

US officials tell New York Times

Vast data mining programs behind 2004 dispute within Bush administration over domestic spying

By Joe Kay
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A *New York Times* article published Sunday reports that a dispute within the Bush administration over its domestic spying programs in 2004 centered on so-called “data mining” operations. These programs involve accessing massive databases of communications logs—both foreign and domestic—to search for links and associations between tens of millions of people.

Citing “current and former officials briefed on the program,” the *Times* reported that “computer searches through massive electronic databases” were the source of the dispute within the Justice Department that led to the threatened resignation of three top Justice Department officials.

The searches enable the government to access to the “metadata” of emails and phone calls of tens of millions of US residents, including “phone numbers or e-mail addresses, as well as dates, times and duration of calls and messages,” according to the *Times*. Using this information, the government can determine the contacts and associations of any American.

The data mining programs have been previously reported in the press, beginning in December 2005. The *Times* reported at the time that a handful of giant telecommunications companies had given the National Security Agency (NSA) access to “switches” through which large volumes of phone and internet traffic pass. The *Washington Post* reported in February 2006 that at least some of those targeted in a separate program involving eavesdropping on telephone and email communications of people residing in the US were chosen through data mining operations. The domestic wiretapping program was first reported by the *Times* in December of 2005 and quickly acknowledged and defended by President Bush.

Subsequent revelations have exposed the breadth of the programs. In May 2006, *USA Today* provided details of the NSA’s accumulation of phone records of hundreds of millions of Americans, which involved the collaboration of telecommunications giants AT&T, Verizon and BellSouth.

However, the Bush administration has never officially

acknowledged the existence of these data-mining programs. The *Times* report is further evidence that what the administration has admitted to is only a small component of a vast spying apparatus.

All of these operations violate the Fourth Amendment ban on “unreasonable searches and seizures” and at least some of them violate specific laws, such as the 1978 Foreign Intelligence Surveillance Act. They pose a fundamental threat to the democratic rights of the American people. Initiated under the pretext of the “war on terror,” they are in fact directed primarily at targeting and monitoring political opposition to the policies of the American ruling elite. Data mining of phone call and email records can be used to generate lists of opponents of the war and other US government policies, to be targeted by mass arrests in the event of a “national emergency.”

The timing of the information leaked to the *New York Times* indicates that the “current and former officials” who commented anonymously to the newspaper include current members of the Bush administration who are seeking to corroborate testimony by Attorney General Alberto Gonzales and forestall calls by some Senate Democrats for a perjury investigation.

High-level former and current government officials, including former Deputy Attorney General James Comey and the current director of the FBI, Robert Mueller, have testified at congressional hearings into administration domestic spying programs that an internal dispute over the programs in 2004 involved the NSA warrantless wiretapping program. However, Gonzales has denied in sworn testimony that there were any divisions within the administration over wiretapping, and has instead testified that the divisions involved “other intelligence activities.” The report published Sunday by the *Times* backs up, at least in a technical sense, Gonzales’ testimony.

The leaked report comes as the political conflict in Washington over Gonzales is escalating. Four Democratic members of the Senate Judiciary Committee last week called

for the appointment of a special counsel to investigate whether the attorney general perjured himself in testimony before the committee. On Sunday, the *New York Times* editorial board called for Congress to impeach Gonzales if Solicitor General Paul Clement does not grant the request for a special counsel.

Apart from assertions by anonymous officials, there is no evidence given in the *Times* article that the dispute was, in fact, confined to “data mining” and not wiretapping. There is no reason to accept at face value the claims of the officials cited by the *Times*, and the spying may in fact be even broader than the data mining programs combined with the wiretapping program acknowledged by the government. It is entirely possible, for example, that the wiretapping program was not confined, as asserted by the Bush administration, to electronic communications between people in the US and people outside the country, and instead encompassed domestic phone calls and emails as well.

The *Times* article itself notes, “Some of the officials said the 2004 dispute involved other issues in addition to the data mining, but would not provide details.”

An article published in the *Washington Post* on Sunday reported, “One source familiar with the NSA program said yesterday that there were widespread concerns inside the intelligence community in 2003 and 2004 over how much Internet and telephone data mining could occur, as well as about the NSA’s direct intercepts of communications without court approval.”

In other words, according to at least several sources, the disputes within the administration—which led ultimately to a determination within the Justice Department in early 2004 that the program was “without legal foundation”—involved not only data mining, but also the NSA wiretapping program. This is precisely what Gonzales has denied under oath.

Testimony by FBI Director Mueller last week before the House Judiciary Committee directly contradicted Gonzales. Asked if the disputes involved the so-called Terrorist Surveillance Program—the Bush administration’s name for the NSA warrantless wiretapping program whose existence it has acknowledged—Mueller replied that the disputes were over “an NSA program that has been much discussed, yes.” The only NSA program that has been “much discussed” is the warrantless wiretapping program, while the data mining operations have been disclosed only in a few newspaper reports.

Mueller supported the testimony of former Deputy Attorney General Comey, who last May indicated that the wiretapping issue was involved in the conflict within the administration. It was Comey who, in the position of acting attorney general, refused to sign off on the program in 2004, setting off a confrontation that led ultimately to the threatened resignations of Comey, Attorney General John Ashcroft and Mueller.

Regardless of the exact nature of the programs in question that led to disputes in 2004, there is no doubt that they continue

to this day. Last week, Justice Department spokesman Brian Roehrkasse said that the programs in question “remain highly classified”—that is, that they still exist.

These programs are only part of a much broader erosion of democratic and privacy rights. In another extraordinary intrusion, the US and the European Union have agreed to share personal data on airline passengers traveling to the US. According to a critical report prepared by the EU Parliament, the shared data could include “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of individuals.”

Despite the fundamental constitutional questions involved, leading Democrats are seeking to confine discussion to the narrow issue of whether or not Gonzales perjured himself when he said there were no disputes within the administration on the so-called Terrorist Surveillance Program.

Speaking on “Face the Nation” Sunday, Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, urged Gonzales to correct any statements he may have previously made. “If he doesn’t correct [his testimony], then I think that there are so many errors in there that the pressure will lead very, very heavily to whether it’s a special prosecutor, a special counsel, efforts within Congress,” Leahy said.

The principal hope of Leahy and the other Democrats is that sufficient pressure can be brought to bear to force Gonzales to resign. There are many indications that the Democrats, in order to avoid a direct clash with the Bush administration over its assertion of virtually unlimited powers and its rejection of congressional oversight, would seize on the ouster of Gonzales to declare victory and evade the more fundamental questions of illegal spying and Bush’s assertion of quasi-dictatorial powers.

Far from criticizing the spying programs themselves, Leahy said he was very open to demands from the Bush administration that Congress amend the 1978 Foreign Intelligence Surveillance Act. Bush said in his weekly radio address on Saturday that he wants the act to be changed in a manner that would expand the ability of the government to carry out warrantless wiretapping.

“If they need to make changes in our intelligence surveillance act, for example, we’ll do that,” Leahy volunteered.

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