

Reach Out and Tap Someone

The NSA's surveillance program undermines the rule of law without producing real gains in security.

By James Bovard

THE NATIONAL SECURITY Agency has been tracking the calls of millions of Americans and constructing the "largest database ever assembled in the world," *USA Today* revealed on May 10. The nation's biggest telephone companies have apparently turned over masses of personal records to the feds, allowing Uncle Sam to build up a database of the phone numbers of incoming and outgoing calls of Americans. The revelations blew to smithereens the Bush administration's story that only international calls were being tapped without a warrant as part of its so-called "terrorist-surveillance program."

Bush announced on the day the story came out, "The intelligence activities I authorized are lawful." However, this may be the result of Cheney logic—that the Supreme Commander has the right to do whatever he feels necessary to protect the public. (The *New York Times* noted that Cheney and his top aides had been the most aggressive advocates of warrantless wiretaps and rounding up Americans' phone data.)

In his weekly radio address two days later, Bush sought to quell the controversy: "This week, new claims have been made about other ways we are tracking down al-Qaeda to prevent attacks on America." Yet unless one considers every American presumptively an al-Qaeda accomplice, the domestic phone intercepts have nothing to do with tracking down al-Qaeda. Bush also declared, "We are not trolling through the personal lives of millions of

innocent Americans." Unless the vast majority of Americans are guilty, there is no way to assert that the feds are not trolling through millions of innocent people's lives.

The revelations buttress the claims of former AT&T employee Mark Klein, who revealed that equipment was attached to AT&T core operations that empowered the NSA to conduct "vacuum-cleaner surveillance of all the data crossing the Internet." The Electronic Freedom Foundation (EFF) sued AT&T after Klein made his charges and after the *New York Times* disclosed that the NSA has been conducting warrantless wiretaps on thousands of Americans. In a deposition, Klein related, "In 2003 AT&T built 'secret rooms' hidden deep in the bowels of its central offices in various cities, housing computer gear for a government spy operation which taps into the company's popular WorldNet service and the entire internet. These installations enable the government to look at every individual message on the internet and analyze exactly what people are doing. Documents showing the hardware installation in San Francisco suggest that there are similar locations being installed in numerous other cities."

The Electronic Communication Privacy Act of 1986 made it a crime for providers of electronics communications to "knowingly divulge a record or other information pertaining to a subscriber or customer ... to any government entity," and companies can face

penalties of \$1,000 for each customer whose privacy was violated. (Qwest was the only major phone company to refuse the government's demand for information—in part because Qwest lawyers and executives recognized that disclosing the information without a court order would be illegal.)

The *USA Today* disclosures make it even more difficult to trust any assertion on surveillance by high-ranking government officials. On Jan. 23, Gen. Michael Hayden, Bush's nominee to be CIA chief, declared that the terrorist-surveillance program "is not a drift net ... This is focused. It's targeted. It's very carefully done. You shouldn't worry." Attorney General Alberto Gonzales told the Senate Judiciary Committee on Feb. 6: "Only international communications are authorized for interception under this program. That is, communications between a foreign country and this country." These comments are reminiscent of Bush's false assertions during the 2004 presidential campaign that no wiretaps were being conducted without a court order.

The administration's credibility is also undermined by its tactics to suppress independent evaluation or investigation of its surveillance. The White House has continuously insisted that its terrorist-surveillance program has been thoroughly reviewed by the Justice Department to determine its legality. (Prior to the Bush administration, the courts, not federal agencies, were supposed to be arbiters of the lawfulness of agencies'

actions.) But on May 10, Congress was notified that the Bush administration had effectively scuttled an investigation by the Justice Department's Office of Professional Responsibility (OPR), the agency's watchdog, into "whether DOJ lawyers had behaved unethically by interpreting the law too aggressively—by giving a legal green light to coercive interrogations and warrantless eavesdropping," as *Newsweek* reported. The Bush administration thwarted the investigation by refusing to grant security clearances to the lawyers investigating the department's actions. Attorney General Gonzales announced that the OPR investigation was unnecessary because the department had already decided the warrantless wiretaps were legal—despite the objections of Deputy Attorney General James Comey and at least one Foreign Intelligence Surveillance Court judge. Gonzales explained, "We don't want to be talking so much about the program that we compromise the effectiveness." He offered no evidence that the OPR had been infiltrated by al-Qaeda.

The Bush team is counting on the "national security" invocation to provide a get-out-of-jail card for any abuses. The Justice Department sought to get a federal judge to dismiss much of the EFF lawsuit, claiming that "the lawfulness of the alleged activities cannot be determined without a full factual record, and that record cannot be made without seriously compromising U.S. national security interests." Thus, it is no longer safe to permit Americans to know what the government is up to. National security requires that the government have unlimited right to deceive the American people about how far it is intruding into their lives. EFF lawyer Kevin Bankston observed that the feds are "basically saying that no one could ever go to court to stop illegal surveillance so long as they claim it's for national security. It leaves them completely unaccountable

and leaves the communications companies that are colluding with them unaccountable."

It is amusing to see Republican stalwarts and media stooges pooh-pooh concerns about the feds tracking each citizen's phone calls. But how would the White House react if someone acquired and published all the records of incoming and outgoing calls to Karl Rove? Creating a database of all the phone calls made and taken by members of Congress could be helpful in future bribery and corruption scandals. Yet there is no chance in Hades that representatives and senators would ever permit other Americans to see such personal data—while many congressmen sneer at citizens who don't want the feds to have such data on them.

Unfortunately, most Americans seem incapable of recognizing the danger of permitting politicians and government agents to compile dossiers on their personal lives. According to a *Washington Post*-ABC News poll taken just after the *USA Today* revelation, "63 percent of

housing their phone-call data, this will simply encourage the seizure of far more personal information. (The NSA indicated that the calling data is being shared with other federal agencies.)

The media reaction has been short and relatively mild. This is appalling, considering that the FBI appears to be using National Security Letter subpoenas (authorized by the Patriot Act) to round up the calling data of journalists suspected of having received leaks on CIA abuses. ABC News reporter Brian Ross suggested on his blog that the feds are tracking the calls of numerous newspaper and TV reporters to determine who was receiving leaks from government officials. Perhaps some journalists are afraid to criticize the government or perhaps they fear losing access to government officials—or perhaps they simply don't give a damn.

The latest revelations are not the end of the story. Instead, they are simply one in a series of revelations of the feds ignoring both the statute book and the Constitution. Former NSA intelligence

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Americans said they found the NSA program to be an acceptable way to investigate terrorism, including 44 percent who strongly endorsed the effort. ... 66 percent said they would not be bothered if NSA collected records of personal calls they had made..." Americans do not understand the implicit Miranda warning on any such surveillance scheme: any information the feds stockpile can be used against people the government does not like—or people the government seeks to silence or suppress. If Americans acquiesce to the feds ware-

officer Russ Tice warned that people "are only seeing the tip of the iceberg" of domestic-surveillance abuses. Seymour Hersh reports in the new issue of *The New Yorker* that a government consultant informed him that "tens of thousands have had their calls monitored in one way or the other," including the use of computers to listen for key words in their conversations.

The roundup of domestic calling records is part of a pattern of aggressive seizures of information by the Bush administration, which successfully pres-

sured America Online and MSN to turn over the records of how millions of people had used their computer search engines. Google resisted similar federal demands, but the feds recently turned up the heat. The Justice Department claims the information is necessary to produce evidence to justify reintroducing the Child Online Protection Act, which has been struck down as unconstitutional by the Supreme Court. Technology expert John Dvorak suggests that it is plausible that the government is gathering up the search histories for purposes unrelated to child-porn crack-downs.

The combination of the phone-call data and the online-search records would go a long way to creating Total Information Awareness (TIA). When the Bush administration first pushed TIA as a ticket to safety in 2002, a public uproar awoke Congress and forced the administration to formally shelve efforts to track almost every area of people's lives. But the feds apparently ignored any congressional orders to cease and desist.

The terrorist surveillance program is the result of a personal edict issued by the president. What other National Security Presidential Directives might Bush have issued? How many laws must be violated before citizens recognize that the government is fundamentally lawless? ■

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Khaddafi's Carrots

While the Bush administration touts its diplomatic success in Tripoli, it refuses to offer Palestinians a similar package.

By M.J. Rosenberg

PERHAPS IT IS BECAUSE I just read a brother's beautiful memoir about one of the Pan Am 103 victims, but I am not overly impressed with the decision to welcome Libya and its leader, Muammar Khaddafi, back into the family of nations. That book tells the story of a young Jewish American, David Dornstein, who was 25 when Libyan agents blew up the plane on which he was returning from Israel by way of London. He died along with 269 other passengers, including 189 Americans. Many were college kids coming home following a semester abroad, four days before Christmas.

But now we are told that all is forgiven. It has, after all, been 18 years since those students, tourists, and business travelers were blown out of that fuselage. Many survived the explosion and the two-minute plunge, only to die on impact. Imagine.

Nevertheless, the Bush administration argues that because Libya has abandoned its nuclear-weapons program, it is a worthy U.S. partner.

It is, no doubt, a good thing that Libya has decided not to develop weapons of mass destruction and especially not nuclear weapons. And it is certainly good news if the Libyans are actually helping in the anti-terrorism struggle. But there is some debate about how advanced Libya's WMD program was to begin with, while there is no debate about the fact that Libya's human-rights record is abysmal. In 2003, the State

Department said it was "unconscionable" that Libya was chairing the UN Human Rights Commission and used its presence, quite rightly, as an argument for abolishing the Commission.

As for terrorism, House International Relations Committee Chairman Henry Hyde has it exactly right: "Libya's continued failure to resolve outstanding claims for past acts of terrorist aggression ... will serve as a stumbling block in the path toward" normalization of relations.

Then there is Khaddafi's anti-Semitism. When he came to power in 1969, Khaddafi confiscated all Jewish property and cancelled all debts owed to Jews. For almost 40 years, Libya has been at the forefront of nations that traffic in both terrorism and virulent anti-Semitism.

But, supposedly, that has now changed. Tom Lantos, ranking Democrat on Hyde's committee, who calls himself "the leading voice in Congress for normalizing relations with Libya," thinks so. Welcoming the Bush administration's Libyan policy, Lantos said, "The world is a far safer place as a result of these actions. I hope that rogue states such as Syria and Iran will learn the lesson: responsible behavior means much better relations with the United States." Lantos conceded that there are still problems with Libya, but "establishing full diplomatic relations" as a first step will "open up more avenues for action on these matters...."

Wait a minute. The United States, and particularly Congress, never applies that