

Former Justice Department official's testimony raises question: How extensive is police state spying in the US?

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Former Deputy Attorney General James Comey's testimony before a Senate panel May 15 raises a number of important questions about the extent of domestic spying in the United States. Comey's testimony gives further credence to reports that the monitoring programs set up by the American government to spy on telephone calls and e-mails are far more expansive than anything that has been officially acknowledged.

In his testimony before the Senate Judiciary Committee, Comey provided details of a confrontation in March 2004 between himself and top White House officials over a warrantless wiretapping program operated by the National Security Agency (NSA). Even in the form later acknowledged by the President, the program violates the 1978 Foreign Intelligence Surveillance Act (FISA).

Comey, backed by then Attorney General John Ashcroft and then FBI director Robert Mueller, refused to give Justice Department approval for the program's reauthorization. He grounded his position on a finding by the Justice Department's Office of Legal Counsel that the program had no legal justification. Comey's stance provoked a sharp conflict with the White House, particularly with then White House counsel and current Attorney General Alberto Gonzales, and then White House Chief of Staff Andrew Card, backed by Vice President Cheney. (See "Former Justice Department official describes illegal actions by Bush administration in defense of domestic spying")

According to Comey, certain changes were made in the program after he and others objected, and these changes were sufficient to allow the Justice Department to ratify the program's legality. The unanswered questions, however, remain: what precisely were these changes, and what was it that Comey and others opposed? How expansive was the spying program authorized after the September 11 attacks? These are not simply historical questions. There can be little doubt that all these domestic spying operations continue today, even if in a different guise.

Editorials in the *New York Times* and the *Washington Post* on Thursday touched on these matters. The *Times* wrote, "The really big question ... is what exactly the national Security Agency was doing before that night [when Comey refused to reauthorize the program], under Mr. Bush's personal orders. Did Mr. Bush start by authorizing the agency to intercept domestic e-mails and telephone calls without first getting a warrant?"

In December 2005, after an article appeared in the *Times* describing aspects of the NSA program, Bush acknowledged the existence of an operation he insisted only involved communications that either came from or were sent to someone residing outside the United States. The *Times* is suggesting that prior to the confrontation with Comey, the program may have included warrantless spying on communications entirely within the United States—an even more flagrant violation of FISA.

The nature of the dispute with Comey is illuminated by Congressional testimony given by Gonzales in February 2006, after he had assumed the post of attorney general. In that testimony, which the Bush administration insisted not be conducted under oath, Gonzales said that there had been no "serious disagreement" from Comey or other administration officials

"about the program that the president has confirmed." He said, however, that there had been "disagreements about other matters regarding operations, which I cannot get into."

Its editorial Thursday, the *Times* noted that Gonzales must have been referring in this testimony to the program that included the modifications after an agreement had been reached with Comey. This is the same program whose existence has been acknowledged by Bush.

The *Post* raised the same point in its editorial on Thursday, asking, "What was the administration doing, and what was it willing to continue to do, that its lawyers concluded was without a legal basis?"

The very fact that both these newspapers of the political establishment raise these questions is a good indication that they have information that the spying programs are in fact much more expansive than has been acknowledged.

There are a number of possible elements of the program that might have been the source of opposition within the Justice Department. One relates to the power claimed by the administration to justify the program even though it violates FISA.

The rationale favored by Gonzales, Cheney and top Justice Department aides in power following the attacks of September 11—figures such as John Yoo and Jay Bybee—was that the President has virtually unlimited powers as commander in chief to carry out the "war on terror."

In 2003, a new group of officials came into the Justice Department, including Comey and Jack Goldsmith, the new assistant attorney general. According to a number of media reports (including a February 6, 2006 article in *Newsweek*, "Domestic Spying: Bush Appointees Revolt"), these officials resisted the blanket executive power argument, which gave the President essentially dictatorial powers to override the law. They favored basing the rationale for the spying program on the Authorization to Use Military Force (AUMF), passed by Congress following the September 11 attacks.

To use AUMF as a rationale for warrantless spying, however, was not only a groundless application of that resolution (which says nothing about spying), but it would also constrain the targets of the actions to "those nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorists attacks" of September 11.

This would imply that prior to March 2004, the program involved spying on broad sections of the American population, without even the pretense of restricting targets to associates of Al Qaeda. The new program as acknowledged by the President would have to be at least nominally more restrictive, though the additional powers could be shifted to other programs that have not been acknowledged.

Another possibility is that suggested by the *Times*, namely that the communications monitored included those entirely within the US. One reason to suppose that purely domestic spying was involved was the close involvement of Mueller, the head of the FBI, in the dispute between Comey and the White House. The FBI is involved primarily in domestic spying, while the NSA and CIA spy internationally. According to Comey,

Bush met personally with Mueller to help work out a compromise. The NSA was apparently not involved at all in these discussions. Why was Mueller involved? Was he upset about the encroachment of the NSA into the FBI's traditional field of operations?

Most likely, the basis of the disputes was a combination of these factors—the program was so expansive and unconstrained that it encompassed virtually anyone. It is worth recalling the description given by the *Times* in its original December 2005 article revealing the program's existence. Citing “senior government officials,” the newspaper reported that: “when the special operation first began, there were few controls on it and little formal oversight outside the NSA. The agency can choose its eavesdropping targets and does not have to seek approval from Justice Department or other Bush administration officials.”

The newspaper wrote at the time that these unnamed officials were “apparently fearful of participating in an illegal operation.”

Moreover, the press itself has reported the existence of programs extending far beyond what has been officially acknowledged. The *Times* reported on December 24, 2005, 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.”

In 2006, a former technician at AT&T, Mark Klein, produced documents showing that the telecommunications giant was routing large amounts of internet communications directly to the NSA “Based on my understanding of the connections and equipment at issue,” Klein said at the time, “it appears the NSA is capable of conducting what amounts to vacuum-cleaner surveillance of all the data crossing the Internet—whether that be people's e-mail, Web surfing or other data.”

In the spring of 2006, *USA Today* reported that three telecommunications companies—AT&T, Verizon and BellSouth—had handed over to the NSA the calling records of hundreds of millions of telephone customers, including 80 percent of the landline and 50 percent of the wireless users in the US.

These programs constitute the framework of a police state in the United States. They provide the government with information that can be used to intimidate, undermine or blackmail any individual or group it chooses, including political opponents.

The expansion of spying powers is part of a much broader attack on the most fundamental democratic rights of the population in the US and internationally. The “war on terror” has been used to justify torture, the denial of habeas corpus, the creation of drumhead military commissions and the imprisonment of “enemy combatants”—including US citizens—indefinitely and without charge.

All of this has been justified as a response to September 11, an event that has never been seriously investigated. These attacks, for which there is substantial evidence of some level of government involvement, have become the pretext not only for the wars in Afghanistan and Iraq, but also for a frontal attack on the constitutional order in the United States.

The spying programs continue to this day. Whatever changes may have been made when Comey raised objections, they most likely involved shifting certain operations from one program to another. Russel Tice, a former NSA employee, has said that the agency has been authorized to engage in much broader spying than the government has admitted as part of a top-secret “special access program.”

As for those officials who raised objections, most have been pushed out of the Justice Department in one way or another. Gonzales meanwhile has become the attorney general.

The methods of criminality and gangsterism—including the revelation that Gonzales and Card went to the hospital bed of the ailing Ashcroft in order to pressure him to override Comey and endorse the program—reflect the nature of the regime and the aims it is pursuing. The firing of the US

attorneys is part of this. The principal aim of these firings was to push an attack on voting rights in order to manipulate the 2006 elections.

Five years after the spying programs were initiated, and a year and a half after hints of their existence were revealed in the American media, the public still has no knowledge of what information the government is collecting and what it is being used for. The Bush administration has refused to provide any details, citing “national security.”

What is perhaps most striking is the way in which all of this has produced no serious opposition from the Democratic Party or mass media. Aside from a few revelations, the media has not pursued the issue. It is worth recalling that the *Times* sat on the initial story on the NSA program for over a year at the request of the White House, helping to ensure that it did not come up as an issue in the 2004 elections. The *Times* editorial on Thursday ends merely with the hope that Congress will conduct a “vigorous investigation.”

The Democratic Party has also made very little of the spying programs and has not pursued the issue since gaining control of Congress in January. No leading Democrat has called for an end to the programs, and there has yet been no call for the impeachment and prosecution of those who have clearly violated the law on an unprecedented scale.

The reaction of the Democrats to this massive assault on the constitution has been characterized by both cowardice and complicity. They are unwilling to explain to the population what is really taking place and why these domestic spying programs have been implemented. The entire political establishment accepts the lie of the “war on terror,” and, to the extent that there are criticisms, they proceed from the premise that the Bush administration has “overreached” in prosecuting this war.

In fact, these measures have nothing to do with combating terrorism. Laws such as FISA were put in place following revelations of spying on political opponents of government police. These laws are now being repudiated, and an even more expansive database of information is being collected, primarily for use in countering the inevitable explosion of social tensions and mass political opposition in the United States.

The main threat perceived by the political establishment, including both the Democrats and the Republicans, is not Al Qaeda, but the broad mass of American working people, which is coming increasingly into conflict with the right-wing and militarist policies of the American ruling elite.



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