

Bush officials defend proposal to expand domestic spying powers

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Before the Senate Intelligence Committee on Tuesday, Bush officials defended the administration's domestic surveillance operations as well as a proposal to expand spying powers aimed at the population both in and outside the United States.

Mike McConnell, the new director of national intelligence, maintained before the Senate Intelligence Committee that the president has the power to order the National Security Agency (NSA) to conduct surveillance inside the country without warrants.

Claiming the president has the authority under Article II of the US Constitution to conduct such warrantless spying, McConnell stated, "If the president chose to exercise Article II authority, that would be the president's call."

McConnell's statements came as he gave testimony in defense of proposed amendments to the 1978 Foreign Intelligence Surveillance Act (FISA), which places restrictions on spying against US citizens and other residents in the United States. The law requires that warrants be issued by the FISA court for any domestic spying to proceed.

FISA was created following revelations of massive, politically motivated spying on civil rights and antiwar organizations in the 1970s. Using the 9/11 attacks as a pretext, the Bush administration has routinely violated this law, most notably through a huge warrantless spying program overseen by the NSA.

When revelations of the NSA program first came out in the press, the administration asserted that the president had the authority as commander-in-chief and leader of the executive branch to carry out the spying even if it violated the FISA law, the same claim repeated by McConnell. They also claimed that the Authorization to Use Military Force (AUMF), passed after the September 11 attacks, overrode the FISA law,

even though AUMF does not contain any reference to spying.

In January, Attorney General Alberto Gonzales said that the administration had crafted a new way to speed warrants from the FISA court to intercept communications to and from the US, and that it was no longer necessary to operate the program outside of the FISA law. Gonzales reported that on January 10 the FISA court had issued an order governing the Bush administration's new "terrorist surveillance program." But in the name of "national security" the new warrant process has never been made public.

Even though the administration now insists that it is following the law, it is trying to push through amendments to it, while at the same time claiming that the president is not in fact obliged to follow the law anyway.

While maintaining there were no plans "that we are formulating or thinking about currently to resume domestic wiretapping without warrants," McConnell went on to add, "Article II is Article II, so in a different circumstance, I can't speak for the president what he might decide." In other words, despite the administration's claims to be conforming to law, the president may violate the law at any turn by claiming executive privilege.

The reference to Article II of the Constitution—which includes the designation of the president as commander-in-chief of the military—has been used by the Bush administration in an effort to impart dictatorial powers to the White House in direct violation of Congressional oversight and the will of the American people.

The real significance of the administration's position was hinted at by Democratic Senator Bill Nelson, who said, "We want to go after the bad guys, but we want to prevent the creation of a dictator who takes the law in

his own hands.”

In two hours of testimony before the Senate committee, McConnell, NSA Director Lt. Gen. Keith Alexander, Assistant Attorney General Kenneth Wainstein and their attorneys underwent sometimes heated questioning on the Bush administration’s proposal seeking increased spying powers. They deferred answers to many questions to a committee session closed to the public.

The officials sought to present the requested amendments to the surveillance restrictions as adjustments to account for technological changes—in the form of cell phones and the Internet—since the FISA Act came into force. McConnell argued that under current rules, “We’re actually missing a significant portion of what we should be getting.”

One of the “communications gaps” the administration reportedly wants to bridge is the ability to spy on “transit traffic.” These are international telephone calls and email correspondence between one foreign country and another, but which are digitally routed through the US telecommunications system.

Despite claims to the contrary, however, the requested amendments to FISA law have nothing to do with modernizing the restrictions to keep up with electronic technology. As the WWS has observed, if enacted the changes would further erode the minimal barriers to surveillance while expanding the powers of the state to spy on the US population. (See “Bush administration seeking to expand spying powers”.)

The requested amendments would allow warrants for surveillance of any non-citizens in the US “reasonably expected to possess, control, transmit, or receive foreign intelligence information while such a person is in the United States,” even if they are not the target of an investigation. Under current law, the FISA court can only grant such warrants to spy on persons the government claims are targets of foreign intelligence or terrorism investigations. Warrants would also be allowed for spying on individuals suspected of activities related to purchasing or developing weapons of mass destruction.

Significantly, the amendments would strip the power of all courts except the FISA court, which meets in secret, to hear claims against the spying program. Last year, a federal court ruled that the NSA program is unconstitutional, but under the amendments this

decision would be rendered void.

The proposals would provide telecommunications companies with immunity from prosecution for their cooperation with the government in handing over phone records and emails. Since the immunity would be made retroactive to September 11, 2001, AT&T and other companies would be shielded from lawsuits already under way for violating customer privacy by turning over massive databases of communications.

Other changes would extend the length of time—from 72 hours to one week—in which the Justice Department could conduct surveillance without requesting a warrant from the FISA court.

The changes would also allow the government to utilize information obtained “unintentionally” through spying if it contains “significant foreign intelligence,” even if that surveillance was unrelated to what was authorized by the court.

Various Democrats on the committee criticized the administration officials. Committee Chairman Jay Rockefeller (Democrat of West Virginia) asked, “Is the administration’s proposal necessary, or does it take a step further down a path that we will regret as a nation?” While in agreement with the “war on terrorism” rationale for the spying operations, Congressional Democrats are under pressure from widespread public opposition to these methods.

“Congress is being asked to enact legislation that brings to an end lawsuits that allege violations of the rights of Americans,” Sen. Rockefeller said at the hearing. “We cannot legislate in the blind.”

However, with a record as a complicit partner in the “war on terror” and the accompanying assault on democratic rights, Congressional Democrats can be relied on to come to an agreement with the Bush administration on domestic spying at some point, whether in open session or behind closed doors.



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