

Democracy or Police State?

New Lawsuit Targets Bush, Cheney, NSA over Illegal Spying

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On September 16, Antifascist Calling [reported](#) on moves by the Department of Justice to seek blanket immunity for AT&T under provisions of the disgraceful FISA Amendments Act (FAA).

If approved by Judge Vaughn Walker, the presiding magistrate hearing the landmark [Hepting v. AT&T](#) lawsuit in federal district court in San Francisco, the giant telecommunications corporation and Bush crime family partner would walk away scott free.

The suit, brought by the Electronic Frontier Foundation ([EFF](#)) on behalf of AT&T customers caught up in the state's illegal internet and telephone driftnet surveillance, is challenging unconstitutional spying on U.S. citizens and legal residents.

The shocking extent of the "public-private partnership" in political repression was first revealed in depth when former AT&T technician Mark Klein filed an [affidavit](#) in support of EFF's contention that AT&T had systematically violated their customers' right to privacy.

As *Antifascist Calling* has previously reported on many occasions, the telecommunications giant had constructed a secret room (SG3 Secure Room, room number 641A) for the exclusive use of the National Security Agency's spying operations at AT&T's Folsom St. office.

On Saturday, EFF [reported](#) that the government "started the formal process for retroactive immunity for the telecommunications companies sued by EFF and others for their involvement in the warrantless surveillance of millions of ordinary Americans." That hearing is set for December 2, 2008 in San Francisco.

The state filed a secret "certification" by U.S. Attorney General Michael Mukasey with the court along with a [public submission](#) of its claim of limitless executive power "during a time of war."

However in a bold, preemptive move on Thursday, EFF filed a new lawsuit against the government. That suit, [Jewel v. NSA](#), targets the National Security Agency, President Bush, Vice President Dick Cheney, Cheney's sinister chief of staff, David Addington, and former U.S. Attorney General Alberto Gonzales.

Filed "on behalf of AT&T customers," the civil rights organization has opened a new front against the government and their corporate partners. EFF [declared](#):

The lawsuit, Jewel v. NSA, is aimed at ending the NSA's dragnet surveillance of millions of

ordinary Americans and holding accountable the government officials who illegally authorized it. Evidence in the case includes undisputed documents provided by former AT&T telecommunications technician Mark Klein showing AT&T has routed copies of Internet traffic to a secret room in San Francisco controlled by the NSA. ("EFF Sues NSA, President Bush and Vice President Cheney to Stop Illegal Surveillance," Electronic Frontier Foundation, Press Release, September 18, 2008)

As in *Hepting v. AT&T*, the identical evidence of gross malfeasance on the part of well-heeled corporate lawbreakers who acted in concert with unaccountable secret state agencies, is central to *Jewel v. NSA*.

These covert intelligence operations arose as the result of secret Department of Justice memorandums written by the Office of Legal Counsel (OLC). According to an unsigned and undated [memo](#) released by the OLC, the Justice Department claims that President Bush has an "inherent right" to carry out "communications intelligence targeted at the enemy." Indeed, as the extent of these illegal programs have revealed, the "enemy" is none other than the American people themselves!

A January 19, 2006 Justice Department [White Paper](#), *Legal Authority Supporting the Activities of the NSA Described by President Bush*, states:

The NSA's activities are supported by the President's well-recognized inherent constitutional authority as Commander in Chief and sole organ for the Nation in foreign affairs to conduct warrantless surveillance of enemy forces for intelligence purposes to detect and disrupt armed attacks on the United States.

Under color of the dubious theory of the "unitary executive," propounded by ultra-rightist outfits such as the [Federalist Society](#), Americans' Fourth Amendment rights are flagrantly-and illegally-violated on a daily basis by the Bush administration. Such specious assertions represent nothing less than an open declaration of war on our rights and the framework for a limitless presidential dictatorship.

Senior EFF Staff Attorney Kevin Bankston commenting on the intent of *Jewel v. NSA* averred,

"In addition to suing AT&T, we've now opened a second front in the battle to stop the NSA's illegal surveillance of millions of ordinary Americans and hold personally responsible those who authorized or participated in the spying program. For years, the NSA has been engaged in a massive and massively illegal fishing expedition through AT&T's domestic networks and databases of customer records. Our goal in this new case against the government, as in our case against AT&T, is to dismantle this dragnet surveillance program as soon as possible."

By targeting the individuals responsible for these illegal programs, EFF intends to bring these felons to justice by holding them accountable for the destruction of our constitutional rights. The Fourth Amendment states in plain and simple language:

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.

But in a perverse interpretation of the constitutional separation of powers, Bushist minions

such as torture-enabler John C. Yoo, formerly an attorney with the DoJ's Office of Legal Counsel and currently a tenured professor at the University of California's Boalt Hall Law School, stated publicly that the President, in his role as "Commander-in-Chief," has the authority to bypass, indeed subvert, laws passed by Congress.

Under this novel interpretation of the Constitution, the President has the right under the theory of the "unitary executive" to grab unlimited executive power to conduct foreign and domestic policy as he sees fit.

As limited as the Watergate-era Foreign Intelligence Surveillance Act (FISA) was, it represented an attempt by Congress after Nixon's resignation to curtail unchecked Executive branch surveillance of domestic dissidents under color of "national security." Indeed, Nixon's blatant and illegal surveillance of his political opponents was included in Article 2 of the [impeachment articles](#) against him.

In the view of miscreants such as Cheney, Addington and Yoo, congressional limitations on the president's power are "unconstitutional" maneuvers meant to strip the Chief Executive of his rightful power to act as he-and the corporatists setting policy-see fit. Under their reading, the Executive, particularly in his role as "Commander-in-Chief," must interpret laws on an equal footing with the courts, if he is to perform his "wartime" function. However, no such provision exists in the U.S. Constitution and in fact, the "unitary executive" is a fantasy.

Since 1803, U.S. constitutional tradition has recognized that the courts wield what Supreme Court Chief Justice John Marshall called "judicial supremacy," that is, the court is the final arbiter of *what is and what is not the law*. Bushist ideologues stand this principle on its head and transform a society based on law into a "managed democracy" predicated on the whims of corporations and the men who wield executive power in their "unitary" interests.

If such flagrant violations of democratic and republican norms go unchecked—either by the coequal branches of government or *salutary direct action by the people themselves*, the rights of citizens to determine the fundamental nature of society is replaced by a *Führerprinzip*, that is to say, a "leader principle" rooted in an antidemocratic hierarchy of warlords that resemble the military structures of the Nazi Party. In other words, a high-tech, panoptic police state.

Since September 11, 2001, the United States Government has launched systematic assaults against the constitutional rights of American citizens and legal residents. As the illegal aggression against the people of Iraq has revealed in all its ghastly horror, the "war on terror" is a *war of terror* against anyone who would challenge U.S. imperialism's claim to be undisputed "masters of the universe."

From warrantless wiretapping to torture, from preemptive wars of aggression and conquest to the plunder of the environment on behalf of corporate "friends," and from indefinite detention of "enemy combatants" to secretive plans for martial law, the Bush administration and their congressional enablers in both capitalist political parties demonstrate on a daily basis that the greatest threat to the American people comes, not from foreign terrorists or Islamic jihadists, but from neofascist fundamentalists *here at home*.

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