US Senate panel votes to sanction illegal spying

Rubberstamp for police-state measures

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The US Senate Select Committee on Intelligence voted Wednesday to block any investigation into the Bush administration's illegal domestic spying operation and instead lend this crime a pseudo-legal cover. The action represents another major step in scrapping constitutional forms of rule and moving in the direction of an American police state.

The committee's vote, following a closed session, split along party lines. The Republican chairman of the panel, Senator Pat Roberts of Kansas, said that the decision was taken to "reject confrontation in favor of accommodation." He added that, as a result of consultations with White House staff members—from which Democrats were excluded—a subcommittee would be formed to "conduct oversight of the terrorist surveillance program," the name given by the administration to its secret use of the National Security Agency to conduct warrantless electronic bugging of American citizens.

The ranking Democrat on the committee, Senator John D. Rockefeller of West Virginia, said that the vote only demonstrated that, "The committee is, to put it bluntly, basically under the control of the White House." In response to the defeat of his proposal for an investigation of the covert surveillance, he charged that the Republican majority preferred to "legislate in darkness and in ignorance."

Given the immensity of the attack on democratic rights, Rockefeller's protest is, in typical fashion for the Democrats, mealy-mouthed and politically unserious. The leadership of the Democratic Party has shown no indication that it intends to wage a struggle against either the illegal spying operation—a gross violation of the US Constitution and civil liberties and a patently impeachable offense—or its cover-up by the Congress.

The deal worked out with the White House involves the creation of a seven-member intelligence subcommittee that would be briefed by the administration on its spying operation and would craft legislation to nominally legalize it. The House Intelligence Committee, meanwhile, is working on its own proposal to achieve the same political end.

According to the *Washington Post*, the proposed Senate legislation, sponsored by Ohio Republican Senator Mike DeWine, would explicitly authorize the government to carry out warrantless domestic spying for a period of 45 days "after which, the government can stop the eavesdropping, seek a warrant, or explain to Congress why it wants to continue without a warrant."

These restrictions are meaningless, placing no impediment whatsoever on the use of police state powers by the White House. In response to the proposals of the Senate Republicans, the Bush administration made no attempt to conceal that it views the proposed legislation as nothing more than window dressing for continuing unrestricted domestic spying.

White House spokesman Scott McClellan told the media Wednesday that the administration is "committed to working with congressional leaders to further codify the constitutional and statutory authority that the president already has."

While the abject capitulation of the Congress to the illegal acts of the administration is hardly surprising, it is nonetheless, from an historical standpoint, breathtaking.

Last December, it was revealed by the *New York Times*—after the newspaper had censored its own story for fully a year at the administration's request—that the National Security Agency (NSA) had secretly eavesdropped on thousands of individuals without first obtaining warrants.

The action was in direct violation of the 1978 Foreign Intelligence Surveillance Act, which established a secret court to issue warrants for such domestic electronic surveillance. The court has approved virtually every government application for a surveillance warrant, rejecting only four out of nearly 19,000 as of the end of 2004.

Moreover, the law establishing the FISA court allows the government to begin surveillance without prior notification and receive a retroactive warrant. Congress lengthened the time period allowed under the law before the surveillance must be sanctioned by the court from 24 hours to 72 hours as part of the repressive legislation approved in the aftermath of the September 11, 2001 attacks.

However accommodating the law is to government demands for domestic spying, it explicitly makes it a criminal offense to carry out any such surveillance outside its provisions, which it states are the "*exclusive* means by which electronic surveillance... may be conducted [emphasis added]."

The Bush administration has brushed aside the law, claiming that the president is authorized to conduct such warrantless spying under his constitutional authority as commander in chief and under implicit authority granted him by Congress itself with its passage

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of a 2001 resolution authorizing the use of military force in response to the terrorist attacks of that year. The same rationale is used to justify the arrest and detention—without charges, legal counsel or trials—of those, citizens and non-citizens alike, declared by the president to be "enemy combatants," and to torture alleged terrorists.

That this rationale—steadfastly defended by the US Justice Department—is specious is not a debatable issue. The FISA statute explicitly covers wartime warrantless electronic surveillance, specifying that such action is allowed only in the first 15 days of a war. In any case, the "global war on terror" invoked by the Bush administration to justify its illegal actions has never been declared.

The administration's claim that Congress inferred the authorization of such spying with its authorization of military force—which nowhere mentions such surveillance—under conditions where a law enacted by Congress explicitly bars such methods represents a repudiation of all legal restraints on the power of the presidency.

FISA, it should be recalled, was enacted in the wake of the revelations that President Richard Nixon had personally and secretly ordered the electronic bugging of government officials, political opponents and journalists in the name of national security. The law was supposed to provide protection against a "Big Brother" style police state by requiring court review of such domestic surveillance.

One of the central charges brought by Congress in the articles of impeachment presented against Nixon in 1974 was his abuse of power through the use of intelligence agencies to carry out secret electronic surveillance against American citizens.

Now, three decades later, the Bush administration has resurrected these practices—an explicitly impeachable offense—and ridden roughshod over the law passed to restrict them. And the reaction of the Congress is to amend the law so that the administration's covert crime is rendered formally legal. In other words, Congress offers itself up as the rubber stamp for a police state-in-the-making.

As for the Democrats, their differences with the administration and Congressional Republicans have not been a matter of defending core constitutional rights or opposing the alarming growth of dictatorial powers within the US government. Rather, they too have argued in favor of new legislation to provide a legal cover for the illegal spying.

Senator Edward Kennedy, the Massachusetts Democrat who helped write the 1978 FISA statute, has stated that his aim is not to halt the covert surveillance initiated by the administration, but to "get it right" by granting congressional approval. The main concern raised by Kennedy is that the illegal character of the spying could jeopardize the prosecution of alleged terrorists by tainting the evidence.

Numerous other Democrats have made speeches on the floor of Congress declaring their support for the surveillance, while criticizing the administration's handling of the issue. This form of "opposition" bears a remarkable resemblance to the Democratic leadership's position on the war in Iraq—criticizing the way it was launched or how it is being conducted, while supporting its strategic aims and its continuation.

The vote to close down the investigation into the NSA spying scandal came just a day after the US House of Representatives voted to renew the USA Patriot Act, making all but three provisions in this sweeping attack on civil liberties permanent law. While drafters of the legislation—both Democratic and Republican—claimed it incorporated new protections of civil liberties, the final version approved overwhelmingly by both houses did nothing to rein in the authoritarian powers which the Bush administration has arrogated to itself.

Meanwhile, emboldened by the lack of any genuine opposition within the political establishment, the administration has launched a full-scale FBI investigation aimed at identifying and criminally prosecuting those who exposed its crimes to the public. The *Washington Post* reported Sunday that FBI agents have interrogated "dozens of employees at the CIA, the National Security Agency and other intelligence agencies" in recent weeks in an attempt to uncover the identities of the whistle-blowers who provided the media with information on the NSA spying program as well as the CIA's secret prisons in Eastern Europe.

The report noted that the Republican chairmen of both the House and Senate intelligence committees are considering legislation that would criminalize unauthorized leaks of classified information, allowing for the prosecution of both those who provide the information and those who receive it. The clear aim is to intimidate the media with the threat to jail anyone who dares expose the government's crimes in the future.

The administration and both major political parties invariably invoke the "war on terror" and the tragic events of September 11, 2001 to justify these attacks on democratic rights—as well as the war launched on the basis of lies against Iraq and the occupation of its oil-rich territory. Yet, as with the latest decision on the NSA spying scandal, every attempt has been made to prevent any genuine investigation into the events of September 11 and the ample evidence suggesting that the administration allowed these attacks to take place in order to provide a pretext for its policies of war and repression.

These policies have their source not in some omnipresent threat of new acts of terrorism, but rather the class interests of the financial elite that controls the US government and both major parties. Within this ruling oligarchy of multi-millionaires and billionaires—whose interests are so at odds with those of working people—there exists no genuine constituency for the defense of democratic rights.

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