

Bowing To The Police State

Is Congress aiding and abetting the creation of a police state?

By [Ray McGovern](#)

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Is Congress aiding and abetting the creation of a police state? Recently, the chairman of the House Intelligence Committee, Pete Hoekstra, R-Mich., helped to give the CIA and NSA unprecedented police powers. By inserting a provision in the FY07 Intelligence Authorization Act, Hoekstra has undermined the existing statutory limits on involvement in domestic law enforcement. This comes after [revelations](#) in January of direct NSA involvement with the Baltimore police in order to “protect” the NSA Headquarters from Quaker protesters.

Add to this, the disquieting news that the White House has been barraging the CIA with totally improper questions about the political affiliation of some of its senior intelligence officers, the ever widening use of polygraph examinations, and the FBI’s admission that it acquires phone records of broadcast and print media to investigate leaks at the CIA. I, for one, am reminded of my service in the police state of the U.S.S.R., where there were no First or Fourth Amendments.

Like the proverbial frog in slowly boiling water, we have become inured to what goes on in the name of national security. Recent disclosures about increased government surveillance and illegal activities would be shocking, were it not for the prevailing outrage-fatigue brought on by a long train of abuses. But the heads of the civilian, democratically elected institutions that are supposed to be our bulwark against an encroaching police state, the ones who stand to lose their own power as well as their rights and the rights of all citizens, aren’t interested in reining in the power of the intelligence establishment. To the contrary, Rep. Hoekstra and his counterpart at the Senate, Pat Roberts, R.-Kan., are running the risk of whiplash as they pivot to look the other way.

James Bamford, one of the best observers of the inner workings of U.S. intelligence, warned recently that Congress has lost control of the intelligence community. “You can’t get any oversight or checks and balances,” he said. “Congress is protecting the White House, and the White House can do whatever it wants.”

Consider the following nuggets drawn from Sunday’s *Washington Post* [article](#) by R. Jeffrey Smith about the firing of senior CIA analyst Mary McCarthy. Apparently McCarthy learned that at least one “senior agency official” lied to Congress about agency policy and practice with regard to torturing detainees during interrogations.

According to Smith’s article, one internal CIA study completed in 2004 concluded that CIA interrogation policies and techniques violated international law. This is said to have come as something of a shock to agency interrogators who had been led by the Justice Department to believe that international conventions against torture did not apply to interrogations of foreigners outside of the United States. McCarthy reportedly was also chagrined to learn

that the CIA's general counsel had secured a secret Justice Department opinion in 2004 authorizing the creation of a category of "ghost detainees," prisoners transported abroad, mostly from Iraq, for secret interrogation—without notification of the Red Cross, as required by the Geneva Convention.

No problem, said senior CIA officials. We'll just lie to the committee leaders about the torture; they will wink and be grateful we did. The lying came during discussion of draft legislation aimed at preventing torture. As deputy inspector general, McCarthy became aware that CIA officials had misled the chairmen and ranking members of the congressional "oversight" committees on multiple occasions. Neither of the committees seemed interested in taking a serious look at the torture issue.

It will be highly interesting to see what the intrepid chairmen of the House and Senate intelligence committees do, if anything, to followup on Smith's report that "a senior CIA official" meeting with Senate staff last June lied about the agency's interrogation practices. Or that a "senior agency official" failed to provide a full account of CIA's policy for treating detainees at a closed hearing of the House intelligence committee in Feb. 2005 under questioning by Rep. Jane Harman, the ranking Democrat. Will Roberts and Hoekstra hold those agency officials accountable, or will they let the matter die—like some of the detainees subjected to "enhanced" interrogation techniques to which the chairmen have so far turned a blind eye?

Hoekstra is a master at Catch-22. On the one hand Hoekstra insists that those in intelligence who have information on illegal or improper behavior report it to his intelligence committee; then he refuses to let them in the door. Russell Tice, a former NSA employee, has been trying since last December to give Hoekstra a first-hand account of illegal activities at the NSA. He has rebuffed Tice, with the lame explanation that the NSA will not clear Hoekstra or any of his committee members for the highly classified programs about which Tice wants to report. With the door locked to the intelligence committees, Tice has turned to the Senate Armed Services Committee and said that he will meet soon with committee staff in closed session to tell of "probable unlawful and unconstitutional acts" at the NSA while Gen. Michael Hayden was in charge.

Amid the recent revelations of secret CIA-run prisons abroad, torture and illegal eavesdropping, Hoekstra has chosen to express outrage—but not at the prisons, torture or eavesdropping. Rather, the House Intelligence Committee chairman is outraged that information on these abuses has found its way onto the public square. Hoekstra has turned his full attention to pursuing those who leak such information—never mind that is the activities disclosed, not the leaks, that are the real outrage.

The executive branch is "walking all over the Congress at the moment," complained Sen. Arlen Specter, R.-Pa., last week to the Senate Judiciary Committee which he chairs. Unlike Roberts and Hoekstra, Specter seems genuinely troubled at the president's disdain for the separation of powers and particularly his end-run around the Foreign Intelligence Surveillance Act of 1978, which prohibits eavesdropping on American citizens without a court warrant.

But when Specter meets a stonewall, he caves. He may ask telephone company CEOs why they surrendered records to the government, but—illegal eavesdropping or no—Specter will likely remain a spectator, as Pat Roberts greases the skids for Big Brother Gen. Michael

Hayden, architect and implementer of eavesdropping on Americans in violation of FISA, to become the next director of the CIA. Hayden's disingenuousness in his testimony before the intelligence committees has been clear, but the committee chairmen are as much to blame for winking at it.

Meanwhile, the Justice Department has told Rep. Maurice Hinchey, D.-N.Y., that it is stopping its months-long investigation into who approved the NSA's eavesdropping-on-American-citizens initiative (now euphemistically dubbed "the terrorist surveillance program"). Justice explained to Hinchey that the NSA would not grant Justice department investigators the appropriate security clearances to investigate the NSA program. Kafka would smirk.

Rep. Hoekstra's speaks of "vigorous oversight" of the NSA, but the evidence of that is lacking. Late last year the current head of the NSA, Army Lt. Gen. Keith Alexander, deliberately misled House intelligence committee member Rush Holt, D-N.J., on the eavesdropping program. On Dec. 6, Holt, a former State Department intelligence specialist, called on Alexander and NSA lawyers to discuss protecting Americans' privacy. They all assured Holt that the agency singled out Americans for eavesdropping only after warrants had been obtained from the FISA court. Later that month, when disclosures in *The New York Times* made it clear that Alexander had lied to a member of his committee, Hoekstra merely suggested that Holt write a letter to Alexander to complain. The inescapable message to Alexander? Fear not: Hoekstra the fox is watching the hen house.

When the writers of the Constitution envisioned a separation of powers to ensure checks and balances in our government, they were relying on the leaders of those branches to fight to maintain their own power within the system. Fresh from the struggle against King George, they could not have predicted that some of our leaders would voluntarily sign away their own rights to another George who would be king.

Ray McGovern works with Tell the Word, the publishing arm of the Church of the Saviour in Washington, DC. He was a CIA analyst for 27 years and is now on the Steering Group of Veteran Intelligence Professionals for Sanity (VIPS).

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