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## **Bush's Secret Surveillance State**

**by Anthony Gregory**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

— The Fourth Amendment

“[B]y the way, any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so. It's important for our fellow citizens to understand, when you think Patriot Act, constitutional guarantees are in place when it comes to doing what is necessary to protect our homeland, because we value the Constitution.”

— President George W. Bush, April 20, 2004

The Bush administration appears to consider public knowledge of its illegal surveillance of American citizens to be more dangerous than the surveillance itself.

On December 16, 2005, the New York Times reported that [President Bush has been secretly ordering the National Security Agency](#) to spy on American citizens within the United States without first getting judicially issued warrants. Asked repeatedly about the controversy during an [interview with Jim Lehrer](#) on the day the story broke, Bush evaded the questions. He responded, “We don't talk about sources and methods. Don't talk about ongoing intelligence operations. I know there's speculation. But it's important for the American people to understand that we will do — or I will use my powers to protect us, and I will do so under the law, and that's important for our citizens to understand.”

The same day, Secretary of State Condoleezza Rice also [defended](#) Bush's vague and secret “powers to protect us,” insisting that Bush “has always said that he will do everything

that he can to protect the American people from the kind of attack that we experienced on September 11, but within the law and with due regard to the civil liberties of Americans.”

[On December 17](#) Bush conceded that he had in fact ordered the secret spying, saying that it made it “more likely that killers like these 9/11 hijackers will be identified and located in time.” He described the program as “critical to saving American lives.”

By December 19, the administration appeared visibly emboldened on the issue. Attorney General Alberto Gonzales went so far as to say that the president had the “[inherent authority](#)” to perform such secret, warrantless wiretaps of people in the United States. The president, [on the same day](#), vowed that the program would resume “for so long as the nation faces the continuing threat of an enemy that wants to kill American citizens.” Even more remarkably, he called the disclosure of the program a “shameful act” and said, “The fact that we’re discussing this program is helping the enemy.”

So in just a few days, the administration had gone from refusing to discuss the program to outright defending it, all the while suggesting that the Constitution and [Congress’s authorization of power to the president immediately following the 9/11 attacks](#) together give the executive branch any number of unchecked, secretive powers over the American people — and that all the president has to do is claim that his actions are for “national security” and we should all shut up about them lest we assist the terrorists.

Just this last Saturday, December 24, the New York Times reported [that the administration gathered much more information](#) through the NSA program than it had so far admitted, including a wide range of data to perform “pattern analysis,” the profiling for certain calling behaviors — a process that reportedly exposed [the entire U.S. telecommunications system, including e-mail](#), to surveillance — and that the program monitored both domestic and international calls. This news of domestic spying comes less than a week after one [of the administration’s top intelligence officials said](#) at a White House briefing, “I can assure you, by the physics of the intercept, by how we actually conduct our activities, that one end of these communications are always outside the United States.”

The secrecy and dishonesty surrounding this program are especially troubling. What has the administration got to hide? For a full year, the New York Times [kept the story secret](#) at the request of the administration. Bush even invited the newspaper’s publisher and executive editor into the Oval Office on December 6 in one last desperate attempt to dissuade them from releasing the story, [according to Newsweek](#).

Will the president actually get away with such blatant disregard for the Bill of Rights, the balance of powers, and the right of the American people to know what their government is doing to them and in their behalf?

So far, the main argument to sustain the secrecy of the surveillance state seems rather circular. We can trust the government to do what is right because it tells us it is doing what is right. On December 17, the president himself defended the powers, claiming that while in the United States, two of the 9/11 terrorists, Nawaf Alhazmi and Khalid

Almihdhar, had contacted suspected members of al-Qaeda, but that U.S. intelligence, constrained by the traditional checks and balances, “didn’t know they were here until it was too late.” However, [according to a 2002 report](#) by the House and Senate intelligence committees, the problem was not a lack of power but rather bureaucratic bumbling: “NSA and the FBI did not fully coordinate their efforts, and, as a result, the opportunity to determine Almihdhar’s presence in the United States was lost.” (Incidentally, it was also [bureaucratic incompetence, not a lack of power, that impeded the FBI investigation of Zacarias Moussaoui](#); the feds relied foolishly on the FISA process, when an old-fashioned search warrant would probably have been attainable.)

The NSA spying program is especially egregious, given that the administration circumvented the already lower standards for surveillance set forth by FISA and unleashed an arm of the military to spy on Americans’ communications. But it is only the newest blunt tool of the secretive surveillance state to come to light.

Since 9/11, the FBI’s powers to issue National Security Letters and to coerce institutions to reveal customers’ personal and financial information have been expanded, notably by the USA PATRIOT Act passed in October 2001. Recipients of these letters must comply with them without telling anyone, including the customers whose personal information is being revealed. By late in 2005, the [FBI was issuing about 30,000 of them annually](#).

In August 2005, [the FBI admitted](#) to secretly collecting thousands of files on nonviolent activist and anti-war groups, including the ACLU. The [newest released files](#) include documents on the Catholic Worker Movement, an anti-poverty organization which the documentation notes has a “semi-communistic ideology.”

Just this month, [NBC News](#) obtained a secret 400-page database maintained by the Pentagon that contained information on anti-war gatherings and demonstrations within the United States, including a meeting of anti-war Quakers in Florida that the database describes as a “suspicious incident” and a “threat.”

The real threat to American liberty, the defense of which the administration still insists is the purpose of the war on terror, is a federal government without strict checks and limits on its power, whose executives feel comfortable using the military to spy on peaceful Americans, while telling the media not to report their secret and unconstitutional surveillance activities. The use of a military intelligence agency against the American people, with or without judicial oversight, is far more a “shameful act” than reporting such activities to the American people, who have a right to know.

A government that spies on its own people must be in turn be watched even more carefully by those people. And a government that does not trust the people to know about its spying cannot itself be trusted.

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