

# Obama's NSA "reform" defends illegal spying

Bill Van Auken  
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The Obama White House is preparing a National Security Agency "reform" package that is aimed at legitimizing and institutionalizing the NSA's illegal domestic spying operations, while putting in place stringent security measures to prevent disclosures of its crimes such as those made by former contractor Edward Snowden.

President Barack Obama is set to present the so-called "reforms" in a speech he will deliver Friday at the US Justice Department. The measures he has embraced are selected from among those recommended to his administration last month by a hand-picked advisory panel dominated by former intelligence officials.

Even before Obama could make the speech, new revelations provided by Snowden have uncovered yet another sinister operation by the NSA. The latest exposure involves the agency's secret planting of software in almost 100,000 computers, enabling it to spy on their users even when the computers are not connected to the Internet. The program uses radio waves transmitted from tiny circuit boards and USB cards planted on the devices. The technology also provides the means for launching cyber-attacks.

"The radio frequency technology has helped solve one of the biggest problems facing American intelligence agencies for years: getting into computers that adversaries, and some American partners, have tried to make impervious to spying or cyberattack," wrote the *New York Times*, which broke the story. "In most cases, the radio frequency hardware must be physically inserted by a spy, a manufacturer or an unwitting user."

The NSA responded to the report by insisting that its activities were aimed only at "valid foreign intelligence targets," and the *Times* reported that it had not uncovered evidence of this spying technique being employed against domestic targets. Given previous disclosures from Snowden, however, there is every reason to suspect that

US citizens are being targeted.

Among the foreign targets disclosed were, in addition to the Chinese and Russian military, Mexico's police, the governments of India, Saudi Arabia and Pakistan, and European Union trade agencies. This last target—like earlier disclosures of Internet spying on the EU, the Brazilian oil giant Petrobras, French corporations and other economic entities—points to Washington's use of the intelligence agency to promote the profit interests of US-based corporate and financial firms at the expense of their overseas rivals.

A strong indication that no substantive changes in NSA domestic and international spying are in the works came Tuesday from Obama's advisory panel, formally known as the Review Group on Intelligence and Communications Technology, during testimony given by its five members to the US Senate Judiciary Committee.

In an opening statement, Cass Sunstein, a Harvard Law School professor who is married to the US ambassador to the United Nations, Samantha Power, stressed that the focus of the five-member panel had been not defending democratic rights or upholding the US Constitution, but rather "maintaining the ability of the intelligence community to do what it needs to do." He emphasized that "not one of the 46 recommendations in our report would compromise or jeopardize that ability in any way."

All of the panel members declared their agreement with an opinion piece published by one of their number, Michael Morell, who served previously as deputy director and acting director of the CIA. Morell asserted in his column that the panel had no intention of proposing an end to the NSA's dragnet collection of so-called metadata on virtually every telephone call, email, text message, and Internet search made both by US citizens and hundreds of millions of people abroad. The five concurred that this program—which is conducted in flagrant violation of the core constitutional protection against unreasonable

searches and seizures—must “remain a tool of our government.”

Morell told the Judiciary Committee that, while the massive data collection had played no role in detecting or preventing a single terrorist plot, “It only has to be successful once.”

Even from the paltry recommendations made by the panel, which, in addition to Morell, includes Richard Clarke, a longtime White House counter-terrorism advisor, and three establishment law professors, the Obama administration is preparing to reject all those that impinge in the slightest on the illegal spying operations of the NSA and other intelligence agencies.

The White House has already rejected the recommendation that the NSA’s cyber warfare unit be hived off to the Pentagon, and the NSA as a whole be placed under civilian leadership.

The only policy changes that it appears to be contemplating is a proposal that the massive telephone data be stored by the telephone and Internet service providers rather than the agency itself (which the companies are strongly opposing because of costs and legal exposure) and that a toothless “privacy advocate” be attached to the secret Foreign Intelligence Surveillance (FISA) Court, which serves as a rubber stamp for NSA, CIA, and FBI spying operations.

This second proposal drew extraordinary fire from the US federal judicial system in the form of a sharply worded letter from Judge John Bates, who last July was named by Supreme Court Chief Justice John Roberts as director of the Administrative Office of the United States Courts. Before that, Bates had been the presiding judge on the secret FISA court. Prior to his appointment to the federal bench, Bates’s career included a stint in the 1990s as a deputy independent counsel in Kenneth Starr’s Whitewater witch-hunt and impeachment drive against Clinton.

Bates’s letter, directed to the Democratic chair of the Senate Intelligence Committee Diane Feinstein, called the appointment of a “privacy advocate” both “unnecessary” and “counterproductive,” stressing that such an office would be a useless appendage, barred from communicating with proposed targets of surveillance or carrying out any independent investigation.

Bates protested that other proposed changes would “prove disruptive to the Courts’ ability to perform their duties,” which consist of providing pseudo-judicial cover to illegal spying by US intelligence agencies. He warned that requiring periodic court audits of “national security

letters” would “fundamentally transform the nature of the FISC to the detriment of its current responsibilities.” Some 300,000 national security letters have been issued by the FBI without judicial review since the passage of the USA Patriot Act in 2001, secretly ordering phone companies, banks, and other firms and agencies to turn over personal records.

Further ensuring that any proposals accepted by Obama will merely serve the purpose of a public relations whitewash of the NSA’s illegal spying, the administration has stressed that to be enacted, they must be approved by Congress. Given the bipartisan opposition within both the House and Senate, and particularly by the chairs and ranking members of both chambers’ Intelligence Committees, such legislation is likely to die before ever reaching the president’s desk.

The only measure that is likely to be enacted is a proposal to institute strict new vetting and security policies designed to prevent anyone from following in the footsteps of Edward Snowden.

The recommendations include not only a highly differentiated system of security clearances, walling off as many as possible from access to top secret data, but also a requirement that the vetting of those granted clearances be handled either by the US government itself or by a non-profit agency. During the massive expansion of the US national security apparatus after 2001, this task was contracted out to private firms.

The report also calls for “continuous monitoring” of employees and contractors, including attention to changes in credit ratings and arrests as well as pushing employees to inform upon each other.

The entire process, billed by Obama as a “national conversation” on data collection and privacy, has only underscored that no branch of the US government—executive, legislative or judicial—and no section of the US ruling establishment has any serious commitment to democratic and constitutional rights. All have integrated themselves into the defense of a totalitarian intelligence apparatus dedicated to relentless spying on the people of the United States and the world.



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