

# Bush Signs Spy Bill in Spirit Of Hitler's Third Reich

by Edward Spannaus

Everything, and more, that was done under Dick Cheney's domestic surveillance program launched immediately after 9/11, is now "legal," thanks to the legislation passed by the Democratic-controlled Congress on Aug. 4, in the hours before it adjourned for its August recess. The next day, President Bush signed the legislation which amends—actually, obliterates—the Foreign Intelligence Surveillance Act (FISA), which had prohibited the electronic surveillance of Americans without a court order for almost 30 years.

In explicit violation of the Fourth Amendment to the U.S. Constitution, the Administration can now monitor Americans' calls and e-mails, without a warrant, so long as there is some claimed connection to a person "reasonably believed to be located outside the United States." The link doesn't have to be to al-Qaeda, nor even to a suspected terrorist, but simply to "a person" outside the U.S., so long as "a significant purpose of the acquisition is to obtain foreign intelligence information." Previously, the FISA Court had to approve any electronic surveillance of a person inside the United States.

## Bush and Cheney Threaten Congress

During the week prior to the bill's passage, the White House was putting excruciating pressure on Congress, demanding that it immediately pass new legislation to give the Administration more leeway to monitor phone calls and e-mails of "suspected terrorists." Fearful of being blamed for a new terrorist attack, many Democrats backed off from their earlier insistence that Congress should not pass any new legislation modifying FISA until the Administration had fully disclosed the scope of the domestic surveillance program put in effect after September 2001.

That program, it is well-established, was run by Vice President Dick Cheney. It was Cheney and his lawyer David Addington who pushed hardest for the spy program in the weeks after 9/11, using their "Schmittlerian" legal theories (modelled on Hitler's 'Crown Jurist' Carl Schmitt) to argue that the President could ignore existing laws and make his own. According to the May 16, 2006, *New York Times*, it was Cheney who argued that the NSA should be able to intercept purely domestic phone calls and e-mails without a warrant. It was Cheney who provided all the clas-

sified briefings on the program—such as they were—to Congressional leaders. And it has now been reported (*New York Times*, July 29) that it was Cheney himself who ordered then-White House Counsel Alberto Gonzales to go to Attorney General John Ashcroft's hospital room on March 10, 2004, in an effort to get the heavily-sedated Ashcroft to override the determination by the top Justice Department officials that the program, as it was then functioning, was unlawful.

According to reports first published in *Newsweek* on Aug. 1, and the *Los Angeles Times* on Aug. 2, the reason for the Administration's desperation to pass a new FISA bill was that, four or five months earlier, a judge of the secret FISA Court had imposed new restrictions on the NSA's ability to intercept, without a specific warrant, overseas phone calls and e-mails which are routed through U.S. facilities.

But, observers were asking why, if there was such a "gap" in intelligence collection created by a court ruling four to five months earlier, did the White House wait until the last minute to declare such an emergency?

On Aug. 3, President Bush escalated the strong-arm pressure, demanding that Congress stay in session until it passed the FISA amendments submitted by the White House. In an atmosphere of hysteria and intimidation similar to that used by Bush and Cheney to push through the Patriot Act in Fall 2001, and the Military Commissions (torture) Act last year, Bush ranted that "there are cold-blooded killers who want to come to our homeland and wreak death," and he insisted that Congress must "stay in session until they pass a bill that will give our intelligence community the tools they need to protect the United States."

Although it was Bush making the public statements, Dick Cheney was Bush's companion (controller) when Bush made his threats to reconvene Congress. It is typical in such situations that Cheney engages in the heavy threats and arm-twisting of Congressional leaders behind the scenes. Senate Majority Leader Harry Reid indicated as much, when he complained on Aug. 2, that Director of National Intelligence Mike McConnell had escalated his demands for changes in the bill, after Democrats thought they had an agreement with him. "I assume that he's gotten some calls from the White House and the Vice President's office," Reid said.

After the passage of the FISA bill, albeit with a six-month expiration date, Cheney, in an Aug. 6 speech to a convention of the Marine Corps League in New Mexico, demanded that Congress “complete the task on a permanent basis before the end of the year.”

### **‘The Politics of Fear’**

By succumbing to Cheney, the Democratic-led Congress has once again succeeded in disgracing itself in the eyes of Americans—thus creating a situation even more conducive to the dictatorship Cheney and his backers desire. The scorn was also reflected in press commentary.

The *Washington Post* wrote on Aug. 6: “The Democratic-led Congress, more concerned with protecting its political backside than with safeguarding the privacy of American citizens, left town early yesterday after caving in to administration demands that it allow warrantless surveillance of phone calls and e-mails of American citizens, with scant judicial supervision and no reporting to Congress about how many communications are being intercepted. . . .”

The *New York Times*’ lead editorial on Aug. 7, entitled “The Fear of Fear Itself,” stated: “It was appalling to watch over the last few days as Congress—now led by Democrats—caved in to yet another unnecessary and dangerous expansion of President Bush’s powers, this time to spy on Americans in violation of basic constitutional rights. . . .” The *Times* remarked that “the spectacle left us wondering what the Democrats—especially their feckless Senate leaders—plan to do with their majority in Congress if they are too scared of Republican campaign ads to use it to protect the Constitution and restrain an out-of-control president.”

The *Los Angeles Times*, calling it “The politics of fear,” noted: “That this flawed legislation was approved by a Democratic Congress is a reminder that many in the party are still fearful that they will be labeled ‘soft on terror’ if they don’t give this administration what it wants when it wants it. But the party may be equally injured by the perception that it won’t stand up for what it believes.”

### **Data-Mining Continues**

The new law also requires telecommunications companies to make their facilities available for government monitoring. This is in fact what the telephone companies were already doing after 9/11, according to a number of earlier reports.

Shortly after it broke the initial story on NSA domestic surveillance, the *New York Times* reported, in a follow-up story on Dec. 24, 2005, that the NSA had obtained the cooperation of American telecommunications companies to obtain backdoor access to the main arteries of telecommunications, thus accessing streams of domestic and international communications. The *Times* reported that the NSA was combing through large volumes of phone and Internet traffic, in what some officials described as a data-mining operation.

A few weeks later, the *Times* reported that, after 9/11, the NSA began sending a steady stream—which soon became a flood—of telephone numbers, e-mail addresses, and names to the FBI in search of suspected terrorists. The FBI complained that there was so much useless data being given to them, that it was swamping their investigators, and that all of it was worthless.

In May 2006, *USA Today* reported that the NSA had been collecting the phone call records of tens of millions of Americans, using data provided by AT&T, Verizon, and BellSouth. Among the major communications companies, only Qwest reportedly balked, demanding that the NSA provide it with a court order first.

Further evidence of this, was contained in statements and affidavits prepared by former AT&T technician Mark Klein, who learned in 2003-04 that AT&T had built “secret rooms” in its central offices in various cities, enabling the NSA to tap into AT&T “WorldNet” services and the entire Internet. Klein originally thought these special facilities were being used for the “Total Information Access” (TIA) data-mining program developed under Reagan National Security Advisor Adm. John Poindexter (ret.). Although Congress supposedly defunded the TIA program, there are solid indications that it is still operating, but under a different name.

Thus, the dispute over whether Alberto Gonzales perjured himself in recent Congressional testimony, when he said that the confrontation in Ashcroft’s hospital room was over some other intelligence activity, really misses the point. What Congress should be looking at, and stopping, is the totality of domestic surveillance, monitoring, and data-mining programs carried out after 9/11—not just the so-called “Terrorist Surveillance Program” which the Administration has acknowledged.

This is what *EIR* proposed in its May 25, 2007 issue, in the wake of the explosive testimony by former Deputy Attorney General James Comey to the Senate Judiciary Committee on May 15. *EIR* said that Comey’s testimony, “that the entire leadership of the Justice Department was prepared to resign over their disagreement with the White House, particularly Dick Cheney and his lawyer David Addington . . . raises the question once again: Is the NSA spying program much bigger than has ever been admitted?”

Instead of pursuing this question, Congress allowed itself to be bullied into passing new “temporary” legislation, which now makes it much simpler, and indeed “legal,” for the Administration to continue doing what it had been previously been doing in secret—to carry out surveillance, monitoring, and data-mining activities, against millions of Americans, without a court order or supervision.

Even more dangerous, Congress acceded to a new Hitler-like power grab by the Bush-Cheney White House, allowing it to ride roughshod over Congress and the courts in a manner reminiscent of Carl Schmitt’s doctrine of imposing emergency rule in a time of crisis.