

State of Emergency and “Continuity of Government”: What is the Real Reason the Government is Spying on Americans?

By [Washington's Blog](#)

Global Research, July 25, 2017

[Washington's Blog and Global Research](#) 10
June 2013

Region: [USA](#)

Theme: [Police State & Civil Rights](#)

Originally published in 2013

[Are Emergency Plans Meant Only for Nuclear War the Real Justification for Spying?](#)

To understand the scope, extent and reason that the government spies on all Americans, you have to understand what has happened to our Constitutional form of government since 9/11.

[State of Emergency](#)

The United States has been in a declared state of emergency from September 2001, to the present. Specifically, on September 11, 2001, the government declared a state of emergency. That declared state of emergency was [formally put in writing](#) on 9/14/2001:

A national emergency exists by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, I hereby declare that the national emergency has existed since September 11, 2001 . . .

That declared state of emergency has continued in full force and effect from 9/11 to the present. President Bush kept it in place, and President Obama has also.

For example, on September 9, 2011, President Obama [declared](#):

CONTINUATION OF NATIONAL EMERGENCY DECLARED BY PROC. NO. 7463

Notice of President of the United States, dated Sept. 9, 2011, 76 F.R. 56633, provided:

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of

further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2011. Therefore, I am continuing in effect for an additional year the national emergency that was declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the Federal Register and transmitted to the Congress.

The Washington Times [wrote](#) on September 18, 2001:

Simply by proclaiming a national emergency on Friday, President Bush activated some 500 dormant legal provisions, including those allowing him to impose censorship and martial law.

The White House has kept substantial information concerning its presidential proclamations and directives hidden from Congress. For example, [according to](#) Steven Aftergood of the Federation of American Scientists Project on Government Secrecy:

Of the 54 National Security Presidential Directives issued by the [George W.] Bush Administration to date, the titles of only about half have been publicly identified. There is descriptive material or actual text in the public domain for only about a third. In other words, there are dozens of undisclosed Presidential directives that define U.S. national security policy and task government agencies, but whose substance is unknown either to the public or, as a rule, to Congress.

Continuity of Government

Continuity of Government (“COG”) measures were implemented on 9/11. For example, according to the 9/11 Commission Report, at page 38:

At 9:59, an Air Force lieutenant colonel working in the White House Military Office joined the conference and stated he had just talked to Deputy National Security Advisor Stephen Hadley. [The White House requested \(1\) the implementation of continuity of government measures](#), (2) fighter escorts for Air Force One, and (3) a fighter combat air patrol over Washington, D.C.

Likewise, page 326 of the Report states:

The secretary of defense directed the nation’s armed forces to Defense Condition 3, an increased state of military readiness. For the first time in history, all nonemergency civilian aircraft in the United States were grounded, stranding tens of thousands of passengers across the country. [Contingency plans for the continuity of government and the evacuation of leaders had been implemented.](#)

The Washington Post [notes](#) that Vice President Dick Cheney initiated the COG plan on 9/11:

From the bunker, Cheney officially implemented the emergency continuity of government orders . . .

(See also footnotes cited therein and [this webpage](#).)

CNN [reported](#) that – 6 months later – the plans were still in place:

Because Bush has decided to leave the operation in place, agencies including the White House and top civilian Cabinet departments have rotated personnel involved, and are discussing ways to staff such a contingency operation under the assumption it will be in place indefinitely, this official said.

Similarly, the Washington Post [reported](#) in March 2002 that “the shadow government has evolved into an indefinite precaution.” The same article goes on to state:

Assessment of terrorist risks persuaded the White House to remake the program as a permanent feature of ‘the new reality, based on what the threat looks like,’ a senior decisionmaker said.

As CBS [pointed out](#), virtually none of the Congressional leadership knew that the COG had been implemented or was still in existence as of March 2002:

Key congressional leaders say they didn’t know President Bush had established a “shadow government,” moving dozens of senior civilian managers to secret underground locations outside Washington to ensure that the federal government could survive a devastating terrorist attack on the nation’s capital, The Washington Post says in its Saturday editions.

Senate Majority Leader Thomas A. Daschle (D-S.D.) told the Post he had not been informed by the White House about the role, location or even the existence of the shadow government that the administration began to deploy the morning of the Sept. 11 hijackings.

An aide to House Minority Leader Richard A. Gephardt (D-Mo.) said he was also unaware of the administration’s move.

Among Congress’s GOP leadership, aides to House Speaker J. Dennis Hastert (Ill.), second in line to succeed the president if he became incapacitated, and to Senate Minority Leader Trent Lott (Miss.) said they were not sure whether they knew.

Aides to Sen. Robert C. Byrd (D-W. Va.) said he had not been told. As Senate president pro tempore, he is in line to become president after the House speaker.

Similarly, the above-cited CNN article states:

Senate Majority Leader Tom Daschle, D-South Dakota, said Friday he can’t say much about the plan.

“We have not been informed at all about the role of the shadow government or its whereabouts or what particular responsibilities they have and when they

would kick in, but we look forward to work with the administration to get additional information on that.”

Indeed, the White House has specifically refused to share information about Continuity of Government plans with the Homeland Security Committee of the U.S. Congress, even though that Committee has proper security clearance to hear the full details of all COG plans.

Specifically, in the summer 2007, Congressman Peter DeFazio, on the Homeland Security Committee (and so with proper security access to be briefed on COG issues), inquired about continuity of government plans, and was refused access. Indeed, DeFazio told Congress that [the entire Homeland Security Committee of the U.S. Congress has been denied access to the plans](#) by the White House.

(Or [here is the transcript](#)).

The Homeland Security Committee has *full clearance* to view all information about COG plans.

DeFazio concluded: “[Maybe the people who think there’s a conspiracy out there are right](#)”.

University of California Berkeley Professor Emeritus Peter Dale Scott [points out](#) that – whether or not COG plans are still in effect – the refusal of the executive branch to disclose their details to Congress means that the Constitutional system of checks and balances has already been gravely injured:

If members of the Homeland Security Committee cannot enforce their right to read secret plans of the Executive Branch, then the systems of checks and balances established by the U.S. Constitution would seem to be failing.

To put it another way, if the White House is successful in frustrating DeFazio, then Continuity of Government planning has arguably already superseded the Constitution as a higher authority.

Indeed, [continuity of government plans](#) are specifically defined to do the following:

- Top leaders of the “new government” called for in the COG would entirely or largely go into hiding, and would govern in hidden locations
- Those within the new government would know what was going on. But those in the “old government” – that is, the one created by the framers of the Constitution – would not necessarily know the details of what was happening
- Normal laws and legal processes might largely be suspended, or superseded by secretive judicial forums
- The media might be ordered by strict laws – punishable by treason – to only promote stories authorized by the new government

See [this](#), [this](#) and [this](#).

Could the White House have maintained COG operations to the present day?

I don't know, but the following section from the above-cited CNN article is not very reassuring:

Bush triggered the precautions in the hours after the September 11 strikes, and has left them in place because of continuing U.S. intelligence suggesting a possible threat.

Concerns that al Qaeda could have gained access to a crude nuclear device "were a major factor" in the president's decision, the official said. "The threat of some form of catastrophic event is the trigger," this official said.

This same official went on to say that the U.S. had no confirmation — "and no solid evidence" — that al Qaeda had such a nuclear device and also acknowledged that the "consensus" among top U.S. officials was that the prospect was "quite low."

Still, the officials said Bush and other top White House officials including Cheney were adamant that the government take precautions designed to make sure government functions ranging from civil defense to transportation and agricultural production could be managed in the event Washington was the target of a major strike.

As is apparent from a brief review of the news, the government has, since 9/11, continuously stated that there is a terrorist threat of a nuclear device or dirty bomb. That alone infers that COG plans could, hypothetically, still be in effect, just like the state of emergency is still in effect and has never been listed.

Indeed, President Bush [said](#) on December 17, 2005, 4 years after 9/11:

The authorization I gave the National Security Agency after Sept. 11 helped address that problem in a way that is fully consistent with my constitutional responsibilities and authorities.

The activities I have authorized make it more likely that killers like these 9/11 hijackers will be identified and located in time.

And the activities conducted under this authorization have helped detect and prevent possible terrorist attacks in the United States and abroad.

The activities I authorized are reviewed approximately every 45 days. Each review is based on a fresh intelligence assessment of terrorist threats to the continuity of our government and the threat of catastrophic damage to our homeland.

During each assessment, previous activities under the authorization are reviewed. The review includes approval by our nation's top legal officials, including the attorney general and the counsel to the president.

I have reauthorized this program more than 30 times since the Sept. 11 attacks [45 days times 30 equals approximately 4 years] and I intend to do so for as long as our nation faces a continuing threat from Al Qaeda and related groups.

The N.S.A.'s activities under this authorization are thoroughly reviewed by the Justice Department and N.S.A.'s top legal officials, including N.S.A.'s general counsel and inspector general.

In other words, it appears that as of December 2005, COG plans had never been rescinded, but had been continuously renewed every 45 days, and .

In 2008, Tim Shorrock [wrote](#) at Salon:

A contemporary version of the Continuity of Government program was put into play in the hours after the 9/11 terrorist attacks, when Vice President Cheney and senior members of Congress were dispersed to “undisclosed locations” to maintain government functions. It was during this emergency period, Hamilton and other former government officials believe, that President Bush may have authorized the NSA to begin actively using the Main Core database for domestic surveillance [more on Main Core below]. One indicator they cite is a statement by Bush in December 2005, after the New York Times had revealed the NSA’s warrantless wiretapping, in which he made a rare reference to the emergency program: The Justice Department’s legal reviews of the NSA activity, Bush said, were based on “fresh intelligence assessment of terrorist threats to the continuity of our government.”

In 2007, President Bush issued Presidential Directive NSPD-51, which purported to change Continuity of Government plans. NSPD51 is odd because:

- NSPD51 was passed [without Congressional input](#)
- Even the [New York Times](#) wrote in an editorial:

Beyond cases of actual insurrection, the President may now use military troops as a domestic police force in response to a natural disaster, a disease outbreak, terrorist attack, or to any ‘other condition.’ Changes of this magnitude should be made only after a thorough public airing. But these new Presidential powers were slipped into the law without hearings or public debate.

- Everyone from “[conservative activist Jerome Corsi \[to\] Marjorie Cohn of the \[liberal\] National Lawyer’s Guild have interpreted \[the COG plans contained in Presidential Directive NSPD-51\] as a break from Constitutional law](#)”
- As a reporter for Slate [concluded](#) after analyzing NSPD-51:

I see nothing in the [COG document entitled presidential directive NSPD51] to prevent even a “localized” forest fire or hurricane from giving the president the right to throw long-established constitutional government out the window

- White House spokesman Gordon Johndroe [said](#) that “because of the attacks of Sept. 11, 2001, the American public needs no explanation of [Continuity of Government] plans”

This is all the more bizarre when you realize that COG plans were originally created *solely* to

respond to a decapitating nuclear strike which killed our civilian leaders. (It was subsequently expanded decades before 9/11 into a multi-purpose plan by our good friends Dick Cheney and Donald Rumsfeld. See [this](#), [this](#) and [this](#).)

Does COG Explain the Pervasive Spying on Americans?

5 years ago, investigative reporter Christopher Ketcham [disclosed](#) the spying which was confirmed last week by whistleblower Edward Snowden:

The following information seems to be fair game for collection without a warrant: the e-mail addresses you send to and receive from, and the subject lines of those messages; the phone numbers you dial, the numbers that dial in to your line, and the durations of the calls; the Internet sites you visit and the keywords in your Web searches; the destinations of the airline tickets you buy; the amounts and locations of your ATM withdrawals; and the goods and services you purchase on credit cards. All of this information is archived on government supercomputers and, according to sources, also fed into the Main Core database.

Given that Ketcham was proven right, let's see what else he reported:

Given that Ketcham was right about the basics, let's hear what else the outstanding investigative journalist said in 2008:

There exists a database of Americans, who, often for the slightest and most trivial reason, are considered unfriendly, and who, in a time of panic, might be incarcerated. The database can identify and locate perceived 'enemies of the state' almost instantaneously." He and other sources tell Radar that the database is sometimes referred to by the code name Main Core. One knowledgeable source claims that 8 million Americans are now listed in Main Core as potentially suspect. In the event of a national emergency, these people could be subject to everything from heightened surveillance and tracking to direct questioning and possibly even detention."

According to one news report, even "national opposition to U.S. military invasion abroad" could be a trigger [for martial law].

When COG plans are shrouded in extreme secrecy, effectively unregulated by Congress or the courts, and married to an overreaching surveillance state—as seems to be the case with Main Core—even sober observers must weigh whether the protections put in place by the federal government are becoming more dangerous to America than any outside threat.

Another well-informed source—a former military operative regularly briefed by members of the intelligence community—says this particular program has roots going back at least to the 1980s and was set up with help from the Defense Intelligence Agency. He has been told that the program utilizes software that makes predictive judgments of targets' behavior and tracks their circle of associations with "social network analysis" and artificial intelligence modeling tools.

A former NSA officer tells Radar that the Treasury Department's Financial Crimes Enforcement Network, using an electronic-funds transfer surveillance program, also contributes data to Main Core, as does a Pentagon program that was created in 2002 to monitor antiwar protesters and environmental activists such as Greenpeace.

If previous FEMA and FBI lists are any indication, the Main Core database includes dissidents and activists of various stripes, political and tax protesters, lawyers and professors, publishers and journalists, gun owners, illegal aliens, foreign nationals, and a great many other harmless, average people.

A veteran CIA intelligence analyst who maintains active high-level clearances and serves as an advisor to the Department of Defense in the field of emerging technology tells Radar that during the 2004 hospital room drama, [current nominee to head the FBI, and former Deputy Attorney General] James Comey expressed concern over how this secret database was being used "to accumulate otherwise private data on non-targeted U.S. citizens for use at a future time." [Snowden and high-level NSA whistleblower William Binney have [since confirmed this](#)] ... A source regularly briefed by people inside the intelligence community adds: "Comey had discovered that President Bush had authorized NSA to use a highly classified and compartmentalized Continuity of Government database on Americans in computerized searches of its domestic intercepts. [Comey] had concluded that the use of that 'Main Core' database compromised the legality of the overall NSA domestic surveillance project."

The veteran CIA intelligence analyst notes that Comey's suggestion that the offending elements of the program were dropped could be misleading: "Bush [may have gone ahead and] signed it as a National Intelligence Finding anyway." But even if we never face a national emergency, the mere existence of the database is a matter of concern. "The capacity for future use of this information against the American people is so great as to be virtually unfathomable," the senior government official says.

In any case, mass watch lists of domestic citizens may do nothing to make us safer from terrorism. Jeff Jonas, chief scientist at IBM, a world-renowned expert in data mining, contends that such efforts won't prevent terrorist conspiracies. "Because there is so little historical terrorist event data," Jonas tells Radar, "there is not enough volume to create precise predictions."

[J. Edgar Hoover's] FBI "security index" was allegedly maintained and updated into the 1980s, when it was reportedly transferred to the control of none other than FEMA (though the FBI denied this at the time).

FEMA, however—then known as the Federal Preparedness Agency—already had its own domestic surveillance system in place, according to a 1975 investigation by Senator John V. Tunney of California. Tunney, the son of heavyweight boxing champion Gene Tunney and the inspiration for Robert Redford's character in the film *The Candidate*, found that the agency maintained electronic dossiers on at least 100,000 Americans that contained information gleaned from wide-ranging computerized surveillance. The database was located in the agency's secret underground city at Mount Weather, near the town of Bluemont, Virginia. [One of the main [headquarter of COG operations](#).] The senator's findings were confirmed in a 1976 investigation by the *Progressive* magazine, which found that the Mount Weather computers

“can obtain millions of pieces [of] information on the personal lives of American citizens by tapping the data stored at any of the 96 Federal Relocation Centers”—a reference to other classified facilities. According to the Progressive, Mount Weather’s databases were run “without any set of stated rules or regulations. Its surveillance program remains secret even from the leaders of the House and the Senate.”

Wired magazine turned up additional damaging information, revealing in 1993 that [Oliver] North, operating from a secure White House site, allegedly employed a software database program called PROMIS (ostensibly as part of the REX 84 plan). PROMIS, which has a strange and controversial history, was designed to track individuals—prisoners, for example—by pulling together information from disparate databases into a single record. According to Wired, “Using the computers in his command center, North tracked dissidents and potential troublemakers within the United States. Compared to PROMIS, Richard Nixon’s enemies list or Senator Joe McCarthy’s blacklist look downright crude.” Sources have suggested to Radar that government databases tracking Americans today, including Main Core, could still have PROMIS-based legacy code from the days when North was running his programs.

Marty Lederman, a high-level official at the Department of Justice under Clinton, writing on a law blog last year, wondered, “How extreme were the programs they implemented [after 9/11]? How egregious was the lawbreaking?” Congress has tried, and mostly failed, to find out.

“We are at the edge of a cliff and we’re about to fall off,” says constitutional lawyer and former Reagan administration official Bruce Fein. “To a national emergency planner, everybody looks like a danger to stability. There’s no doubt that Congress would have the authority to denounce all this—for example, to refuse to appropriate money for the preparation of a list of U.S. citizens to be detained in the event of martial law. But Congress is the invertebrate branch.

UPDATE [from Ketcham]: Since this article went to press, several documents have emerged to suggest the story has longer legs than we thought. Most troubling among these is an October 2001 Justice Department memo that detailed the extra-constitutional powers the U.S. military might invoke during domestic operations following a terrorist attack. In the memo, John Yoo, then deputy assistant attorney general, “concluded that the Fourth Amendment had no application to domestic military operations.” (Yoo, as most readers know, is author of the infamous Torture Memo that, in bizarro fashion, rejiggers the definition of “legal” torture to allow pretty much anything short of murder.) In the October 2001 memo, Yoo refers to a classified DOJ document titled “Authority for Use of Military Force to Combat Terrorist Activities Within the United States.” According to the Associated Press, “Exactly what domestic military action was covered by the October memo is unclear. But federal documents indicate that the memo relates to the National Security Agency’s Terrorist Surveillance Program.” Attorney General John Mukasey last month refused to clarify before Congress whether the Yoo memo was still in force.

Americans have the right to know whether a COG program is still in effect, and whether the

spying on our phone calls and Internet usage stems from such COG plans. Indeed, 9/11 was a horrible blow, but it was not a decapitating nuclear strike on our leaders ... so COG and the state of emergency should be *lifted*.

If COG plans are *not* still in effect, we have the right to demand that "enemies lists" and spying capabilities developed for the purpose of responding to a nuclear war be discarded , as we have not been hit by nuclear weapons ... and our civilian leaders - on Capital Hill, the White House, and the judiciary - are still alive and able to govern.

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