

US government steps up attack on exposure of NSA spying

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The report issued last Wednesday by a White House panel on US surveillance programs has set the stage for an intensified effort to suppress any further revelations of illegal government spying.

The report largely endorsed the National Security Agency's operations, hailing the "patriotism" of the operatives who are collecting and stockpiling private information on every American citizen and virtually the entire population of the world. This whitewash came two days after a federal judge ruled that the NSA's mass collection of telephone records violated the Fourth Amendment to the US Constitution's prohibition of "unreasonable searches and seizures."

Within hours of the report's issuance, the Obama administration was in court in a further attempt to shut down any legal challenge to the massive violation of privacy rights.

The Justice Department filed papers in two lawsuits brought in the Northern District of California, one on behalf of Verizon customers, the other on behalf of AT&T customers, charging that the NSA surveillance was illegal and unconstitutional. Both court cases stemmed from spying initiated under the Bush administration—and criticized by candidate Obama during the 2008 election campaign—but then embraced and expanded by President Obama after he took office.

In both cases, the US government has long argued that a "state secrets" privilege forbids any court from hearing a challenge to the NSA's actions. In particular, US attorneys have claimed the plaintiffs have no standing to sue because they cannot prove they were the targets of spying, since the spying is secret. This position, a perfect Catch-22, essentially forecloses any judicial remedy to illegal government action.

The cases were revived in the wake of the Snowden disclosures, which showed that effectively all Americans, including the plaintiffs, had their communication

metadata swept up and collected by the NSA.

In affidavits filed with Judge Jeffrey S. White, the director of national intelligence, James Clapper, argued that the court should take no notice of the Snowden revelations because the facts Snowden disclosed were classified as secret.

"Disclosure of this still-classified information regarding the scope and operational details of NSA intelligence activities implicated by plaintiffs' allegations could be expected to cause extremely grave damage to the national security of the United States," he claimed.

"Disclosing or confirming further details about these activities could seriously undermine an important tool—metadata collection and analysis—for tracking possible terrorist plots," Clapper continued, and by providing details of the methods used, help "foreign adversaries evade detection."

The affidavits reveal that warrantless surveillance of all US telecommunications was first authorized by President George W. Bush on October 4, 2001, citing as the pretext the 9/11 terrorist attacks, in which the role of US government agencies remains unexamined and highly suspect.

The cases were filed by Carolyn Jewel on behalf of herself and other AT&T customers, and Virginia Shubert, on behalf of herself and other Verizon customers. They have received legal and financial support from the Electronic Freedom Foundation (EFF), a group opposed to the police state methods of the US military/intelligence apparatus.

Cindy Cohn, legal director of the EFF, denounced the Clapper affidavits as an affront to common sense. "The American people know they're being surveilled," she said. "The government is trying to reset the clock in order to avoid an open judicial determination about whether that surveillance is legal."

The legal maneuvers are combined with a political

counteroffensive. In appearances Sunday on television talk shows, both Democratic and Republican congressmen and members of the White House panel on the NSA denounced Snowden and called for his arrest and prosecution, in some cases for treason.

Republican Congressman Mike Rogers, chairman of the House Intelligence Committee, hailed the report of the White House panel as a vindication of the NSA. “Basically what they said was, this information is a vital part of our counterterrorism effort to keep Americans safe,” he said, rejecting suggestions that the panel’s mild criticism of some spy activities was “devastating to the NSA.”

Speaking on the ABC program “This Week,” Rogers claimed that Snowden had committed treason by offering to assist the Brazilian government in uncovering NSA spying against its leadership. “He has contacted a foreign country and said, I will sell you classified information for something of value,” Rogers declared. “That’s what we call a traitor in this country.”

Just as rabid were the comments of Peter King, chairman of the House Committee on Homeland Security, who told the NBC program “Meet the Press” that the Obama panel had found “there were no abuses by the NSA.” King added, “I think Edward Snowden is a defector and a traitor.”

The comments of leading Democrats were more restrained in their language but even more politically significant, demonstrating a broad bipartisan consensus on covering up for the unconstitutional spying by the NSA.

Senator Mark Udall of Colorado, a supposed “critic” of the NSA, praised the White House panel for its alleged “important reforms.” In a revealing remark, he explained why such “reforms” were necessary: “Because we have got to rebuild the American people’s trust in our intelligence community...”

Asked directly about whether he thought Snowden should be prosecuted, he replied, “I do. I do. He broke his oath. He broke the law. Come home, make the case that somehow there was a higher purpose here, but Edward Snowden ought to come back to the United States.”

Democratic Senator Patrick Leahy of Vermont, chairman of the Judiciary Committee and a self-proclaimed defender of civil liberties, criticized the NSA from the right during an appearance on “Meet the Press.” Referring to Snowden’s exposures, he said, “They did such a poor job at NSA that a subcontractor was able to steal all those secrets, and today, after spending millions of dollars, they still don’t know what was stolen.”

The two leading members of the White House panel also appeared on network television to reinforce the anti-Snowden campaign in Washington. Richard Clarke, a former White House counterterrorism adviser in both the Clinton and Bush administrations, said, “What Mr. Snowden did is treason, was high crimes, and there is nothing in what we say that justifies what he did.”

Michael Morell, former deputy director of the CIA, hailed NSA operatives as “patriots” and emphasized that the NSA was not a rogue agency. “It was doing exactly what its government asked it to do,” he said, following the directives of the executive branch, ratified by the judicial branch, and “overseen extensively by the intelligence committees of Congress.”

In a barefaced lie that was not disputed by his interviewer, Bob Schieffer, host of the CBS program “Face the Nation,” Morell declared, “NSA is not spying on Americans. I think that is a perception that some have out there. It is not—it is not—it is not focused on any single American.”

Snowden himself has condemned the presidential panel. In an e-mail exchange with the Brazilian Globo TV channel, he wrote Sunday that the panel of five members was handpicked by Obama to obtain a prearranged result.

“Their job wasn’t to protect privacy or deter abuses, it was to ‘restore public confidence’ in these spying activities,” he wrote. “Many of the recommendations they made are cosmetic changes.” Snowden’s comments were made public in a Sunday night broadcast on the television channel’s “Fantastico” program.

The Globo report cited further comments from Snowden denying that his revelations had caused any harm to the American people, who are among the victims of the NSA surveillance that Snowden has exposed. He told the network that US law currently makes no distinction between a whistleblower exposing illegal programs “and a spy secretly selling documents to terrorists.”

His real offense was to “embarrass” the US government, prompting a political response that makes a fair trial in the United States impossible, Snowden said.



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