does not come merely from his inherent constitutional powers. It comes directly from Congress as well.”

The inclusion of surveillance of communications of US citizens under the category of “military action” underscores the limitless character of the power claimed by the president. The principle of the separation of powers is thrown out the window, and there is essentially no action that the president might take that could not be justified using the same argument.

Underlying the administration’s defense is the basic lie that spying is necessary as part of the “war on terrorism.” Administration officials invariably precede their remarks on the spying program by a recollection of the attacks of September 11, in the same way as they sought to frame the war in Iraq as a response to a world in which “everything had changed.” Bush and the other officials have repeatedly asserted that the spying program is narrowly tailored to target members of Al Qaeda. “We have ways to determine whether or not someone can be an Al Qaeda affiliate or Al Qaeda,” Bush said on Monday. “And if they’re making a phone call in the United States, it seems like to me we want to know why.”

By repeating over and over the assertion that the program is directed solely at Al Qaeda members or “affiliates,” the administration hopes to obscure the fact that all the published reports on the program have exposed this claim as false.

James Risen, who co-wrote the original *New York Times* piece reporting on the secret program, has explained in his recently published book, *State of War*, that the spying involves government access to vast databases containing tens or hundreds of thousands of communications and emails that have nothing to do with Al Qaeda. The NSA has established close relationships with major telecommunications companies to tap into communication “switches,” which allow them to search for data they may consider relevant.

Bush officials have also claimed that the spying involves only international communications—those that are either from or to a country other than the United States. Bush said on Monday that “these are not phone calls within the United States. It’s a phone call of an Al Qaeda, known Al Qaeda suspect, making a phone call into the United States.” However, the databases that the NSA has access to contain both international communications as well as communications entirely within the United States. “There seems to be no physical or logical obstacle to prevent the NSA from eavesdropping on anyone in the United States that it chooses,” Risen wrote. An article in the *New York Times* on December 21 also reported that some of the communications monitored by the NSA occurred entirely within the US.

The Bush administration is asking the American people to trust its assertion that the program is targeting only “known Al Qaeda” members or “affiliates.” Even if one were to accept this claim as true, the question remains: Who falls under the category of an Al Qaeda affiliate? Lawyers for the ACLU and the Center for Constitutional Rights have filed lawsuits against the government on the justified suspicion that their communications have been monitored while they seek to represent clients held at Guantánamo Bay.

The administration has never offered a serious explanation for why it has chosen to operate the program in violation of FISA if it was only targeting Al Qaeda. FISA established a separate court that approves NSA requests to spy on communications involving suspected intelligence agents or terrorist suspects. Out of thousands of requests made since it was set up, the FISA court has only rejected a handful. FISA also allows the government to monitor communications for up to 72 hours before it is required to present evidence to the court in order to receive a warrant. If the administration wanted to spy on someone who it could reasonably claim had some ties to Al Qaeda, it could easily do so within this framework.

Lt. Gen. Michael Hayden, former NSA director and current deputy director of national intelligence, sought to address this obvious contradiction in remarks on Monday at the National Press Club in Washington. He argued that FISA does not allow the NSA by itself to initiate spying without a warrant for 72 hours. Rather, “The attorney general is the one who approves emergency FISA coverage, and the attorney general’s standard for approving FISA coverage is a body of evidence equal to that which he would present to the court,” Hayden said. Gonzales repeated the same argument in his speech.

In other words, according to the Bush administration, approval from the attorney general is an undue burden on the NSA, preventing it from acting quickly to monitor necessary communications. The idea that the attorney general might be hesitant to give authorization to spy on a suspected Al Qaeda member is absurd. Under such circumstances, the attorney general would have no doubt that his authorization of the spying would eventually be approved by the FISA court.

Besides the general principle of the administration that the president should be unconstrained in his powers, the only conceivable explanation for the decision to violate FISA and pursue warrantless spying of electronic communications is that the government intends to target broader sections of the population. It has already been established that the Pentagon has kept records of antiwar protesters, and there have been a number of reports in recent weeks of the NSA spying on peace activists in Baltimore, Maryland and San Jose, California, although not as part of the new program authorized by the administration.

FISA was passed in response to public anger over precisely this sort of spying, including the monitoring of prominent political figures such as Martin Luther King Jr. The American ruling elite has long sought to get rid of these constraints. Like all of the Bush administration’s policies, the attacks of September 11 have been used as a pretext to carry out a pre-conceived agenda.

In this regard, there was a revealing exchange during a question and answer period between Lt. Gen. Hayden and a representative of “The World Can’t Wait” organization, which is planning an upcoming protest against the Bush administration. The questioner asked if the NSA is spying on the communications of members of his organization. In response, Hayden asserted only that the spying program “isn’t a drift net” that is monitoring all calls made by US citizens. He did not reply when asked again whether the NSA was specifically targeting “people who politically oppose the Bush government.”

Hayden also refused to participate in a public debate on the NSA program, saying that this would be equivalent to asking him to “come out and tell the world how you’re catching Al Qaeda.” In other words, any serious discussion of the nature and extent of the program would aid terrorism. In response to a question from an Associated Press reporter, Hayden refused even to state what kind of communications were being monitored—whether these included both phone conversations and emails.

Further refuting the argument that the program was implemented as a response to 9/11 is the fact that at least one report has stated that the attempt to gain access to telecommunications databases began before the attacks. In an article published January 3, the online magazine *Slate* cited

one telecommunications executive who said that his company had been solicited by the NSA for this purpose in early 2001.

An exhaustive list of the lies employed by the Bush administration in defending the spying program would take a book to fully elaborate, but several others deserve to be noted:

* Hayden, voicing a position that has been repeated by other administration officials, declared, “Had this program been in effect prior to 9/11, it is my professional judgment that we would have detected some of the 9/11 Al Qaeda operatives in the United States, and we would have identified them as such.” In fact, the US government had detected several of the 9/11 hijackers and were following them prior to the attacks. Even the 9/11 commission was forced to acknowledge this fact in a report that otherwise whitewashed the role of the intelligence agencies in facilitating the terrorist attacks by refusing to take action on information they had.

* Hayden said that when US citizens come up in their reports to other agencies, the “US identities are expunged when they’re not essential to understanding the intelligence value of any report.” He failed to mention, however, that other agencies, including the Defense Intelligence Agency, the FBI and the CIA, can request from the NSA the names that have been withheld, and these are routinely provided. *Newsweek* has previously reported that between January 2004 and May 2005, more than 10,000 names of US citizens were provided to other agencies in this way.

* In his Monday appearance in Kansas, Bush said that his “most important job is to protect the security of the American people” and Gonzales said at the Columbia Law School on Tuesday that “No other public official ... is charged by the Constitution with the primary responsibility for protecting the safety of all Americans—and the Constitution gives the president all authority necessary to fulfill this solemn duty.” This is a fundamental misrepresentation of the constitutional role of the president, and is in line with the administration’s attempt to portray the president as the commander-in-chief of the entire country, rather than the military. In fact, the Constitution states that the task of the president, as head of the executive branch, is to “take Care that the Laws be faithfully executed.” Nowhere does it say that the primary role of the president is to “protect the safety of all Americans.” This revision of the Constitution is intended to justify the president’s open violation of the law using the pretext of “national security.”

* Bush also said, “We briefed members of the United States Congress ... about this program.... If I wanted to break the law, why was I briefing Congress?” A report by the Congressional Research Service earlier this month found that the reporting procedure used by the administration—in which the report was only given to a small group of House and Senate leaders, under strict gag orders—“would appear to be inconsistent with the law.” Congress was never briefed on the program, let alone the American people as a whole, whose rights have been violated.

In making the very restricted briefings to some congressmen of both parties, the administration was relying on the fact that the Democratic Party would not say or do anything to reveal the existence of the illegal program. This is a role that the Democrats faithfully fulfilled. If the administration—which has been exposed as acting in blatant violation of existing legislation—feels that it can respond with such a brazen disregard for truth, it is because it feels confident that it faces no serious opposition from within the political establishment.

Throughout the existence of the spying program, leading Democrats had been informed of it, but said nothing. In response to the revelations, the Democratic Party leadership has not called for the impeachment of the president, or even for an end to the spying program. Rather, their main demand is that the president present his case to Congress and let the legislative body overturn or rewrite FISA to make the program “legal.” On Monday, White House spokesman Scott McClellan hinted that the administration might in fact follow the advice of the Democrats on this question.

See Also:

Bush administration report defends spying, unconstrained executive powers

[23 January 2006]

Bush administration domestic spying provokes lawsuits, calls for impeachment

[18 January 2006]

More revelations of illegal spying by US government

[7 January 2006]



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