

# US Senate hearings set to cover up domestic spying

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With hearings before the Senate Judiciary Committee on the Bush administration's domestic spying program set to begin this week, the basic outlines are already clear. The White House is repeating its lies in defense of an illegal and anti-democratic spying operation carried out by the National Security Agency (NSA), while Democrats are offering only the most muted and cowardly criticism.

This combination will ensure that the Senate hearing will be a complete farce, and will not address any of the fundamental issues involved or lead to any check on the Bush administration.

The tenor of the hearings was set on Sunday by Senator Patrick Leahy, the ranking Democrat on the Judiciary Committee, who appeared on CBS's television program, "Face the Nation." Leahy suggested that "Americans want to know that there is a check and balance," while insisting that "we're all against the terrorists." He said that all Democrats want to make sure that the Bush administration succeeds in its supposed task of defeating terrorism, and counseled both parties to "stop the polemics and make sure it is working right."

Leahy pointed out that in the past, when the Administration has requested new authorizations such as the Patriot Act and the revision of FISA in 2002, Democrats were quick to agree—a self-indictment of the entire role of the Democrats in facilitating the attack on democratic rights throughout the Bush administration. The Democrats, Leahy announced, are ready to perform the same service once more.

In making these statements, Leahy again indicated that the Democrats accept the entire rationale of the "war on terrorism," used by the Bush administration to justify everything from spying, to war, to tax cuts for the wealthy. No leading Democrat has even suggested that the spying should be halted. Rather, the call is for a pseudo-legal basis for the administration to continue doing what it has been doing.

On the other hand, the Republicans continue to press the offensive. In spite of the public revelations of the program and its obvious violation of existing legislation, the administration's position is that it will continue the program, will refuse to hand over documents relating to it, and will provide no concrete information about what it is doing.

The sole official who will testify before the committee hearings that begin on Monday is Attorney General Alberto Gonzales. During his tenure as White House counsel in Bush's first term, Gonzales played a key role in constructing the legal framework

used by the administration to defend spying and other attacks on democratic rights—that the president has virtually unconstrained powers as commander-in-chief to override existing legislation. This is an argument for what amounts to dictatorial powers for the President.

Over the weekend, the administration leaked Gonzales's prepared responses to questions that will be posed by Judiciary Committee Chairman Arlen Specter. Gonzales will present the same arguments already advanced by the administration for expansive presidential powers, and will continue to repeat the brazen lies of the administration about the nature of the spying program.

The administration has argued that the President has the right to ignore the Foreign Intelligence Surveillance Act (FISA)—which prohibits warrantless spying on communications involving people within the United States—largely on the grounds that the so-called war on terrorism and the Authorization to Use Military Force passed shortly after September 11, 2001, trump this law.

Gonzales will continue to insist, in the face of numerous media reports to the contrary, that the program specifically targets members of Al Qaeda. "Contrary to the speculation reflected in some media reporting," Gonzales will say, according to testimony obtained by the Associated Press and *Time* magazine, "the terrorist surveillance program is not a dragnet that sucks in all conversations and uses computer searches to pick out calls of interest." He will claim that "no communications are intercepted unless first it is determined that one end of the call is outside of the country and professional intelligence experts have probable cause...that a party to the communication is a member or agent of Al Qaeda or an affiliated terrorist organization."

He will insist that press reports documenting the extremely broad scope of the program "are in almost every case...misinformed, confused, or wrong." However, he will refuse to back up these assertions with any concrete details. "I cannot and will not address operations aspects of the program or other purported activities described in press reports," the testimony reads.

He will also repeat the absurd argument that following FISA regulations would significantly delay the administration's capacity to spy on terrorist suspects. The law allows the NSA, with the approval of the attorney general, to conduct warrantless surveillance without court approval for up to 72 hours. And the FISA court has almost never declined a request from the government for a warrant that would be required after this period.

One of the principal reasons the administration has sought to operate the NSA spying program outside of FISA is that the program is in fact much more extensive, and includes the potential or actual monitoring of broad sections of the American population. This was confirmed again by a report by Barton Gellman, Dafna Linzer and Carol Leonnig in the *Washington Post* on Sunday, which directly contradicts Gonzales's testimony.

The article cited "accounts from current and former government officials" as well as "private-sector sources with knowledge of the technologies in use." The latter are most likely individuals working in telecommunications companies, which have reportedly made their databases of communications available to the government.

The *Post* reported that "thousands" of Americans have had their telephone conversations monitored and their e-mails read, with one source placing the figure at 5,000. However, "fewer than 10 US citizens or residents a year, according to an authoritative account, have aroused enough suspicion during warrantless eavesdropping to justify interception of their domestic calls, as well." In other words, the vast majority of communications intercepted have nothing to do with terrorism, a fact that contradicts Gonzales and the Bush administration's attempts to frame the spying as a "terrorist surveillance program." Warrants could not be obtained to spy on these individuals because the government could present no evidence to the FISA court documenting probable cause of their connection to terrorism.

Moreover, the *Post* notes, the government has access to far more communications than the thousands that have been directly read or listened to. "Computer-controlled systems collect and sift basic information about hundreds of thousands of faxes, e-mails and telephone calls into and out of the United States before selecting the ones for scrutiny by human eyes and ears," the newspaper reported. Again, this is in direct contradiction to Gonzales's testimony and corroborates previous reports that the government has access to telecommunications switches that contain vast stores of communications, including purely domestic calls and e-mails.

With access to this information, the NSA could easily be monitoring and storing communications of individuals engaged in political opposition to government policies, which is what FISA was originally enacted to prevent. It is unclear what happens to all the data that the government collects; however, the *Post* reports that one lawyer, representing an individual who has been part of the NSA program, said that participants are "uncomfortable with the mountain of data they have now begun to accumulate." Spokesmen for the Bush administration "declined to say whether any [communications] are discarded," according to the *Post*.

In addition to refusing to give any details about the nature of the spying program, the administration is also refusing to hand over to the Senate legal opinions written by the Justice Department in 2001 and 2004 that sought to defend it. One of these memoranda was reportedly written by former Justice Department lawyer John Yoo, who also wrote the infamous torture memo, which argued that ordering torture is one of the President's commander-in-chief powers. The other was written after concerns emerged within the Justice Department itself over the legal basis of the NSA program.

The administration's position is that not only will it continue to

do what it is doing, it will seek retribution against those who helped leak existence of the program to the American people. In testimony before the Senate Intelligence Committee, both Director of National Intelligence John Negroponte and CIA Chief Porter Goss denounced anyone challenging the legality of the NSA program. Goss claimed that leaks about the spying program had done "very severe" damage to national security and expressed his hope that "we will witness a grand jury investigation with reporters present being asked to reveal who is leaking this information."

Both Negroponte and Goss implied that any criticism of the spying program was endangering national security and therefore aiding terrorists.

The whole position of the administration is absolutely dependent upon the prostration of the Democratic Party and its refusal to take any stand against the attack on democratic rights. The administration feels confident to so openly flout the law because it knows from experience that it will find no serious resistance from the nominal opposition.

In addition to Leahy's comments, other Democrats continue to defend the NSA program itself, only counseling that the administration seek authorization from Congress first. Representative Jane Harman, the ranking Democrat on the House Intelligence Committee, wrote in a letter to Bush last week that the "activities of the NSA program can—and should—be accomplished within the law, not by circumventing it." Harman was one of the eight members of Congress to be briefed regularly about the spying program since it was initiated in 2001.

The complicity of the Democrats in the attack on democratic rights was most recently on display in the decision to make only token resistance to the nomination of Supreme Court Justice Samuel Alito. The administration is counting on Alito to rule in favor of a broad interpretation of presidential powers, including on such issues as domestic spying.

It should be recalled that among the articles of impeachment drawn up against President Richard Nixon were the charges of abuse of presidential powers and contempt of Congress. The former was for the illegal spying organized by Nixon, and the latter for a refusal to turn over documents. Both of these charges pertain to the present situation. The open flouting of the law by the Bush administration exceeds even the criminality of Nixon. However, the question of impeachment is not even being suggested as a possibility by the Democratic Party leadership, an indication of the complete decay of any commitment to basic democratic principles within the political establishment.



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