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Intensified Warrantless Spying in America

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Newly released ACLU Justice Department documents and Kurt Eichenwald's just published book titled "500 Days: Secrets and Lies in the Terror Wars" provide new information on lawless spying in America.

Eichenwald described "the most dramatic expansion of NSA's power and authority in the agency's 49 year history." It was devised days after 9/11, he said. In fact, it began much earlier.
In December 2000, the NSA said:

> "The volumes and routing of data make finding and processing nuggets of intelligence information more difficult. To perform both its offensive and defensive mission, NSA must 'live on the network.' "
>
> Its mission "demand(s) a powerful, permanent presence on a global telecommunications network that will host the 'protected' communications of Americans as well as the targeted communications of adversaries."

Who knows when this began. Bet on long before 9/11. That incident made it easier. Doing so disregards Foreign Intelligence Surveillance Act (FISA) provisions. International and domestic law considerations never compromised America's imperium or how it operates domestically.

Extrajudicially, Bush officials unilaterally gave NSA power to compile millions of emails and phone calls into a database for analysis.

To this day, Obama officials claim no court or judge can challenge them. What they say goes. Governing this way is called tyranny. Imperial arrogance goes its own way. Legal considerations are ignored.

Bush administration officials went all out to keep information on their program secret. At first they succeeded. The New York Times knew about but stayed silent.

In December 2005, that changed. Times writers James Risen and Eric Lichtblau headlined "Bush Lets US Spy on Callers Without Courts," saying: Post-9/11, lawless spying became policy. In 2002, Bush authorized it by presidential order. Big Brother watches everyone it sets its sights on. So-called threats were invented to justify it.

Today, it's more intensive than ever. After its publication, The Times article went viral. Congressional investigations and lawsuits followed. Two will be argued in weeks. The Electronic Frontier Foundation (EFF) has its day scheduled shortly.

It's presenting mountains of public information, Washington's own admissions, and evidence

from AT&T whistleblower Mark Klein. He revealed blueprints and photographs of NSA's secret room at the company's San Francisco facility.

Three other whistleblowers submitted affidavits. They explain how NSA lawlessly spied on millions of Americans post-9/11. Nonetheless, Obama officials filed a Northern District of California court motion invoking its "state secrets" privilege.

In other words, they claim, it doesn't matter if spying is illegal. Claiming national security considerations justifies circumventing rule of law provisions.

The Supreme Court will hear an ACLU suit this term. Journalists, lawyers, and human rights activists are involved. They sued after the 2008 FISA Amendments Act (FAA) passed. It gutted Fourth Amendment protections and authorized warrantless spying on US citizens abroad.

Plaintiffs deal with all kinds of people globally as part of their work. Some America calls terrorists whether or not justified. Most often, it's not. Claimants call warrantless spying unconstitutional. It compromises their work and threatens them.

Obama officials want the case dismissed on "standing" grounds. Wrongfully, they claim plaintiffs can't prove they're monitored or harmed. According to the ACLU:

> "The government theory of standing would render real injuries nonjusticiable and insulate the government's surveillance activities from meaningful judicial review."

The same holds with regard to "state secrets" in EFF's suit. Obama officials claim they trump rule of law accountability. Incontrovertible evidence doesn't matter. Based on their say alone,they claim a divine right to operate unconstitutionally ad nauseam.

They want Supreme Court approval. Most people have no idea what's going on. Unless the High Court slaps them down, they and succeeding administrations will operate unconstitutionally without interference.

On September 27, the ACLU headlined "New Justice Department Documents Show Huge Increase in Warrantless Electronic Surveillance," saying:
Newly released documents show Washington operates unaccountably. Months of litigation were required to get them. They reveal a dramatic increase of "pen register" and "trap and trace" surveillance.

They're used to gather information from telephone, email, and other Internet communications. They're "powerfully invasive" tools. They covertly record incoming and outgoing numbers dialed. They're built into phone company call-routing hardware.

They're also used to collect email and instant messages, social network communications, and web sites visited. From 2009 – 2011, content obtained increased 60%.
Individuals whose phones were surveilled more than tripled. "In fact, more people were subjected to pen register and trap and trace surveillance in the past two years than in the entire previous decade."

Use of these tools increased exponentially. "The number of authorizations the Justice Department received to use (them) increased 361% from 2009 – 2011."

It reflects the latest example of skyrocketing domestic spying. In early 2012, The New York Times said cell phone carriers received 1.3 million demands for subscriber information in 2011 alone.

ACLU learned from public records that police departments nationally use cell phone location tracking.

Spying is the national pastime. Legal standards required are lower than for wiretaps and other content-collecting technology.

To wiretap phones, government officials must convince judges it has justifiable probable cause, and that this method is essential for investigatory purposes.

For pen register, certification only is needed. Courts are told information sought is relevant to an ongoing criminal investigation. As long as this simple procedure is followed, authorities can spy freely. Judicial authorization isn't required. It's little more than "ministerial in nature."

Authorities argue that obtaining so-call "non-content" information isn't invasive and doesn't violate privacy. It differs from "content" information, it's claimed. Saying so doesn't wash.
"This premise is false," said ACLU. It's often "extremely invasive." It reveals who people communicate with in real time as opposed to what's said or written.

It "paint(s) a vivid picture of the private details of your life." Social network contacts determine sexuality, for example. Other private information can also be obtained. Oversight is entirely lacking. What's gotten in what form isn't known.

To maintain some accountability, Congress requires the Attorney General to submit annual reports on Justice Department use of these tools. They must document:
(1) The period of interceptions authorized by each order. In addition, the number and duration of their extensions, if included, are required.

(2) Specific offenses for which each order was granted.

(3) The total number of investigations that involved orders.

(4) The total number of facilities (like phones) affected.

(5) The district applying for and person authorizing each order.

So far, from 2000 – 2008, Bush and Obama officials failed to submit required reports. Instead they delivered "document dumps." They covered the period 2005 – 2009.
Even then, information disappears "into a congressional void." Time consuming FOIA requests managed to get it. Nothing so far was gotten for 2010 and 2011. FOIA requests are pending. After ACLU got no response, it sued.

Congress managed to get the 2010 and 2011 reports. It hasn't so far gone public about lawless spying. "Rather than publishing the reports online, they appear to have filed them away in an office somewhere on Capitol Hill."

"This is unacceptable." Transparency is vital. People need to know what's going on. That's how free and open societies are supposed to work. America falls woefully short.

Congressional representatives know it. They created required reporting procedures accordingly. Now they're complicit in coverup. It shouldn't require legal action to obtain what should be made available routinely.

Nothing prevents Congress from doing it. Information can easily be posted online. Even after ACLU obtained the reports, "much remains unknown about how the government" uses its surveillance tools.

ACLU has no idea how or to what extent they're used by other law enforcement agencies. Do the Secret Service, Immigration and Customs Enforcement (ICE), and/or state and local police have access?

What's known reveals only a small portion of what's likely ongoing. "Congress should pass a law improving the reporting requirements." In August, Jerrold Nadler (D. NY) introduced a measure to amend the 1986 Electronic Communications Privacy Act.

It reflects technology changes from then to now. One portion of his bill addresses all major problems with current reporting requirements. His measure expands reporting requirements for all federal, state and local law enforcement agencies.

It also shifts responsibility of compiling reports from the Attorney General to the Administrative Office of the United States Courts. They already complete the reporting requirements for government use of wiretaps. They post them online annually.

Nadler's bill authorizes meaningful oversight. It's badly needed. Lawless spying is out-of-control. Checking it is essential. Reforms are urgently needed.
It's critically important to protect privacy. It's also vital maintain open and transparent government. Current conditions are mirror opposite. They replicate how police states operate.

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His new book is titled "How Wall Street Fleeces America: Privatized Banking, Government Collusion and Class War"
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