



July 19, 2013

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POST POLITICS

## The Military Industrial Complex: We Know It Just Didn't Stick -- It Was Our Fault

Posted: 07/19/2013 3:04 pm

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The NSA website today and for the past many months states that it has the capacity, and is looking into, intercepting all domestic communications as well all foreign and military communications. In Oak Bluff, Utah, the new NSA site, two million square feet, the largest spy plant in the world, a \$4 billion construction with an \$18 million annual electric bill and its own water processing plant, employs more people and is larger than the Pentagon. The NSA website proudly proclaiming it has the ability to do everything that Edward Snowden has revealed, and says "If you did nothing wrong, you have nothing to hide." It goes to great lengths to describe the exact technology that we have, the exact technology that we are building toward, and how unique it is.

Decades ago, long before, the Reagan and Bushes, the government had already expanded its domestic surveillance activity beyond that of any time in history. Created in 1952, the NSA immediately became the biggest American intelligence agency, with more than 30,000 employees at Ft. Meade, Maryland, and listening posts around the world. Part of the Defense Department, it is the successor to the State Department's "Black Chamber" and American military eavesdropping and code-breaking operations that date to the early days of telegraph and telephone communications.

It is a very big part of the very dangerous Military-Industrial Complex that President Dwight Eisenhower described as he left office in 1960. Then it was the Armed Forces; today it is the NSA and CIA. Then it was Lockheed; today it is Google.

His remarkable speech warning us not to do exactly what the NSA did should be read by every American. President Eisenhower said:

This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence -- economic, political, even spiritual -- is felt in every city, every State house, every office of the Federal government. We recognize the imperative need for this development. Yet, we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society. In councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together. Akin to, and largely responsible for the sweeping changes in our industrial-military posture, has been the technological revolution during recent decades.

I was one of Dan Ellsberg's lawyers. Since the 1960s, I and other lawyers who represented political defendants or other political cases never discussed the cases in our homes, offices, in correspondence, or on the telephones. We talked when we could, in parks and restaurants. Today we do the same and certainly never use emails.

In 2004, President Bush's State of the Union speech assured Americans that there are no warrantless searches. But we have know that since the mid eighties, National Security Agency (NSA) and Pentagon operatives break into homes; wiretap and eavesdrop at will; and build secret dossiers on citizens while arguing that there can be no judicial review of their activities. President Bush more than 10 years ago claims that there were less than 2,500 intercepts; James Branson, a former NSA official corrected him and year, claimed that the figure was closer to hundred thousand. Analysts then understood the difference between intercepts and the date base from which the intercepts were taken. We knew the databases were extraordinary. Foreign countries that spied on us knew we were spying on them. No surprises.

The NSA, since 1952, runs the eaves dropping hardware of the American intelligence system, operating a huge network of satellites and listening devices around the world. Its mission has been to gather intelligence on foreign enemies by breaking codes and tapping into telephone and computer communications. It did it and we know of it. The facts just didn't stick with us -- so much other information was coming in.

The 1978 Foreign Intelligence Services Act (FISA) and the courts it created are not new. It is not surprising that original very few people know of its existence. The courtroom is in a windowless room on the top floor of the Department of Justice. There are eleven rotating judges. The Court meets in secret, with no published opinions or public records. Nearly all those spied upon will never know they were under surveillance. No one, except the FISA judge involved and the Department of justice knows what is done. No one, except the government and FISA judge, knows who the warrants are aimed at. There is no review by anyone, neither the regular

federal Appellate Court nor the Congress, of its decisions.

More than 15,000 search warrants, permitting eavesdropping, surveillance, and break-ins, had been sought by the government prior to 9/11. Not one was denied. From 2001 to 2005, 5,200 were sought and four were sent back to the government for more evidence. Of the four two were modified and granted. Thus, although the FISA court is required to determine if enough facts are present to justify a warrant, only twice has it ever denied a warrant. Even though the FISA law gave the government the right to tap, and then either wait 72 hours to tell the FISA court or discontinue the tap, that was not sufficient for the president. Not one single case so far as we know has been successfully prosecuted based on evidence obtained through one of these wiretaps.

In 2006, The Patriot Act was passed. Two out of three branches of the federal government are left out of the loop in that act. Through the Patriot Act -- a brilliant public relations acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" -- and the September 18, 2001, use of military force authorization, Congress has consistently driven power to the president while lessening its own role, as well as the role of the judiciary, in decisions about foreign and our domestic war.

The Patriot Act is only the tip of the iceberg of amended legislation. Few in the public and few in Congress understand that its endless deletions and amendments of previous legislation. The Patriot Act surveillance provisions, like the NSA surveillance, provide federal agencies with more surveillance options and less judicial supervision. The principal statute governing electronic surveillance in criminal investigations passed in 1968, Title III of the Crime Control and Safe Streets Act, tried to answer Supreme Court doubts about the constitutionality of electronic surveillance check that, in effect, is no check at all. Except in emergencies, the Administration must persuade a judicial officer that they have probable cause that the interception they seek may provide evidence of one of a number of listed offenses. The court order permitting surveillance requires investigators to submit to limitations and judicial supervision. Evidence intercepted in violation of Title III's central provisions is made inadmissible in Court. But one rarely knows the true source of government evidence ultimately admitted in.

The Patriot Act rejects the Safe Streets Act. It allows surveillance of U.S. citizens beyond FISA standards and beyond the criminal law even where there is no probable cause and, in effect, no judicial involvement. FISA warrants freely obtained were always used in "Roving Wiretaps" Bush gave us a new language and new concepts. Under Bush, we were told if you wiretap an individual's phone, the government says you can tap any phone, cell phone, or street call that the person uses, as well as the phones of anyone he calls. One wiretap provision, unchecked by a judge, can lead to hundreds or thousands of other calls. The Patriot Act authorizations, not based on probable cause, are nationwide and have been for years.

Certainly those in government, both Republic and Democrats, knew exactly what was going on. They knew, ever since the Church Committee of 1975 of decades ago, of the overstepping of our intelligence agencies. We all knew. We just did not pay attention.