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Finally, Whistleblowers Report from the Inside on the NSA Program

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One month after the NSA's warrantless wiretapping program was disclosed by the *New York Times* in December 2005, we sued to put an end to it. In the two and a half years since then, an ACLU suit (brought on the same day as ours) was essentially dismissed on technicalities. And our lawsuit, *Center for Constitutional Rights v. Bush*, has seen over 700 pages of filings -- and not one single judicial ruling.

Disappointment from the courts is never a surprise. But what *has* been surprising to me is that no one has come forward from within the ranks of the intelligence community to report on the illegal activities the President and former NSA director and current CIA chief Michael Hayden have admitted they were carrying out. While the government has spent years arguing that even federal judges couldn't scrutinize the NSA's actions because that could constitute a security risk, I've asked myself: The NSA has 40,000 employees. Thousands of them have seen the sort of things the government has said it won't reveal to a federal judge. So where are all the whistleblowers?

Well, finally, thanks to [Brian Ross at ABC News](#) and surveillance expert Jim Bamford (see his [new book on the NSA Program here](#)), at long last we have a report from the inside on what the NSA was actually eavesdropping on. And the facts are almost as bad as we expected.

Let me step back a bit for some context: One lingering question with the NSA program has been whether it was focused on a few particular suspects or was a huge dragnet that swept in everyone and anyone. The administration said it was the former: that they only listened to calls where one end was outside the U.S., and that they only listened when one party on the line had some link to terrorism. True? Not at all:

Adrienne Kinne, a 31-year old US Army Reserves Arab linguist assigned to a special military program at the NSA's Back Hall at Fort Gordon from November 2001 to 2003 ... described the contents of the calls as "personal, private things with Americans who are not in any way, shape or form associated with anything to do with terrorism." ... She said US military officers, American journalists and American aid workers were routinely intercepted and "collected on" as they called their offices or homes in the United States.

Journalists and aid workers! (According to Kinne, the Red Cross, active here at Guantanamo where I am currently visiting clients, was one target.) We told you so. One of the things I said two and a half years ago [in a post here on Huffington](#) was that

it may be the case that the administration is engaging in surveillance that even conservative FISA judges would never approve of: conversations of attorneys with their clients, or of journalists with their sources. This kind of surveillance would help silence two indispensable voices of dissent, both essential to a working democracy: civil rights attorneys and the press.

Recall that the FISA Court (that I mention in the quotation above) was set up after Watergate to set limits on surveillance involving foreign parties for national security purposes. One of the mysteries of the NSA Program was why the administration simply didn't go to the FISA court for warrants to spy on their small group of targets. It had been incredibly friendly to Presidents over the years, rejecting only 5 of the 19000 applications it saw thru 2005. Now we know one reason.

I also speculated in [the same March 2006 post](#) that perhaps they evaded the FISA court because the NSA Program involved "data mining" - that is, the phone companies allowing the NSA direct access into the fiberoptic telecommunications backbone, allowing them to scan every call and email at will. If this was the real NSA Program, then President Bush was lying when he told the nation the program was a limited, targeted program focused on foreign terrorists in December 2005. Instead, "essentially everyone in the country would have been targeted. Such a program would be a long step on the way to a total surveillance society like East Germany, where the government kept files on every citizen. It would chill untold amounts of political activity, and of course it would be so broad that it could never be approved by a court under the Fourth Amendment."

Again, today's story reveals that just this sort of thing may have been happening. The two whistleblowers who did come forward in 2006, both phone company employees, each said that the NSA had been given access to massive switching stations in Verizon and AT&T's facilities. In today's story, another NSA spook, David Murfee Faulk, says that staffers used to listen to private calls between sexual partners, telling each other things like "hey, check this out, there's some good phone sex ... pull up this call, it's really funny." On first blush, that implies not only that the NSA was using its unrestrained warrantless surveillance powers to entertain themselves, but also that NSA eavesdroppers could switch between phone calls ("pull up this call") as if they were telephone operators - essentially, that they had open access to everything.

Of course, this is not the first time in history that warrantless wiretapping has resulted in wasted efforts. The Church Committee found as much when it examined the history of President Johnson and Nixon's spying on the civil rights and antiwar movements. As one of today's whistleblowers, Adrienne Kinne, put it, NSA's broad-brush surveillance wasted time

listening to innocent Americans, instead of looking for the terrorist needle in the haystack. ... "By casting the net so wide and continuing to collect on Americans and aid organizations, it's almost like they're making the haystack bigger and it's harder to find that piece of information that might actually be useful to somebody," she said. "You're actually hurting our ability to effectively protect our national security."

Although we often hear right-wing blowhards complain that "federal judges and wiretap laws [are] a drag on law enforcement's efficiency," and that "that eliminating judicial oversight entirely was the best way to defend the country," that's simply not the case. As [we've said for years](#):

In fact, the opposite is true: judicial oversight of wiretapping results in more efficient law enforcement because the probable cause requirement focuses law enforcement's efforts on threats that are real. For 200-plus years having judges review the evidence creating cause for suspicion before issuing search warrants is a system that has worked to ensure not only that the innocent don't get searched, but also that law enforcement doesn't waste its time with irrational profiling.

Amen (if I do say so myself!). Despite this, everyone running for President this year voted for the atrocious "FISA Amendments Act," which takes us far away from the model of real judicial oversight of wiretapping.

The real bombshell waiting to detonate is this: if the NSA was willing illegally eavesdrop on private conversations of journalists and the Red Cross, would they do the same with lawyers? In 2006, William Haynes, the defense department's general counsel, was asked by John Conyers' House committee whether attorney-client conversations were swept up in the NSA's dragnet, and [Haynes specifically said](#) that attorney-client calls "would not be categorically excluded from interception." One wonders: how long before we hear that the real reason this administration - led by a pathetic combination of Richard Nixon and Herbert Hoover, now cementing his legacy as the worst President in American history - decided to get around the spying-friendly FISA court was in order to listen to calls that even the most conservative of federal judges would never countenance them listening to? And thereby make it harder for lawyers like us to sue them over all their other illegal activities for the last 8 years?

--October 9, 2008

Guantanamo Bay Naval Station

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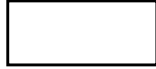
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NEW

Thank you for your insightful article. Why is it Americans don't value their fourth amendment rights?

This issue of wiretapping is barely mentioned by our MSM. Its appalling to me that Americans cede so much power to the president in name of national security.

Keep up the good work, some of us are concerned with this erosion of our rights.

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If it walks like a Duck and it Quacks like a Duck...Yep it's a Republican! This is something that the Bush administration has been very keen on...the fact that they are breaking all kinds of Constitutional laws matters not to them. They are cowboys and they view this country as the wild, wild west. These are scary times we live in, not because of the "terrorist" nope, but because we, the American people, are sitting back while our rights go bye, bye!

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Firing squads for all NSA participants.... screenplay I'm working on.

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Law #1 of bureaucracy is "Whatever can be abused, will be abused," which especially holds true for this administration. Why should anyone be surprised?

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We may not be surprised; but we should be outraged. One of the first acts of the next POTUS should be to undo all the legally questionable things the current POTUS has put in place and restore the balance of the three branches of government.

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