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Obama Administration Endorses Continued Spying on Americans

Justice Department Moves to Squash NSA Spying Suits

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Since fatuously declaring his to be a "change" administration, President Barack Obama has quickly donned the blood-spattered mantle of state secrecy and executive privilege worn by the Bush regime.

On Friday April 3, the Department of Justice filed a motion to dismiss one of the Electronic Frontier Foundation's (**EFF**) landmark lawsuits against illegal spying by the National Security Agency (NSA).

That suit, ***Jewell v. NSA***, was filed last September against the NSA, NSA Director Keith B. Alexander, President George W. Bush, Vice President Richard Cheney, U.S. Attorney General Michael Mukasey and Mike McConnell, Director of National Intelligence. But with the departure of the Bush gang, the defendants now include President Barack Obama, NSA Director Keith B. Alexander, U.S. Attorney General Eric Holder and Dennis C. Blair, Director of National Intelligence.

When the suit was filed against the government, 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)

Though the drapery in the Oval Office may have changed, the criminal acts against American citizens and legal residents by unaccountable intelligence agencies and privateers in the corporate security industry continue apace.

Based on information disclosed by AT&T whistleblower Klein and other sources, including ***The New York Times***, the suit seeks to "halt illegal, unconstitutional, and ongoing dragnet surveillance" by AT&T and other grifting telecoms of the "communications and communications records" of their customers.

Klein told the Court in a sworn **affidavit** that AT&T's internet traffic in San Francisco runs through fiber-optic cables at the company's Folsom Street facility. Using a device known as

a splitter, a complete copy of internet traffic that AT&T receives–email, web browsing requests and other electronic communications sent by AT&T customers, or received from people who use another internet service provider–was diverted onto a separate fiber-optic cable connected to the company's SG-3 room, controlled by NSA. Only personnel with NSA clearances–either working for, or on behalf of the agency–have access to this room.

The evidence of corporate malfeasance presented by Klein and other whistleblowers, led the civil liberties' watchdog group to assert that AT&T's "deployment of NSA-controlled surveillance capability" is not limited to the corporation's San Francisco facility "and is consistent with an overall national AT&T deployment to from 15 to 20 similar sites, possibly more. This implies that a substantial fraction, probably well over half, of AT&T's purely domestic traffic was diverted to the NSA. At the same time, the equipment in the room is well suited to the capture and analysis of large volumes of data for purposes of surveillance."

As I **reported** in November, among the firms supplying the surveillance products hardwired into America's telecommunications infrastructure is **Verint Systems Inc.** (formerly Comverse InfoSys). The firm was founded by former Israeli intelligence officer, Jacob "Kobi" Alexander, a corporate grifter who fled the United States for Namibia after being indicted in 2006 on thirty-two counts of fraud. Alexander hatched a backdated stock options scheme that netted him $138 million in profits looted from company shareholders.

While Alexander and his family may be safely ensconced in the dry but relatively safe harbor of Windhoek, Verint's security products live on, providing "actionable intelligence solutions" to repressors world wide. According to a *Business Week* **company profile**,

Verint Systems, Inc. provides analytic software-based solutions for the security and business intelligence markets. Its analytic solutions collect, retain, and analyze voice, fax, video, email, Internet, and data transmissions from voice, video and IP networks for the purpose of generating actionable intelligence for decision makers. The company primarily offers communications interception solutions, such as STAR-GATE, RELIANT, and VANTAGE; networked video solutions that include NEXTIVA; and contact center actionable intelligence solutions, which include ULTRA. Verint Systems serves government entities, global corporations, law enforcement agencies, financial institutions, transportation agencies, retail stores, utilities, and communications service providers. (Verint Systems, Inc. *Business Week*, Information Technology Sector, accessed April 11, 2009)

Other corporate outfits providing similar intelligence "solutions" to America's telecommunications firms and agencies such as the CIA, FBI, Department of Homeland Security, Defense Intelligence Agency, National Reconnaissance Office and the National Geospatial-Intelligence Agency include Verint's rival **Narus** (another spooky Israeli security firm), **Siemans** and **Ericsson**.

Despite the economic meltdown, *Washington Technology* **reported** March 27 that "technology companies are poised to tap into the billions of dollars that will flow from the American Recovery and Reinvestment Act into new federal, state and local initiatives." Many of the initiatives include new corporate welfare projects devised by the Department of Homeland Security and the FBI to "keep America safe."

In this context, the Obama administration's drive to preserve the NSA's ability to illegally

spy on Americans is intimately connected to the corporatist bottom line. After all, Democrat or Republican, *the business of government is business*.

Arguments in San Francisco federal district court by U.S. Attorneys have been described by constitutional law experts as being "worse than Bush." In their motion to dismiss *Jewell*, the Obama administration cited the same perverse logic of the previous regime: that the state secrets privilege requires the court to dismiss the issue "out of hand."

Douglas Letter, U.S. Terrorism Litigation Counsel for Obama's Department of Justice, argued that simply allowing the case to proceed "would cause exceptionally grave harm to national security."

Yet more pernicious–and unprecedented–arguments followed. "The DoJ," **according** to EFF, now claim "that the U.S. Government is completely immune from litigation for illegal spying–that the Government can never be sued for surveillance that violates federal privacy statutes."

Arguing that the state possesses "sovereign immunity," the "change" administration now claims that under provisions of the disgraceful USA PATRIOT Act–a draconian law rammed through Congress in the wake of the 9/11 attacks–the state is "immune from suit under the two remaining key federal surveillance laws: the Wiretap Act and the Stored Communications Act."

In practice, this means that under a new, ludicrous interpretation of the Orwellian PATRIOT Act, the government can *never* be held accountable for illegal surveillance under any federal statute. As Glenn Greenwald points out in ***Salon***,

> In other words, beyond even the outrageously broad "state secrets" privilege invented by the Bush administration and now embraced fully by the Obama administration, the Obama DOJ has now invented a brand new claim of government immunity, one which literally asserts that the U.S. Government is free to intercept all of your communications (calls, emails and the like) and–even if what they're doing is blatantly illegal and they know it's illegal–you are barred from suing them unless they "willfully disclose" to the public what they have learned. ("New and worse secrecy and immunity claims from the Obama DOJ," Salon, April 6, 2009)

EFF attorney Kevin Bankston told *Salon*: "This is the first time [the DOJ] claimed sovereign immunity against Wiretap Act and Stored Communications Act claims. In other words, the administration is arguing that the U.S. can *never* be sued for spying that violates federal surveillance statutes, whether FISA, the Wiretap Act or the SCA."

In their motion to dismiss, DoJ attorneys–like their predecessors–argue on Page 13 of the Government's brief that "An assertion of the state secretes privilege "must be accorded the 'utmost deference' and the court's review of the claim of privilege is narrow." *Kasza*, 133 F.3d at 1166; see also *Al-Haramain*, 507 F3d at 1203 ('[W]e acknowledge the need to defer to the Executive on matters of foreign policy and national security and surely cannot legitimately find ourselves second guessing the Executive in this arena')."

On Page 16, the state contends that, "Finally, all of the plaintiffs' claims require the disclosure of whether or not AT&T assisted the Government in alleged intelligence activities, and the DNI again has demonstrated that disclosure of whether the NSA has an intelligence

relationship with a particular private company would also cause exceptional harm to national security–among other reasons by revealing to foreign adversaries which channels of communication may or may not be secure."

If U.S. District Judge Judge Vaughn Walker rules in the state's favor and dismisses *Jewell*, constitutional protections under the fourth amendment guaranteeing "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," would be a meaningless charade.

There is however, a precedent for the Obama administration's blatant violation of our rights: that of their predecessors in the Bush regime's Office of Legal Counsel.

According to an October 23, 2001 Department of Justice **memorandum** titled *Authority for Use of Military Force To Combat Terrorist Activities Within the United States*, authored by torture-enabler and OLC head, John C. Yoo, the military could be deployed domestically to interrogate, detain, raid and spy on Americans, without having to comply with constitutional guarantees under the Bill of Rights. Yoo advised the Oval Office:

> Fourth, we turn to the question whether the Fourth Amendment would apply to the use of the military domestically against foreign terrorists. Although the situation is novel (at least in the nation's recent experience), we think that the better view is that the Fourth Amendment would **not** apply in these circumstances. Thus, for example, we do not think that a military commander carrying out a raid on a terrorist cell would be required to demonstrate probable cause or to obtain a warrant. (Page 2)

Additionally, having decided that the President enjoys plenary, that is, unlimited power to carry out the "war on terror" Yoo concludes, after dispensing with Fourth Amendment protections that,

> First Amendment speech and press rights may also be subordinated to the overriding need to wage war successfully. …
>
> The current campaign against terrorism may require even broader exercises of federal power domestically. Terrorists operate within the continental United States itself, and escape detection by concealing themselves within the domestic society and economy. While, no doubt these terrorists pose a direct military threat to the national security, their methods of infiltration and their surprise attacks on civilian and governmental facilities make it difficult to identify any front line. Unfortunately, the terrorist attacks of September 11 have created a situation in which the battlefield has occurred, and may occur, at dispersed locations and intervals within the American homeland itself. As a result, efforts to fight terrorism may require not only the usual wartime regulations of domestic affairs, but also military actions that have normally occurred abroad. (Pages 24, 25)

Indeed, the Bush administration's so-called Terrorist Surveillance Program (TSP) transformed the United States into a limitless battlespace where anything goes. From warrantless wiretapping of telephone and internet communications, the seizure of business and medical records, as well as the illegal–and indefinite–detention of citizens and legal residents as "unlawful enemy combatants," Yoo's memorandum provided the steel and concrete that gave form to the architectural blueprints for a presidential dictatorship.

Instructively, these memos were not withdrawn until 2008. However, in moving to suppress *Jewell*, Obama's Justice Department and their private partners in the telecommunications industry in practice, are continuing the same repressive policies.

As *Wired* **reported** back in January, "NSA whistleblower Russell Tice" revealed "that the National Security Agency spied on individual U.S. journalists, entire U.S. news agencies as well as 'tens of thousands' of other Americans."

> Tice said on Wednesday that the NSA had vacuumed in all domestic communications of Americans, including, faxes, phone calls and network traffic.
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> Today Tice said that the spy agency also combined information from phone wiretaps with data that was mined from credit card and other financial records. He said information of tens of thousands of U.S. citizens is now in digital databases warehoused at the NSA.
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> "This [information] could sit there for ten years and then potentially it marries up with something else and ten years from now they get put on a no-fly list and they, of course, won't have a clue why," Tice said.

In most cases, the person would have no discernible link to terrorist organizations that would justify the initial data mining or their inclusion in the database. (Kim Zetter, "NSA Whistleblower: Wiretaps Were Combined with Credit Card Records of U.S. Citizens," *Wired*, January 23, 2009)

As George Washington University Law Professor and constitutional scholar, Jonathan Turley, **told** MSNBC's Keith Olbermann on "Countdown" April 7,

> I think right now, the Bush people are bringing out their mission-accomplished sign, because they've not only gotten Obama to protect Bush and Cheney and others from any criminal investigation on torture, but he's now gone even further than they did in the protection of unlawful surveillance. This is the ultimate victory for the Bush officials. They have Barack Obama adopting the same extremist arguments, and in fact exceeding the extremist arguments made by President Bush…

You cannot any longer suggest that President Obama is advancing the civil liberties and the privacy interests that he promised to advance. This is a terrible roll-back. It's a terrible decision. ("Countdown" with Keith Olbermann, MSNBC, Tuesday, April 7, 2009)

And with Congress' passage of the abominable FISA Amendments Act (FAA) last July, handing the NSA carte blanche to continue warrantless spying and driftnet surveillance of Americans, granting grifting telecom giants such as AT&T, Sprint and Verizon get-out-of-jail-free-cards in the form of retroactive immunity for their collusive and wholly illegal activity with NSA and other state agencies, America's post-constitutional new order continues apace. As I **reported** last September, "the extent of these illegal programs have revealed, the 'enemy' is none other than the American people themselves!"

Three months into the Obama administration, the contours of a new and improved "liberal" police state reveal the same rotten, nidorous core as that of their predecessors. This time around however, the mailed fist of the capitalist state is gussied up with Smiley Face

emblems and Hello Kitty stickers.

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