

Mukasey Defends Bush Regime Spying, Domestic Military Operations

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By

Editor,

During an emotional speech at the Commonwealth Club in San Francisco on March 27, U.S. Attorney General Michael Mukasey asserted that the September 11 attacks could have been prevented “if the government had been able to wiretap a phone call from Afghanistan,” the [San Francisco Chronicle](#) reports.

As I [wrote](#) March 30, we know that Mukasey’s declaration was factually false, yet the USAG continues to claim that the government should be able to monitor communications from “terrorists,” without seeking permission from the Foreign Intelligence Surveillance Court (FISC) whose brief from Congress, under the 1978 Foreign Intelligence Surveillance Act (FISA), does precisely that.

In other words, Mukasey is either substantially ignorant of the law or is playing a mendacious game at the behest of his political masters, one that strips Americans of their constitutionally-guaranteed Fourth Amendment rights.

During a Senate Appropriations subcommittee hearing Thursday, [Mukasey](#) told sceptical senators “the one thing I got wrong was the geography, but other than that, it was spot on.”

The Bush administration continues to press Congress to expand the so-called Terrorist Surveillance Program by passing a new “Protect America Act” which expired February 16.

The administration would grant various arms of the intelligence bureaucracy carte blanche to spy on Americans while limiting court review of the process. The proposed new law, overwhelmingly supported by Senate Democrats and Republicans in both houses of Congress, would bar pending lawsuits against giant telecommunications companies accused of providing access to their networks and company records to Bushist spymasters.

Challenging the veracity of Mukasey’s assertions at the Commonwealth Club, House Judiciary Committee Chairman John Conyers (D-MI), [pointedly inquired](#):

This statement is very disturbing for several reasons. Initially, despite extensive inquiries after 9/11, I am aware of no previous reference, in the 9/11 Commission report or elsewhere, to a call from a know terrorist safehouse in

Afghanistan to the United States which, if it had been intercepted, could have helped prevent the 9/11 attacks. In addition, if the Administration had know of such communications from suspected terrorists, they could and should have been intercepted based on existing FISA law. For example, even assuming that a FISA warrant was required to intercept such calls, as of 9/11 FISA specifically authorized such surveillance on an emergency basis without a warrant for a 48 hour period. If such calls were known about and not intercepted, serious additional concerns would be raised about the government's failure to take appropriate action before 9/11. (Congress of the United States, House of Representatives, Committee on the Judiciary, "The Honorable Michael Mukasey, Attorney General of the United States," April 3, 2008)

Claiming that many threats "do not appear to be emergencies until it is too late," Justice Department official Brian Benczkowski, challenged Conyers' assertion and said that it's "easy to say, after the fact," a particular call could have been intercepted under the law. *Chronicle* reporter [Bob Egelko](#) writes that Benczkowski said "it makes more sense to eliminate legal obstacles to effective intelligence-gathering overseas." In other words, give the administration what it wants: unlimited power to spy on Americans.

Despite Conyers' correctly calling out Mukasey on his unequivocal falsehoods on the issue of monitoring al-Qaeda prior to the 9/11 attacks, Conyers too, substantially misrepresents the facts. To wit, the National Security Agency (NSA) maintained close electronic surveillance of al-Qaeda's communications hub in Sana'a, Yemen for years before 9/11. Such monitoring included not one call, but probably dozens of communications amongst operatives of Osama bin Laden's "Martyrdom Battalion."

According to Paul Thompson at the [History Commons](#), NSA, CIA and FBI monitoring included the interception of communications among al-Qaeda assets prior to the bombing of the USS Cole in October 2000:

Mid-August 1998-October 2000: Al-Qaeda Operatives Use Monitored Yemen Communications Hub to Coordinate Cole Bombing

Al-Qaeda operatives use a communications hub in Sana'a, Yemen, to "put everything together" before the bombing of the USS Cole. The communications hub is run by Ahmed al-Hada, who US officials will later describe as "a prominent al-Qaeda member who is believed to have been involved in the Cole bombing." The hub is monitored by US intelligence from 1998, at least, (see Late August 1998) and information gleaned from it is used to thwart a number of plots (see Late 1998-Early 2002). The US monitors the house through bugs planted inside and through spy satellites to monitor people leaving and entering it. The hub was also used before the 1998 embassy bombings and will be used to communicate with the 9/11 hijackers before 9/11 (see Early 2000-Summer 2001). [MSNBC, 2/14/2002; MIRROR, 6/9/2002; MSNBC, 5/2005] When the FBI arrives in Yemen to investigate the bombing, it finds that "telephone records show[...] that suspects in the Cole bombing had been in touch with suspects from the 1998 embassy bombings in Kenya." [MILLER, STONE, AND MITCHELL, 2002, PP. 238] Calls between the hub and an al-Qaeda cell in Ireland that seems to have a connection to the Cole bombing are also intercepted during part of this period (see Late December 1999-October 12, 2000). It is unclear why the information does not allow the NSA to thwart the plot. Despite the scope of the monitoring, NSA Director Michael Hayden will later say there were no intercepts the NSA could have exploited to stop the bombing: "When the Cole disaster took place I had brought to my desk in, in this office, every stitch of NSA reporting on the-that could in any way be

related to this. And I went thought it report by report and I sent a letter out to our entire work force, which was essentially, you performed well. Keep up the good work.” [CBS NEWS, 6/19/2002]

As I have written before, the 9/11 attacks, were neither a “failure of the imagination” as the 9/11 Commission asserted, nor the result of “flawed communications” between various security arms of the state to “connect the dots.” The murder of some 3,000 individuals on U.S. soil were the result of actions undertaken by successive U.S. administrations’ to *protect on-going intelligence operations* by the United States in the Balkans, Central Asia and the Middle East.

While al-Qaeda is certainly a far-right terrorist organization responsible for politically-motivated acts of murder, and have sought to obtain and deploy chemical, biological and nuclear weapons, this did not preclude their utilization as *intelligence assets* by the Bush I, Clinton, and Bush II administrations. The United States and their NATO allies, freely employed al-Qaeda and other Islamist forces as a cats-paw as they conducted multiple destabilization campaigns in the former Federal Republic of Yugoslavia as well as within the former Soviet Union itself, notably in Azerbaijan, Georgia and the Russian province of Chechnya, as [Michel Chossudovsky](#) has documented. Nor has it prevented the Bush administration from using such reactionary forces as disposable assets as it currently wages a covert war against Iran, as Seymour Hersh reported last year in [The New Yorker](#).

As with his fictitious claims regarding the 9/11 attacks, Mukasey has essentially condoned moves by the administration to deploy the U.S. military domestically for “counterterrorist” operations.

Despite Bush administration assertions to the contrary, there is no evidence that domestic operations by the U.S. military are legal under the U.S. Constitution, despite Mukasey’s testimony Thursday, when he attempted to distance himself from a classified October 2001 Department of Justice memorandum.

Responding to a question put to him by the Senate Appropriations Committee, Mukasey said that “the Fourth Amendment applies across the board, whether we’re in wartime or peacetime,” according to [The New York Times](#).

Times’ reporter Philip Shenon wrote,

Still, the attorney general did not repudiate the entire document. He also did not say if its findings had been formally withdrawn or when it might be turned over to the Senate Judiciary Committee, which has requested a copy.

The memorandum’s existence was revealed last week when the Bush administration released a copy of a separate Justice Department document from 2003 that referred to the October 2001 memorandum in a footnote.

The footnote said the 2001 memorandum, which has not been shared outside the administration, concluded that the Fourth Amendment, which bars unreasonable searches and seizures, did not apply to “domestic military operations” against terrorist threats. (“Mukasey Distances Himself from a Memo on Searches,” *The New York Times*, April 11, 2008)

Meanwhile, [The Washington Post](#) reported Saturday that the Department of Homeland

Security “plans to start using the nation’s most advanced spy technology for domestic purposes soon, rebuffing challenges by House Democrats over the idea’s legal authority.”

DHS will “activate” the National Applications Office’s satellite surveillance program for (unspecified) domestic purposes. First proposed last August by DHS, the NAO’s overhead sensor data will be used by law enforcement “once privacy and civil rights concerns are resolved.” DHS has previously averred that the program “will not intercept communications.”

This however, is a meaningless parsing of intelligence terminology by DHS, more reflective of its desire to conceal than to reveal the nature of NAO’s domestic “mission.” Data “captured” by satellites are referred to in the “trade” as **GEOINT** or Geospatial Intelligence, gathered by satellite, aerial photography, mapping/terrain data, or **IMINT**, imagery intelligence, gathered from satellite or aerial photography. Strictly speaking, communications monitoring such as that conducted by NSA is referred to as SIGINT, or signals intelligence. The question is: what or whom will be “mapped” by space-based satellites and/or high-altitude spy planes such as Lockheed’s U2 or its SR-71 Blackbird? DHS Secretary Michael Chertoff claimed,

“There is no basis to suggest that this process is in any way insufficient to protect the privacy and civil liberties of Americans,” Chertoff wrote to Reps. Bennie G. Thompson (D-Miss.) and Jane Harman (D-Calif.), chairmen of the House Homeland Security Committee and its intelligence subcommittee, respectively, in letters released yesterday.

“I think we’ve fully addressed anybody’s concerns,” Chertoff added in remarks last week to bloggers. “I think the way is now clear to stand it up and go warm on it.”

His statements marked a fresh determination to operate the department’s new National Applications Office as part of its counterterrorism efforts. The administration in May 2007 gave DHS authority to coordinate requests for satellite imagery, radar, electronic-signal information, chemical detection and other monitoring capabilities that have been used for decades within U.S. borders for mapping and disaster response.

But Congress delayed launch of the new office last October. Critics cited its potential to expand the role of military assets in domestic law enforcement, to turn new or as-yet-undeveloped technologies against Americans without adequate public debate, and to divert the existing civilian and scientific focus of some satellite work to security uses. (Spencer S. Hsu, “Administration Set to Use New Spy Program in U.S..” The Washington Post, April 12, 2008, Page A3)

We should not be deceived either by Mukasey, Chertoff or by half-hearted gestures from Congress to reign in the “post-Constitutional” Bush regime. Since the 2001 terrorist attacks, the Democratic Party has been complicit with Bush administration claims of unlimited executive power to fight its alleged “war against terror.”

From the torture of detainees, the launching of “preemptive” wars of conquest, the circumvention of binding international treaties, to the subversion of Americans’ democratic rights under the U.S. Constitution, the Democrats have rubber-stamped and provided Bush and his minions a rationale—“protecting the Homeland”—for overturning all Constitutional restrictions on presidential and military power.

Illegal domestic spying by the FBI, NSA and “security” corporations operating beyond the reach of any meaningful oversight by elected, democratic institutions will continue long after the Bush administration ignobly sails off into the proverbial sunset.

Tom Burghardt is a researcher and activist based in the San Francisco Bay Area. In addition to publishing in Covert Action Quarterly, Love & Rage and Antifa Forum, he is the editor of Police State America: U.S. Military “Civil Disturbance” Planning, distributed by [AK Press](#).

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