

A damning admission: New York Times concealed NSA spying until after 2004 election

By David Walsh and Barry Grey
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A column by *New York Times* public editor Byron Calame August 13 reveals that the newspaper withheld a story about the Bush administration's program of illegal domestic spying until after the 2004 election, and then lied about it.

On December 16, 2005, the *Times* reported that President Bush had authorized the National Security Agency (NSA) to monitor thousands of telephone conversations and e-mails in the US without court approval. At the time, the *Times* acknowledged that it had, at the urging of the Bush administration, withheld publication of the story, saying it held its exposé back "for a year." This time frame suggested that the newspaper made the decision to withhold publication of the story after the 2004 presidential election.

Such a delay was, in itself, unpardonable, and provoked angry criticism. Now we learn, from an interview with Executive Editor Bill Keller conducted by Calame, that internal discussions at the *Times* about drafts of the eventual article had been "dragging on for weeks" before the November 2, 2004, election, which resulted in a victory for Bush.

"The process," the public editor notes, "had included talks with the Bush administration." A fresh draft was the subject of discussion at the newspaper "less than a week" before the election.

Involved here is not a trivial sex scandal or some moral peccadillo committed by one or another of the major candidates. At issue was a major policy question—one that goes to the core of constitutionally guaranteed civil liberties and basic democratic rights.

The electorate had the right to know that the incumbent president was systematically breaking the law in order to secretly wiretap, without court warrants, the communications of American citizens. As the *Times* was well aware, similar illegalities—although on a smaller scale—were among the charges leveled against Richard Nixon in the second article of impeachment, entitled "Abuse of Power," approved by the Judiciary Committee of the House of Representatives in July 1974, leading to Nixon's resignation the following month.

The NSA spying, authorized by Bush shortly after September 11, 2001, violates the 1978 Foreign Intelligence Security Act, which was passed in the aftermath of the Watergate scandal specifically to prohibit the type of warrantless wiretaps and

intercepts ordered by Nixon against his political opponents, and secretly sanctioned by Bush without congressional approval after 9/11. (As the Bush administration revealed in the wake of the *Times*'s December, 2005 exposé, some leading members of Congress of both parties were briefed on the program after it was initiated, and Democrats and Republicans alike remained silent.)

As a federal judge pointed out in her ruling last week ordering the shutdown of the NSA program, it also breaches the Fourth Amendment to the Constitution, which bans unreasonable searches and seizures, and the First Amendment, which protects free speech.

The NSA spying operation is a major component of a massive and unprecedented assault on the democratic rights of the American people, involving a drive by the Bush administration to establish what amounts to a presidential dictatorship.

In the fall of 2004, the *Times*, under pressure from a lawless president running for reelection, chose to conceal the existence of the surveillance program from the electorate. The history of this decision and its cover-up is quite revealing.

In his August 13 column, entitled "Eavesdropping and the Election: An Answer on the Question of Timing," Calame makes reference to "a number of readers critical of the Bush administration" who "have remained particularly suspicious of the [original *Times*] article's assertion that the publication delay dated back only 'a year' to Dec. 16, 2004." Clearly, Calame's piece comes in response to protests and inquiries as to when the decision was made to withhold the domestic spying story.

His admission is itself an effort at damage control.

Calame asks in the second paragraph of his August 13 commentary, "Did the *Times* mislead readers by stating that any delay in publication came after the Nov. 2, 2004, presidential election?" The answer, although the public editor doesn't care to say so directly, is unequivocally "Yes," based on his own findings.

Calame writes: "Mr. Keller, who wouldn't answer any questions for my January column, recently agreed to an interview about the delay, although he saw it as 'old business.' But he had some new things to say about the delay and the

election.”

These “new things” include the following:

“ ‘The climactic discussion about whether to publish was right on the eve of the election,’ Mr. Keller said. The pre-election discussions included Jill Abramson, a managing editor; Philip Taubman, the chief of the Washington bureau; Rebecca Corbett, the editor handling the story, and often Mr. [James] Risen [one of the article’s co-authors]. Arthur Sulzberger Jr., the publisher, was briefed, but Mr. Keller said the final decision to hold the story was his.

“Mr. Keller declined to explain in detail his pre-election decision to hold the article, citing obligations to preserve the confidentiality of sources. He has repeatedly indicated that a major reason for the publication delays was the administration’s claim that everyone involved was satisfied with the program’s legality. Later, he has said, it became clear that questions about the program’s legality ‘loomed larger within the government than we had previously understood.’ ”

If one is believe this account, Keller and company chose to accept the Bush administration’s arguments about the legality of its own unconstitutional domestic surveillance operation. The *Times* hierarchy took the word of a government that epitomizes the rise of the political underworld and its consolidation of power. Not only did the Bush administration come to power on the basis of a stolen election, it used lie after lie to drag the American people into a bloody and unprovoked war in Iraq.

Either Keller is being disingenuous, or he is so ignorant of elementary political realities that he is unfit to edit a newspaper of any kind, let alone the supposed “newspaper of record.”

Concerning the *Times*’s change of heart in 2005, Calame notes that Keller recently e-mailed him “a description of how that picture had changed by December 2005, and it cast some new light on the pre-election situation for me. It implied that the paper’s pre-election sources hadn’t been sufficiently ‘well-placed and credible’ to convince him that questions about the program’s legality and oversight were serious enough to make it ‘responsible to publish.’ But by December, he wrote, ‘We now had some new people who could in no way be characterized as disgruntled bureaucrats or war-on-terror doves saying we should publish. That was a big deal.’ ”

This ostensible justification is itself damning. The *Times* knew that the secret program existed, that it flouted the letter and spirit of the 1978 FISA Act, and that it was a matter of immense political import. Why, otherwise, would the Bush administration be so insistent that the story be killed? There was no credible rationale, given what the newspaper knew at the time, to withhold the existence of the domestic spying program from the public—especially on the eve of an election.

Particularly significant is Keller’s contemptuous reference to “war-on-terror doves,” which only reveals the fundamental agreement of Keller and the rest of the *Times* leadership with the administration’s all-purpose pretext for war abroad and

repression at home. Those who question or challenge the so-called “war on terror” are, evidently, relegated by the *Times* to the lunatic fringe of politics.

As for the description of the newspaper’s devotion to the most scrupulous and conscientious regard for verifiable facts and unimpeachable sources, one need only consider its approach to the current British terror scare. Take last Sunday’s *Times* editorial (“Hokum on Homeland Security”), which begins with the following phrase: “Ever since British intelligence did such a masterly job in rounding up terrorists intent on blowing up airliners....”

Really? How do they know that those imprisoned in London were “terrorists intent on blowing up airliners?” Because Bush and British Home Secretary John Reid say so? Not a shred of evidence has been presented by either the British or American authorities to substantiate this claim. No charges were even lodged until yesterday, and even sections of the American media have decided to somewhat downplay the alleged plot because of lack of proof and growing public skepticism.

Calame goes on to quote Keller, approvingly, that the decision to withhold the NSA story only days before the election “also was an issue of fairness.” Calame says he agrees “that candidates affected by a negative article deserve to have time—several days to a week—to get their response disseminated before voters head to the polls.”

Aside from the sophistry arising from the fact that Keller admitted to having the basic story in hand for weeks before the election, what is truly astounding is that neither Calame nor Keller shows the slightest concern for “fairness” toward the voters, who went to the polls not knowing, thanks to the *Times*, that the Republican candidate was tearing up the Constitution.

As for Keller’s dishonest claim last December that the story had been held up only “for a year,” Calame quotes his executive editor, without comment, saying, “It was probably inelegant wording.”

This entire affair is one more devastating example of the cowardice of the *Times* and its capitulation to the White House and the most ruthless elements in the ruling elite, who are irremediably hostile to any signs of opposition and democratic political life in general. More broadly, the *Times*’s conduct speaks to the virtual integration of the American mass media into the state apparatus. It reveals the degree to which the media functions as a propaganda appendage of the government, concealing or distorting facts on cue.

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