

July 2, 2009

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**Re: Report on President Bush's Electronic Surveillance Programs**

Dear Mr. Fine, Ms. Lewis, Mr. Ellard, Mr. Heddell, and Ms. Mazer:

The undersigned organizations are writing to urge you to take the necessary steps to ensure maximum transparency in the publicly released version of the forthcoming report on President Bush's warrantless electronic surveillance programs.

A clear and complete understanding of how the Bush administration's surveillance activities outside of the Foreign Intelligence Surveillance Act (FISA) affected people in the U.S. is vital to an informed public debate about the proper scope of electronic surveillance in our country. Although investigative news reports have described many aspects of these activities, other important information remains unknown. Even many members of Congress have been left to legislate without all of the relevant facts. Moreover, the former administration's selective disclosures of information have misled the public and lawmakers alike about the true scope of surveillance and its impact on people in the U.S.

The upcoming report will be the fullest source of information yet available to the public and those members of Congress who were not "read into" the Bush administration's surveillance programs. As such, it will play a vital role in advancing the public debate. In order to effectively fulfill that role, however, it is critical that the report declassify as much information as possible and present the relevant information about the scope of the surveillance and its impact on U.S. persons in a clear and transparent manner.

We are particularly concerned about potential confusion resulting from ambiguities in terminology used by some government officials. To give examples, in early 2006, shortly after the New York Times broke the story of the National Security Agency's warrantless wiretapping activities, then-Deputy Director of National Intelligence Michael Hayden gave an address to the National Press

Club in which he repeatedly denied that the NSA was interested in the “conversations” of innocent Americans. Subsequent press investigations revealed that numerous communications of Americans had indeed been intercepted. When pressed on this question during the Senate hearing on his nomination to lead the CIA, General Hayden responded that he “chose his words very carefully” at the Press Club event; the administration had intercepted “communications” of U.S. persons (including purely domestic communications) but not “conversations.” Similarly, when asked about earlier statements that appeared to understate the scope of the Bush administration’s surveillance activities, he noted that his earlier statements were expressly limited to “the program the President discussed several weeks ago”—not all of the electronic surveillance activities conducted by the administration outside of FISA’s exclusive procedures.

These distinctions in terminology likely would have meant little to a member of the public who was following the hearing. Any such distinctions will be equally meaningless to members of the public who read the unclassified version of the upcoming report (or follow the press coverage of the report), unless those distinctions are clearly identified and explained.

Accordingly, we respectfully request that you prominently define the terms being used in the upcoming report, so that Americans can have an accurate and full understanding of the activities being described and the extent to which the communications of U.S. persons have been intercepted. In particular, we ask that you differentiate between the *targeting* of U.S. persons and the *acquisition* of communications involving U.S. persons (who may or may not have been the “target”); the *acquisition* of communications and the *review* of the communications’ data and/or words spoken or written by the parties to the communications; *automated* review of communications (e.g., computer algorithms used to search or sort communications) and *human* review (e.g., when a person listens to a call or reads a transcript or e-mail exchange, whether stored or in real time); and the so-called “terrorist surveillance program” (TSP) and any other electronic surveillance programs or policies affecting people in the U.S. (including wiretapping, pen registers, and acquisition of stored communications, such as e-mails stored by internet or electronic communications service providers). Similarly, to the extent you refer to *monitoring*, *collection*, *interception*, or *electronic surveillance* of communications, we ask that you clearly define and distinguish these terms. Finally, to the extent you refer to the *contents* of communications, we ask that you specify the definition you are using (e.g., whether you are using FISA’s definition at 50 U.S.C. § 1801(n) or the definition at 18 U.S.C. § 2510).

Without such differentiation and definition, a statement such as “the program resulted in the surveillance of X number of Americans” could be misleading. If the intent of the statement is to describe the number of Americans whose conversations were subject to human review under the TSP, but a member of the public reads the statement as describing the number of Americans whose communications were intercepted under any surveillance program (an equally plausible interpretation), that member of the public will be left with a highly inaccurate (and understated) impression of the true scope of surveillance activities.

In addition, we request that you work with the NSA and any other relevant agency personnel to ensure the broadest possible public disclosure of the contents of the report. Given the importance of the issue and its potential impact on the privacy of law-abiding Americans, it is critical that the public version of the report contain as much information as can responsibly be disclosed. We note

that much about these programs already has been reported or disclosed by whistleblowers. Even if specific acquisition techniques cannot be revealed, it should not jeopardize national security to reveal, for example, statistical information about the scope of surveillance and the number of affected people in the U.S.

Thank you for your consideration of our views, and please feel free to contact any of us to discuss further the matters raised in this letter.

Sincerely,

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