NSA monitors millions of American e-mails

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19 June 2009

Several current and former agents within the National Security Agency (NSA), speaking on condition of anonymity, have told the *New York Times* that the spy agency likely monitors millions of e-mail communications and telephone calls made by Americans. The new revelations follow the disclosure in April that the NSA's monitoring of domestic e-mail traffic broke the law in 2008 and 2009.

Last year, Congress passed legislation providing the NSA greater latitude to spy on the communications of Americans, so long as it resulted inadvertently from the agency's efforts to spy on foreigners or those it "reasonably believed" to be outside US borders. This authorized the NSA to intercept tens of millions of e-mail and phone communications that pass through American telecommunication "gateways." The measure was attached to a congressional law granting immunity to telecommunications companies that turned over private phone records to federal authorities.

Among those voting for the bill was then-Senator Barack Obama of Illinois. In all, 293 members of the House and 69 senators voted to pass the bill.

To launch investigations specifically targeting American "terror suspects," the legislation requires that the NSA first gain a warrant from the secretive Foreign Intelligence Surveillance Court (FISC). In fact, this is a mere formality. The FISC almost never turns down a government request for a warrant.

Yet the NSA's activities have gone beyond even this pseudo-legal system specifically constructed in order to allow domestic spying. It is not known how many Americans have been spied upon, but the *Times*'s sources report that in 8 of 10 warrants issued by the FISC, the NSA "is believed to have gone beyond legal boundaries." Further, "Because each order could single out hundreds or even thousands of phone numbers or e-mail addresses, the number of individual communications that were improperly collected could number in the millions," the *Times* reported.

A former agent said the NSA's illegal domestic spying operations have been underway for years. In 2005, the agent said he was trained to use a secret database called Pinwale, which allows agents "to read large volumes of e-mail messages to and from Americans." The agent said he believes that American e-mail messages culled by the program could amount to as much as 30 percent of the total. Two current NSA agents confirmed that the program continues today.

Sources confirmed to the *Times* that spying on the domestic e-mail of Americans was at the heart of a bitter feud within the Bush administration in 2004 involving former Attorney General John Ashcroft and top Justice Department officials who "staged a near revolt over what they viewed as possibly illegal aspects of the NSA's surveillance operations." The crisis unfolded at the hospital bedside of Ashcroft, who was recovering from pancreatitis. Ashcroft and acting Attorney General James Comey refused to sign an order reauthorizing a domestic electronic surveillance program they believed to be in violation of 1978's Foreign Intelligence Surveillance Act (FISA).

"The controversy was mostly about that issue," a former Bush administration official with knowledge of the dispute told the *Times*. At the time, Comey expressed concern over "the collection of 'meta-data' " on Americans' communications, which could be used to build a database that identifies both broad communication patterns as well as to map out communication links among individuals and groups. The Bush administration went ahead with the program without Justice Department authorization. (see "Former Justice Department official describes illegal actions by Bush administration in defense of domestic spying")

The NSA has evidently told lawmakers that the known instances in which it broke legally established domestic spying guidelines were inadvertent cases of "overcollection." While the NSA refused comment for the *Times* story, a spokeswoman for National Intelligence Director Dennis Blair claimed that due to legal and logistical complications, "technical and inadvertent errors can occur," and that "when such errors are identified, they are reported to the appropriate officials, and corrective measures are taken"

The chairman of the House Select Intelligence Oversight Panel, Rush Holt (Democrat, New Jersey), cast doubt upon this vague explanation. "Some actions are so flagrant that they can't be accidental," he told the *Times.*

This is an extraordinary declaration. The leading member of the House committee tasked with overseeing US spy agencies is saying, in effect, that the NSA is deliberately breaking the law in order to spy on large number of Americans without warrants or any other form of legal justification. Taken together with the revelations from the *Times*'s anonymous sources, it paints a

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portrait of an intelligence apparatus that operates with impunity, unaccountable to the legislative and judicial branches of government—much less to the American people, who in the last three national elections have repudiated the anti-democratic policies of the Bush administration.

The *Times* followed its investigative article with an editorial that correctly points out that the NSA abuses underway were prepared by last year's congressional revisions of FISA. The editorial notes that "President George W. Bush started violating that law shortly after 9/11 when he authorized the NSA to conduct domestic wiretapping without first getting the required warrant. When that program was exposed by *The Times* in late 2004, the Bush team began pressuring Congress to give retroactive legal cover to the eavesdropping operation and to the telecommunications companies that participated in it."

The reference to the *Times* exposing the article in late 2004 is rather self-serving. In fact, the *Times* shielded the evidence of NSA domestic spying from the American public until after the 2004 election, at the behest of the Bush administration. (See, "A damning admission: New York Times concealed NSA spying until after 2004 election")

Congressmen have not revealed to the American public details of their concerns over the NSA domestic spying program, and Senator Dianne Feinstein of California, the chairman of the Senate Intelligence Committee, on Wednesday rushed to deny the implications of the *Times* story. "Everything that I know so far indicates that the thrust of the story—that there are flagrant actions essentially to collect content of [American e-mails]—is just simply not true, to the best of my knowledge," she claimed.

In fact, the Obama administration and leading Democrats are fully committed to advancing the power of the police state built up during the Bush years.

In testimony before the Senate Judiciary Committee on Tuesday, Attorney General Eric Holder refused to state that warrantless wiretapping of Americans' phone conversations is illegal, a position both he and President Barack Obama advocated before Obama's inauguration. He also refused to say whether or not the Justice Department would rescind a 2006 Bush administration White Paper that attempted to provide a legal rationale for the warrantless wiretapping program.

The revelations also serve as another indication of the powerful domestic role of the military-intelligence apparatus—a power increasingly independent of the nation's political institutions and laws.

In April, after voices within or close to the "national security community" launched high-decibel criticism of President Barack Obama's decision to comply with a court order and release Bush administration legal memorandum that sought to create a pseudo-legal basis for torture, Obama responded by promising that there would be no investigation of those who ordered or carried out torture.

This only emboldened the military-intelligence apparatus and the Republican right. Top generals supported Obama when he reversed his earlier acceptance of a court order to release dozens of photos depicting US soldiers torturing Iraqi prisoners. Then, buckling under pressure from the military-intelligence apparatus, Obama also backtracked on campaign promises to end the military tribunal system for trying alleged terrorists held at the Guantanamo Bay prison camp.

Indeed, the congressmen ostensibly tasked with overseeing the nation's spy agencies are themselves the subjects of its espionage. It is openly acknowledged that the NSA carries out spying operations on members of the US Congress and prominent political figures. In April, it came to light that the NSA had been wiretapping the conversations of Rep. Jane Harman, a California Democrat and then the ranking member on the House Intelligence Committee, as she promised to intervene on behalf of two indicted pro-Israeli lobbyists in return for political favors. Harman had herself been an outspoken advocate of the NSA's warrantless spying operations.

The former agent interviewed by the *Times* also confirmed that Pinwale had been used by an agent to access the e-mail account of former President Bill Clinton. He indicated that the agent who had done so was investigated, but not whether or not he was dismissed.

In a related development, within days the military is expected to release details of a new "Cyber Command" that would oversee and develop the military's espionage and war-making capabilities on computer systems. The NSA, which controls most of the functions that would be associated with cyberwarfare, will figure prominently in the new command.

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