

Bush asserts expanded surveillance powers over US mail

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President Bush has claimed the power to open people's mail without a judicial warrant, news reports last week revealed.

The White House claim of new presidential powers was made quietly two weeks earlier, when Bush issued a "signing statement" as he initialed the new Postal Accountability and Enhancement Act on December 20, during the congressional winter recess. This went completely unreported until an article appeared in the January 4 edition of the *New York Daily News*.

There was little that was controversial in the legislation, which simply repeated an existing prohibition on the opening of first-class mail by postal inspectors without a court warrant. In signing the bill, however, Bush used the following language: "The executive branch shall construe [the law]...which provides for opening of an item of a class of mail otherwise sealed against inspection in a manner consistent, to the maximum extent permissible, with the need to conduct searches in exigent circumstances, such as to protect human life and safety against hazardous materials, and the need for physical searches specifically authorized by law for foreign intelligence collection."

In the aftermath of the *Daily News* report, White House press secretary Tony Snow denied that there was any change, saying that the signing statement represented "merely a statement of present law and present authorities granted to the president of the United States."

However, others pointed out that the language of the statement, although perhaps intentionally vague, contradicts the bill that Bush has just signed, and goes beyond existing powers. It could easily be used to open and read many pieces of mail.

The suggestion that the privacy of the mails can be

ignored comes in the wake of revelations over the past year about massive government surveillance of telephone and e-mail communications, and indicates that the Bush administration has no intention of allowing the Republican reverses in the midterm elections to slow down its steady encroachment on long-established privacy rights and democratic rights generally, in the name of an endless "war on terror."

Kate Martin, director of the Center for National Security Studies in Washington, stated that the government is already able to legally open mail believed to contain a bomb or other imminent threat. Bush's language expands that, however. "The administration is playing games about warrants," said Martin. "If they are not claiming new powers, then why did they need to issue a signing statement?" Martin pointed out that Bush is "using the same legal reasoning to justify warrantless opening of domestic mail" as he did with warrantless eavesdropping.

An unnamed senior US official said that Bush's statement "takes Executive Branch authority beyond anything we've ever known."

There are two major Constitutional issues raised by the latest events. First, as in the case of the warrantless eavesdropping on telephone calls and e-mail, the opening of mail without a warrant constitutes a flagrant violation of the US Bill of Rights, which prohibits unreasonable search and seizure in the following language of the 4th Amendment to the Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Additionally, the use of signing statements by the Bush administration to grab new powers that have never been given to the executive branch or to announce that the President will implement or reject provisions of legislation as he sees fit calls into serious question the separation of powers as spelled out in Articles I and II of the Constitution, on the powers of the legislative and executive branches respectively.

The Bush administration's use of signing statements is completely unprecedented in US legislative history. Until he vetoed stem cell legislation this past year, Bush was the first president in modern history who had never vetoed a bill sent to him by Congress. This extraordinary and peculiar circumstance, it has become increasingly clear, was only in part related to Republican control of Congress and the cowardice of the Democratic minority. In fact, the strategy of the White House has been to foreclose the possibility of a congressional override of a presidential veto, by simply signing the legislation and then adding a "signing statement" that essentially announced that he would do as he pleased in implementing the laws.

In the past, signing statements were few and far between, and almost always served symbolic, ceremonial or public relations purposes. In the current administration, however, more than 800 of these statements have been issued, more than one for every 10 pieces of signed legislation. The signing statements are official documents in which the White House presents its own legal interpretation of the bill.

The statements serve not only to nullify specific provisions of a bill—such as the postal bill's simple restatement of the prohibition on the opening of mail without a court warrant, or the case of the amendment introduced by Arizona Senator John McCain that prohibited torture against those in US custody. In Orwellian fashion, the White House claims that nothing has happened. Bush "agrees" with a law while announcing that he takes it to mean the opposite of what it says.

The signing statements are also part of the administration's longer-range goal of asserting presidential supremacy in relation to Congress, and go a long way toward erecting the framework for a police state and presidential dictatorship. In the five years since the September 11, 2001, attacks, legislation like the Patriot Act and the recent Military Commissions

Act have been combined with extralegal measures to roll back many of the restrictions placed on government spying in the 1970s, in the aftermath of the defeat of the US in Vietnam and the Watergate scandal. In that period, congressional hearings exposed extensive illegal government spying, including the opening of hundreds of thousands of pieces of U.S. mail.

It is a virtual certainty that the Democratic leadership will do nothing about the White House's latest attacks on democratic rights, just as they have supported the repressive measures of the Patriot Act and confined themselves to empty statements of "concern" over warrantless wiretapping.



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